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

Rules and Regulations

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Wednesday, June 16, 2004

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 110

RIN 3206–AJ73

Posting Regulations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to revise the rules relating to notice of new regulations and information collection requirements. The revisions include eliminating one subpart and renaming the remaining subpart and plain language modifications.

DATES: Effective Date: This regulation is effective on July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Robert T. Coco, (202) 606–1822, Fax: (202) 606–0909, or e-mail *rtcoco@opm.gov*.

SUPPLEMENTARY INFORMATION: On March 6, 2003, the Office of Personnel Management (OPM) published a proposed rule (68 FR 10666) revising part 110 of title 5, Code of Federal Regulations. The proposed rule had a 60-day comment period, during which OPM received no comments. The final rule is identical to the proposed rule. The rule will make the following revisions to title 5, Code of Federal Regulations. Part 110 is revised to reflect the removal of old subpart B—Information Collection Requirements. Old subpart B was a requirement arising from an internal OPM housekeeping function no longer in effect. Its removal requires us to eliminate the old subpart A designation and use the designation part 110 to refer to the remaining material. We have also made minor word changes and changed the order of material within the section. Except as otherwise noted, the purpose of these revisions is not to make substantive changes but, rather, to make part 110 more readable.

Section 110.101: Changes "special bulletins" to "notice" and changes "new regulations" to "new proposed, interim, and final regulations." Corrects the name of the type of issuance currently used, which was changed in 1994 when the bulletin system was abolished, and clarifies regulation description to indicate that it includes new proposed, interim, and final regulations.

Section 110.101(b): (Note old paragraphs (a) and (b) have been reversed, and redesignated as paragraphs (b) and (a), respectively, so that they are now in a more logical sequence). Provides the option for viewing documents either in paper format or via Web site, thus providing the ability to use electronic as well as paper format of documents.

Section 110.102(b): Adds "agency Web sites" as a supplemental posting option. This provides the option for an agency to make new OPM regulations available on the agency's Web site or through a link to the OPM Web site.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is revising part 110 of title 5, Code of Federal Regulations as follows:

PART 110—POSTING NOTICES OF NEW OPM REGULATIONS

Authority: 5 U.S.C. 1103.

§ 110.101 What are OPM's Notice and Posting System responsibilities?

OPM will issue a notice that will provide information for Federal agencies, employees, managers, and other stakeholders on each of its new proposed, interim, and final regulations. Each notice will transmit:

(a) A posting notice that briefly explains the nature of the change, and provides a place for Federal agencies to indicate where the full text of the **Federal Register** notice will be available for review.

(b) A copy of the notice of rulemaking that appears in the **Federal Register** or a link to a Web site where the notice of rulemaking appears.

§ 110.102 What are Agency responsibilities?

(a) Agencies will make regulations available for review by employees, managers, and other interested parties. Federal agencies receiving the notices of rulemaking described in § 110.101(b) will make those regulations available for review upon request. Each agency will complete the posting notice described in § 110.101(a) indicating where and how requests to review these materials should be made.

(b) Agencies will determine posting locations and, if desired, develop supplemental announcements. Agencies will display completed posting notices in a prominent place where the notices can be easily seen and read. Agencies will choose the posting location that best fits their physical layout. Agencies may supplement these postings with announcements in employee newsletters, agency Web sites, or other communication methods. The basic requirement to post the notice continues, however, even if supplemental announcement methods are used.

(c) Agencies will post notices of the new regulations even if the **Federal Register** comment date has passed. The public comment period on proposed regulations begins when a notice of proposed rulemaking is published in the **Federal Register**, not with the posting of the notice described in § 110.101(a). The purpose of posting notice is solely to inform agency personnel of changes. Agencies are required to post the posting notice even if the formal deadline for comments shown in the preamble of the **Federal Register** notice of rulemaking has passed. Agencies should make every reasonable effort to minimize delays in distributing the notice described in § 110.101 to their field offices.

(d) No fixed posting period. There are no minimum or maximum time limits on displaying the notice described in § 110.101(a). Each office receiving a notice for posting should choose the posting period which provides the best opportunity to inform managers and employees of regulatory changes based upon office layout, geographic dispersion of employees, and other local factors.

[FR Doc. 04–13558 Filed 6–15–04; 8:45 am]

BILLING CODE 6325–44–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AK01

Extended Assignment Incentives

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on extended assignment incentives, which provide additional flexibility to assist agencies in retaining experienced, well-trained employees in a United States territory, possession, or commonwealth for longer than the employee's initial tour of duty.

DATES: The final regulations are effective on June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Vicki Lynn Draper by telephone at (202) 606–2858; by fax at (202) 606–4264; or by e-mail at *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: On September 12, 2003, the Office of Personnel Management published interim regulations (68 FR 53667) to implement a statutory amendment that authorized the payment of extended assignment incentives. Section 207 of the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107–273, November 2, 2002), added a new section 5757 to chapter 57 of title 5, United States Code, to permit the head of an executive agency to pay an extended assignment incentive to certain Federal employees assigned to positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. The 60-day comment period for the interim regulations ended on November 12, 2003. We received no comments from either agencies or individuals. Therefore, we are adopting the interim regulations as final, with one minor correction of a regulation citation at § 575.513(a).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 575

Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the interim rule amending part 575 of title 5 of the Code of Federal Regulations, which was published at 68 FR 53667 on September 12, 2003, is adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES, RETENTION ALLOWANCES, SUPERVISORY DIFFERENTIALS, AND EXTENDED ASSIGNMENT INCENTIVES

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

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, 5755, and 5757; Pub. L. 107–273, 116 stat. 1780; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 2. The heading for Part 575 is revised to read as above.

■ 3. In § 575.513, paragraph (a) is revised to read as follows:

§ 575.513 What are the agency's and the employee's obligations when an employee fails to fulfill the terms of a service agreement?

(a) This section does not apply when an employee is involuntarily separated or involuntarily reassigned to a position outside the particular territory, possession, or commonwealth involved, as provided in § 575.511 or when an agency unilaterally terminates a service agreement under § 575.512.

* * * * *

[FR Doc. 04–13559 Filed 6–15–04; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG48

Voluntary Fire Protection Requirements for Light Water Reactors; Adoption of NFPA 805 as a Risk-Informed, Performance-Based Alternative

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its fire protection requirements for nuclear power reactor licensees to permit existing reactor licensees to voluntarily adopt fire protection requirements contained in the National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805). These fire protection requirements are an alternative to the existing deterministic, prescriptive fire protection requirements.

DATES: *Effective:* July 16, 2004. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of July 16, 2004.

ADDRESSES: The final rule and related documents may be examined and copied for a fee at the NRC Public Document Room (PDR), One White Flint North, Room O1–F15, 11555 Rockville Pike, Rockville, Maryland (NFPA standards are copyrighted). Copies of NFPA 805 may be purchased from the NFPA Customer Service Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101 and in PDF format through the NFPA Online Catalog (*www.nfpa.org*) or by calling 1–800–344–3555 or (617) 770–3000.

FOR FURTHER INFORMATION CONTACT: Joseph L. Birmingham, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2829; e-mail *jlb4@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1971, the Atomic Energy Commission promulgated General Design Criterion (GDC) 3, "Fire protection," in Appendix A to 10 CFR part 50. Subsequently, the NRC developed specific guidance for implementing GDC 3 in Branch Technical Position (BTP) Auxiliary and Power Conversion Systems Branch (APCSB) 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants," dated May 1, 1976, and Appendix A to BTP APCSB 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976," dated August 23, 1976. In the late 1970s, the NRC worked with licensees to establish configurations to meet this guidance, reaching closure on most issues. However, to resolve the remaining contested issues, the NRC published the final fire protection rule (10 CFR 50.48, "Fire protection") and Appendix R to 10 CFR part 50 dated November 19, 1980 (45 FR 76602).

Section 50.48(a)(1) requires each operating nuclear power plant to have a fire protection plan that satisfies Criterion 3 (GDC 3) of Appendix A to 10 CFR 50 and states that the fire protection plan must describe the overall fire protection program; identify the positions responsible for the program and the authority delegated to those positions; outline the plans for fire protection, fire detection and suppression capability, and limitation of fire damage. Section 50.48(a)(2) states that the fire protection plan must describe the specific features necessary to implement the program described in paragraph (a)(1) including administrative controls and personnel requirements; automatic and manual fire detection and suppression systems; and the means to limit fire damage to structures, systems, and components (SSCs) to ensure the capability to safely shut down the plant. Section 50.48(a)(3) requires that the licensee retain the fire protection plan and each change to the plan as a record until the Commission terminates the license.

GDC 3, referenced in 10 CFR 50.48(a)(1), provides broad performance objectives for an acceptable fire protection program. GDC 3 specifies, in part, that SSCs important to safety be designed and located to minimize, consistent with other safety requirements, the probability and effects of fires and explosions; noncombustible and heat resistant materials be used wherever practical; fire detection and fighting systems of appropriate capacity and capability be provided and designed to minimize the adverse effects of fires on SSCs important to safety; and fire fighting systems be designed to assure their rupture or inadvertent operation does not significantly impair the safety capability of the SSCs.

Section 50.48(b) references Appendix R to 10 CFR 50 and states that Appendix R establishes fire protection features required to satisfy GDC 3 with respect to certain generic issues for nuclear power plants licensed to operate before January 1, 1979. As stated in 10 CFR 50.48(b)(1), with the exception of Sections III.G, III.J, and III.O of Appendix R, nuclear power plants that were licensed to operate before January 1, 1979, are exempt from the requirements of Appendix R. These plants are exempt to the extent that:

Features proposed or implemented by the licensee have been accepted by the NRC staff as satisfying the provisions of Appendix A to BTP APCSB 9.5–1 that are reflected in NRC fire protection safety evaluation reports (SERs) issued before the 10 CFR 50.48 effective date of February 19, 1981; or,

Features that were accepted by the NRC staff in comprehensive SERs before Appendix A to BTP APCSB 9.5–1 was published in August 1976. Otherwise, these nuclear power plants must meet 10 CFR 50, Appendix R, as well as any requirements contained in plant specific fire protection license conditions and/or technical specifications. These nuclear power plants must also comply with 10 CFR 50.48(a).

Nuclear power plants that were licensed to operate after January 1, 1979, must comply with 10 CFR 50.48(a) as well as any plant-specific fire protection license conditions and/or technical specifications. Their fire protection license conditions typically reference SERs generated by the NRC as the product of initial licensing reviews against either Appendix A to BTP APCSB 9.5–1 and the criteria of certain sections of 10 CFR 50, Appendix R, or Section 9.5.1 of NUREG–0800, the NRC Standard Review Plan (SRP) which includes similar criteria specified in 10 CFR 50, Appendix R. These fire protection requirements are considered to be deterministic.

The NRC has issued approximately 900 exemptions from the technical requirements specified in Appendix R. These exemptions were granted to licensees that submitted a technical evaluation demonstrating that an alternative fire protection approach satisfied the underlying safety purpose of Appendix R. During the initial implementation period for "Pre-1979 Appendix R plants," the NRC granted exemptions under the provisions of 10 CFR 50.48(c)(6), which has since been deleted. For exemptions requested by "Pre-1979 plants" after the licensee's initial Appendix R implementation period, the NRC conducted its reviews in accordance with the provisions specified in 10 CFR 50.12, "Specific exemptions." "Post-1979 plants" have also requested and, when acceptable to the NRC, received approval to deviate from their licensing requirements. The processing of exemption and deviation requests has placed a significant burden on the resources of the NRC and the nuclear industry.

Industry representatives and some members of the public have described the current deterministic fire protection requirements as "prescriptive" and an "unnecessary regulatory burden." Beginning in the late 1990s, the Commission provided the NRC staff with guidance for identifying and assessing performance-based approaches to regulation (*see* SECY–00–0191, "High-Level Guidelines for Performance-Based Activities," dated September 1, 2000, and Staff Requirements Memorandum (SRM), dated March 1, 1999, entitled, "SECY–98–0144: White Paper on Risk-Informed and Performance-Based Regulation." This guidance augmented the risk-related guidance in the NRC's Probabilistic Risk Assessment (PRA) Policy Statement (60 FR 42622, August 16, 1995) and Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," dated July 1998.

In SECY–98–0058, "Development of a Risk-Informed, Performance-Based Regulation for Fire Protection at Nuclear Power Plants," dated March 26, 1998, the NRC staff proposed to the Commission that the staff work with the NFPA and the industry to develop a performance-based, risk-informed consensus standard for fire protection for nuclear power plants and, if the standard was acceptable, the staff would endorse the standard in a rulemaking. In an SRM dated June 30, 1998, the Commission approved the staff's proposal and the staff began cooperative participation in the development of NFPA 805.

As a result of its interaction with NFPA, the NRC staff determined that the likelihood of an acceptable standard was sufficiently high that rulemaking to endorse NFPA 805 should be approved. In SECY–00–0009, dated January 13, 2000, titled "Rulemaking Plan, Reactor

Fire Protection Risk-Informed, Performance-Based Rulemaking," the staff requested Commission approval to proceed with rulemaking to permit reactor licensees to adopt NFPA 805 as a voluntary alternative to existing fire protection requirements. In an SRM dated February 24, 2000, the Commission directed the staff to proceed with this rulemaking.

The NFPA Standards Council issued NFPA 805, 2001 Edition, January 13, 2001, with an effective date of February 9, 2001. It was approved as an American National Standard on February 9, 2001. The standard specifies the minimum fire protection requirements for existing light water nuclear power plants during all modes ("phases" in NFPA 805) of plant operation, including, shutdown, degraded conditions, and decommissioning.

In a memorandum dated October 9, 2001, the NRC staff informed the Commission that it planned to submit to the Commission by July 2002 a proposed rule that would revise 10 CFR 50.48 and a final rule 12 months after the proposed rule was published for public comment. Additionally, the staff informed the Commission that it was working with the Nuclear Energy Institute (NEI) to develop implementing guidance.

On December 20, 2001 (66 FR 65661), the NRC published draft rule language proposing to endorse NFPA 805 in the **Federal Register**. The NRC also posted this draft language on the NRC's interactive Rulemaking Forum Web site at *http://ruleforum.llnl.gov*. The NRC requested public comment on the draft rule language.

In response to this preliminary request for public comment, the NRC received five sets of comments from industry, consultants, licensees, industry organizations, and NRC staff. Based on those comments and on reviews by NRC Program Offices and Committees, the NRC revised the draft rule language. In SECY–02–0132, dated July 15, 2002, the staff requested the Commission's approval to publish the proposed rule in the **Federal Register** and on October 3, 2002, the Commission approved the publication of the proposed rule in the **Federal Register** for public comment. The proposed rule was published in the **Federal Register** for a 75-day public comment period (67 FR 66578; November, 1, 2002).

II. Discussion

In this rule, the NRC is allowing licensees to adopt NFPA 805 as a performance-based alternative to complying with paragraph (b) of § 50.48 for plants licensed to operate before January 1, 1979; or the fire protection license conditions for plants licensed to operate after January 1, 1979. Paragraph (b) of § 50.48 refers to fire protection features that 10 CFR 50, Appendix R requires to satisfy GDC 3. Paragraph (b) discusses the extent to which those features are regulatory requirements for certain licensees, and specifically to plants licensed before January 1, 1979. Requirements for plants licensed after that date are specified in plant fire protection license conditions. The NRC considers that NFPA 805 specifies fire protection requirements or provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the Appendix R fire protection features. A description of NFPA 805 and the NFPA 805 methodology follows.

NFPA 805 is a performance-based standard for fire protection prepared by the NFPA Technical Committee on Fire Protection for Nuclear Facilities. Issued by the Standards Council on January 13, 2001, it was approved as an American National Standard on February 9, 2001. NFPA 805 describes a methodology for establishing fundamental fire protection program design requirements and elements, determining required fire protection systems and features, applying performance-based requirements, and administering fire protection for existing light water reactors during operation, decommissioning, and permanent shutdown. It provides for the establishment of a minimum set of fire protection requirements but allows performance-based or deterministic approaches to be used to meet performance criteria.

Under NFPA 805, a licensee adopts the performance goals, objectives, and criteria itemized in Chapter 1 of NFPA 805 and then meets those goals, objectives, and criteria through the implementation of performance-based or deterministic approaches. Those goals, objectives, and criteria contain provisions for nuclear safety, radioactive release, life safety, and business interruption. Relative to its mission to protect the public health and safety, the NRC is concerned with the nuclear safety and radioactive release goals, objectives, and criteria, and the protection of essential personnel aspect of the life safety goals, objectives, and criteria. Therefore, the NRC is not endorsing the Plant Damage/Business Interruption and Life Safety Goals of NFPA 805.

After a licensee adopts the performance goals, objectives, and criteria itemized in Chapter 1, it establishes plant fire protection requirements using the methodology in Chapter 2 of NFPA 805. The initial step in this methodology is to establish the minimum fire protection program elements and design criteria contained in Chapter 3 of NFPA 805. NFPA 805 does not permit the Chapter 3 elements and design criteria to be subject to the performance-based approaches allowed elsewhere within NFPA 805. However, to provide regulatory flexibility, the final rule provides for licensees to request a license amendment to apply NFPA 805 performance-based approaches to the Chapter 3 fire protection program elements and minimum design criteria.

After establishing the fundamental fire protection program elements and minimum design requirements of Chapter 3, the licensee performs a plant-wide analysis to identify fire areas and fire hazards required to meet the performance criteria and the SSCs in each fire area to which the performance criteria apply. The licensee may apply either a performance-based or a deterministic approach to meet the performance criteria. For a deterministic approach, the performance criteria are deemed to be satisfied when the plants existing fire protection requirements are met. For a performance-based approach, the licensee must perform engineering analyses to demonstrate that the performance-based requirements are met. These engineering analyses may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations.

If the approach chosen to meet the performance criteria results in a change to the approved design basis, the licensee must evaluate any resulting changes in risk and determine whether the changes in risk are acceptable to the AHJ (Authority Having Jurisdiction, *i.e.*, NRC). NRC guidance on the acceptability of changes in risk is in RG 1.174 and is referenced by NFPA 805. The licensee must also evaluate the change to determine whether defense-in-depth and safety margins are maintained. The licensee implements a monitoring program to monitor plant performance as it applies to fire risk and must adjust the fire protection program as necessary as levels of risk change. For the resulting fire protection program, the licensee documents the results of the analyses, ensures the quality of the analyses, and maintains configuration control of the resulting plant design and operation. Section 2.7 of NFPA 805 provides requirements for program documentation, configuration control, and quality.

NFPA 805 does not supersede the requirements of GDC 3, 10 CFR 50.48(a), or 10 CFR 50.48(f). Those regulatory requirements continue to apply to licensees that adopt NFPA 805. However, under NFPA 805, the means by which GDC 3 or 10 CFR 50.48(a) requirements may be met is different than under 10 CFR 50.48(b). Specifically, whereas GDC 3 refers to SSCs important to safety, NFPA 805 identifies fire protection systems and features required to meet the Chapter 1 performance criteria through the methodology in Chapter 4 of NFPA 805. Also, under NFPA 805, the 10 CFR 50.48(a)(2)(iii) requirement to limit fire damage to SSCs important to safety so that the capability to safely shut down the plant is ensured is satisfied by meeting the performance criteria in Section 1.5.1 of NFPA 805. The Section 1.5.1 criteria include provisions for ensuring that reactivity control, inventory and pressure control, decay heat removal, vital auxiliaries, and process monitoring are achieved and maintained.

This methodology specifies a process to identify the fire protection systems and features required to achieve the nuclear safety performance criteria in Section 1.5 of NFPA 805. Once a determination has been made that a fire protection system or feature is required to achieve the performance criteria of Section 1.5, its design and qualification must meet any applicable requirements of NFPA 805, Chapter 3. Having identified the required fire protection systems and features, the licensee selects either a deterministic or performance-based approach to demonstrate that the performance criteria are satisfied. This process satisfies the GDC 3 requirement to design and locate SSCs important to safety to minimize the probability and effects of fires and explosions.

The methodology in NFPA 805 for performance-based approaches is to a large degree consistent with the principles for performance-based regulation contained in the "White Paper on Risk-Informed, Performance-Based Regulation," attached to the SRM for SECY–98–0144. The NFPA 805 methodology incorporates the following attributes: (1) Measurable or calculable parameters exist to monitor the system, including facility performance; (2) objective criteria to assess performance are established based on risk insights, deterministic analyses, and/or performance history; (3) plant operators have the flexibility to determine how to meet established performance criteria in ways that will encourage and reward improved outcomes; and (4) a framework exists in which the failure to meet a performance criterion, while undesirable, will not in and of itself constitute or result in an immediate safety concern.

Technical Acceptability of NFPA 805 as an Alternative to 10 CFR 50.48(b)

With respect to the certain required fire protection features required to satisfy GDC 3, 10 CFR 50.48(b) references Appendix R, whereas 10 CFR 50.48(c) references NFPA 805. The NRC evaluated whether the technical approaches, methodologies, and engineering analyses specified in NFPA 805 provide criteria to establish fire protection features sufficient to satisfy GDC 3. The acceptability of NFPA 805 with exceptions and supplementation versus Appendix R is discussed below.

Appendix R, Section I, states that Appendix R sets forth the fire protection features required to satisfy GDC 3 with respect to certain generic issues. Section I also discusses the need to limit fire damage to systems required to achieve and maintain safe shutdown conditions and that protection be provided so that a fire within only one such system will not damage the redundant system.

Appendix R, Section II, provides the general requirements for a fire protection program, discusses defense-in-depth, defines the fire hazards analysis required to be performed, describes fire prevention features, and requires alternate or dedicated shutdown capability for areas where the fire protection features cannot ensure safe shutdown capability in the event of a fire in that area.

Appendix R, Section III, provides specific requirements for certain fire protection features. The fire protection features in Section III are: A. Water supplies for fire suppression systems, B. Sectional isolation valves, C. Hydrant isolation valves, D. Manual fire suppression, E. Hydrostatic hose tests, F. Automatic fire detection, G. Fire protection of safe shutdown capability, H. Fire brigade, I. Fire brigade training, J. Emergency lighting, K. Administrative controls, L. Alternative and dedicated shutdown capability, M. Fire barrier cable penetration seal qualification, N. Fire doors, and O. Oil collection system for reactor coolant pump.

NFPA 805 establishes performance goals, performance objectives, and performance criteria that require a licensee to provide reasonable assurance that a fire will not prevent the plant from achieving and maintaining the fuel in a safe and stable condition, the plant will not be placed in an unrecoverable condition, and will not result in a radiological release that adversely affects the public, plant personnel, or the environment. These goals, objectives, and criteria are described in Chapter 1 and elsewhere in the standard. NFPA 805 allows the use of either a deterministic or performance-based approach to achieve the performance goals, objectives, and criteria of Chapter 1. Subsequent chapters of the standard describe methodologies to be used to establish the required fire protection systems and features, including the analyses used to support the performance-based fire protection design that fulfills these goals.

NFPA 805 requires the licensee to use a deterministic or performance-based approach to assess whether the performance goals, objectives, and criteria in Section 1.5 of the standard are met. The methodologies for implementing these approaches are established in Chapters 2 and 4 of NFPA 805. Chapter 3 of NFPA 805 provides certain deterministic and administrative requirements for fire protection systems and features that are not subject to the NFPA 805 performance-based approach. The methodology in Chapter 2 describes how these approaches are to be developed and implemented. The methodology in Chapter 4 describes the process to be used to determine which fire protection systems and features are required to achieve the performance criteria outlined in Chapter 1.

NFPA 805 accomplishes the intent of the Appendix R, Section I, requirements through the methodology in Chapter 4 of NFPA 805. That methodology requires that a nuclear safety capability assessment be performed that determines that one success path is maintained free of fire damage from a single fire. The assessment may use either a deterministic or a performance-based approach. The deterministic approach requires protection for one success path of required cables and equipment to achieve and maintain the nuclear safety performance criteria in Chapter 1. The nuclear safety performance criteria is considered to be satisfied when the protection scheme meets certain deterministic criteria such as when a 3-hour fire barrier encapsulation of one success path is provided. The performance-based approach requires that, using the Chapter 2 methodology, information on targets, damage thresholds, limiting conditions, and fire scenarios be used to determine the protection scheme necessary to ensure the nuclear safety success path(s) for required cables and equipment are maintained free of fire damage to achieve the nuclear performance criteria in Chapter 1.

Chapter 3 of NFPA 805 accomplishes the requirements for general fire protection program features described in Appendix R, Section II.A. and the general fire prevention features described in Appendix R, Section II.C. The defense-in-depth objectives described in Appendix R, Section II, *General Requirements,* are incorporated in NFPA 805. The defense-in-depth objectives of Appendix R, Section II, are (1) prevent fires from starting; (2) detect rapidly, control, and extinguish promptly those fires that do occur; and (3) provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant. These defense-in-depth objectives are stated in Section 1.2 of NFPA 805 and the methods to accomplish them are specified in the standard as described below:

1. Prevention of fires is specified in Section 3.3 of NFPA 805 and includes control of ignition sources, control of combustible and flammable materials, use of noncombustible or fire resistant structural materials, and control of cable construction and raceways.

2. Fire detection and suppression are required in Sections 3.4 through 3.11 of NFPA 805 and include on-site fire-fighting capability, fire alarms, manual and fixed suppression systems, and passive fire protection features.

3. Protection of SSCs important to achieve the nuclear safety performance criteria is specified in Chapter 4 of NFPA 805. Chapter 4 establishes the methodology to determine the fire protection systems and features required to achieve the performance criteria and specifies that at least one success path to achieve the nuclear safety performance criteria shall be maintained free of fire damage by a single fire. The nuclear safety performance criteria specified in Section 1.5 are: (1) Reactivity control, (2) inventory and pressure control, (3) decay heat removal, (4) vital auxiliaries, and (5) process monitoring.

The methodologies described in NFPA 805 Chapters 2 and 4 and the fundamental fire protection program and design elements in Chapter 3 require a general fire hazards analysis similar to that described in Appendix R, Section II.B. Appendix R, Section II.D, which describes alternative or dedicated shutdown capability, is discussed later in this section.

The NRC has evaluated Appendix R, Section III, *Specific Requirements,* and determined that, with certain differences (*e.g.*, cold shutdown, alternate or dedicated shutdown, shutdown methods and emergency lighting), NFPA 805 Chapter 3 and the methodologies in Chapters 2 and 4 provide acceptable alternative criteria to the specific fire protection requirements in Section III.

For example, Appendix R, Section III.A, *Water supplies for fire suppression systems,* is the design criteria for fire suppression system water supplies and it requires certain design features, such as the duration of the water supply and configuration of the water sources, to be met. NFPA 805 has similar requirements in Chapter 3 for water supply and configuration that are acceptable alternatives to the requirements in Appendix R.

Another example is Appendix R, Section III.K, *Administrative controls,* which requires controls to govern the activities related to the handling of combustible materials and ignition sources and govern actions by emergency and general plant personnel. NFPA 805 has requirements in Chapter 3 for administrative controls that are acceptable alternatives to the requirements in Appendix R.

Appendix R, Section III.G, *Fire protection of safe shutdown capability,* provides the deterministic requirements to ensure that one train of systems necessary to achieve and maintain hot shutdown is free of fire damage and systems necessary to achieve and maintain cold shutdown can be repaired within 72 hours. The final rule (45 FR 76602; November 19, 1980) that promulgated 10 CFR 50.48 and Appendix R, dated November 19, 1980, stated that the objective for the protection of safe shutdown capability is to ensure that at least one means of achieving and maintaining safe shutdown conditions will remain available during and after any postulated fire in the plant. NFPA 805 requires that, in the event of a fire, the plant be able to achieve and maintain the fuel in a safe and stable condition and that the plant is not placed in an unrecoverable condition in lieu of the analyzed shutdown method delineated in Section III.G. Specific criteria for the NFPA 805 conditions are provided in Section 1.5 of NFPA 805. These differences in requirements for plant shut down result from the fact that NFPA 805 is performance-based rather than deterministic. The shutdown methods delineated in Section III.G are not required by NFPA 805 because they are not needed to achieve the performance criteria of NFPA 805. However, NFPA 805, Chapter 4, requires that one success path necessary to achieve and maintain the nuclear safety performance criteria be maintained free of fire damage by a single fire. Therefore, NFPA 805 has a similar objective for the protection of safe shutdown via its requirement of one success path. These minor differences from Appendix R are acceptable because achieving the nuclear safety goals, objectives, and performance criteria of NFPA 805 provide controls for maintenance of the reactor fuel and the plant condition that ensure adequate protection of public health and safety.

The criteria and methodologies contained in NFPA 805 provide acceptable alternatives to the requirements in Appendix R, Sections I, II, and III regarding fire protection features required to satisfy GDC 3.

In addition to the requirements of 10 CFR 50.48(b) and Appendix R, the NRC reviewed the NFPA 805 fire protection criteria versus the guidance in RG 1.189, "Fire Protection for Operating Nuclear Power Plants." Section C of RG 1.189, "Regulatory Position," describes eight elements of an acceptable fire protection program. The NRC review determined that NFPA 805 provides adequately for each element. These eight elements are:

1. Delineation of organization, staffing, and responsibilities.

2. Performance of a fire hazards analysis sufficient to ensure safe shutdown functions and minimize radioactive material releases in the event of a fire.

3. The limitation of damage to SSCs important to safety so that the capability to safely shut down the reactor is ensured.

4. Evaluation of fire test reports and fire data to ensure they are appropriate and adequate for ensuring compliance with regulatory requirements.

5. Evaluation of compensatory measures for interim use for adequacy and appropriate length of use.

6. Training and qualification of fire protection personnel appropriate for their level of responsibility.

7. Quality assurance.

8. Control of fire protection program changes.

For example, element 3, limitation of damage to SSCs important to safety so that the capability to safely shut down the reactor is ensured, is addressed in NFPA Chapter 4. Chapter 4 of the standard establishes methods to determine the fire protection needed to limit fire damage to SSCs required to achieve the nuclear safety performance criteria in Section 1.5 of NFPA 805 and specifies that the design and qualification of those fire protection systems or features meet the applicable requirements of Chapter 3. The criteria in the standard are adequate to meet the intent of this element of RG 1.189.

NFPA 805 Differences With Respect to Appendix R

NFPA 805 does not explicitly include some requirements of Appendix R. NFPA 805 has no deterministic requirements for cold shutdown and emergency lighting, no provision for an alternative shutdown capability, and allows the use of recovery actions. NFPA 805 requires that the fuel be maintained in a safe and stable condition rather than prescribing the requirement for hot shutdown, cold shutdown, or the provisions for an alternate or dedicated shutdown. These differences result from the fact that NFPA 805 is performance-based rather than deterministic, with a performance goal to achieve a safe and stable condition. Deterministic requirements for emergency lighting for operation of safe shutdown equipment are not included in NFPA 805 because varying degrees of lighting and duration of lighting may be implemented by a performance-based approach provided that the performance goal to achieve a safe and stable condition can be demonstrated and met. The use of feasible recovery actions are allowed in NFPA 805 provided that the performance-based approach is used and can demonstrate and meet the performance goal. Also, the additional risk resulting from the use of recovery actions must be evaluated. These differences from Appendix R are acceptable because the nuclear safety performance criteria of NFPA 805 must be met in order to achieve a safe and stable condition. Meeting the performance criteria ensures adequate protection of public health and safety.

NFPA 805 includes some specific requirements that are not included in Appendix R. For example, NFPA 805 applies during all phases of plant operation including shutdown and degraded conditions. NFPA 805, Chapter 5, applies to plants that have permanently ceased operation and requires that the fire protection plan specified in Chapter 3 of NFPA 805 be maintained. The application of fire protection criteria for all phases of plant operation is more inclusive than 10 CFR 50.48(b) and Appendix R, resulting in a more comprehensive fire protection program.

Appendix R, Section II.B, requires a fire hazards analysis to determine the consequences of fire on the ability to minimize and control the release of radioactivity to the environment. Similarly, NFPA 805, Chapter 1, requires that radiation release goals, objectives, and performance criteria be met. The radioactive release goal of NFPA 805 is to provide reasonable assurance that a fire will not result in a radiological release that adversely affects the public, plant personnel, or the environment. The NFPA 805, Chapter 1, Radioactive Release Performance Criteria, requires that radiation release from the effects of fire suppression activities shall be as low as reasonably achievable and shall not exceed 10 CFR part 20 limits. NFPA 805, Chapter 4, requires the evaluation for demonstrating how the criteria are met. The NFPA 805 approach to radioactive release is more comprehensive than 10 CFR 50.48(b) and Appendix R and is considered adequate to ensure the protection of public health and safety.

Acceptability of NFPA 805 for Decommissioning Plants

The first paragraph of 10 CFR 50.48(f) is revised to include the statement that a fire protection program that complies with NFPA 805 is deemed to be acceptable for complying with the requirements of paragraph (f). Section 50.48(f) requires licensees to maintain a fire protection program to prevent, detect, control, and extinguish fires that could result in a radiological hazard and to ensure that the risk of fire-induced radiological hazards to the public, environment, and plant personnel is minimized. Further, 10 CFR 50.48(f) requires licensees to assess and revise the fire protection program throughout the stages of decommissioning as the fire hazard threat changes and allows licensees to make changes to the fire protection program if the changes do not reduce the effectiveness of the fire protection program, taking into account the decommissioning plant conditions and activities.

The NRC reviewed NFPA 805, Chapter 5, and determined that it requires a fire protection plan to be maintained throughout decommissioning and permanent shutdown. It also specifies that the plan maintain a fire protection program as specified by Section 3.1 of NFPA 805. The fire protection program specified in Section 3.1 requires that fundamental fire protection program elements and minimum design requirements be established and maintained as part of the plant fire protection program. NFPA 805, Section 5.2, requires controls governing the identification of fire hazards, fire prevention, fire detection, fire fighting capability, and emergency response. Section 5.2 also requires the maintenance of a fire protection program that is commensurate with the fire hazards as decommissioning progresses. NFPA 805, Section 5.3, identifies specific fire protection program elements and requires that the fire protection program elements be established and maintained as decommissioning progresses after permanent shutdown. As a plant progresses into decommissioning, the fire protection program that meets the nuclear safety criteria in NFPA 805, Chapter 1, changes because the fuel has been removed from the reactor and the reactor is no longer operating. The focus of the fire protection program changes to control fires that may cause the release of radioactivity, taking into consideration changes in plant configuration, maintenance, and activities as the plant progresses beyond permanent shutdown. Section 5.3, of NFPA 805, requires that the fire protection program be maintained commensurate with these changes in fire hazards and the potential for release of hazardous and radiological materials to the environment. Because the NFPA 805 fire protection program requirements for a decommissioning plant are technically equivalent to the requirements of paragraph (f), the NRC considers that a fire protection program that complies with NFPA 805 is acceptable for complying with the requirements of paragraph (f).

Statement of Acceptability of 10 CFR 50.48(c) and NFPA 805

The NRC considered whether 10 CFR 50.48(c) provides requirements and criteria for licensees to implement fire protection features for certain generic issues referenced in 10 CFR 50.48(b) and as established in Appendix R to 10 CFR 50, or as required by plant license conditions resulting from NRC reviews of plant licenses to those features established in Appendix R. The NRC reviewed the requirements in Chapter 3 of NFPA 805 for the establishment of fundamental fire protection program elements and minimum design requirements; the performance goals, objectives, and criteria in Chapter 1 of NFPA 805; the methodology in Chapter 4 for identifying fire protection systems and features required to meet the Chapter 1 performance criteria; and the methodology in Chapter 2 for the implementation of deterministic or performance-based approaches to establish those fire protection systems and features. The NRC determined that NFPA 805 contains requirements that address those generic issues referenced in 10 CFR 50.48(b) and provides sufficient requirements and criteria for licensees to implement fire protection features that satisfy GDC 3 with respect to those issues. Therefore, the NRC determined that compliance with 10

CFR 50.48(c) is an acceptable alternative to compliance with 10 CFR 50.48(b) for plants licensed to operate before January 1, 1979, or the fire protection license conditions for plants licensed to operate after January 1, 1979.

In addition, the NRC reviewed the requirements in Chapter 5 for licensees who have submitted the certifications required under 10 CFR 50.82(a)(1). The NRC considered the requirements in Chapter 5 to continue to maintain the fire protection systems and features needed to meet the performance criteria of Chapter 1, to continue to maintain a fire protection plan as specified in Section 3.2 of NFPA 805, and the criteria in Chapter 5 regarding issues applicable to a plant progressing through decommissioning and into permanent shutdown. The NRC determined that a fire protection program that complies with NFPA 805 meets the requirements for a fire protection program as specified in 10 CFR 50.48(f).

Discussion of Provisions of the Rule

The following paragraphs discuss the bases for certain provisions in this rule. The final rule provides for licensees to request a license amendment that would permit them to maintain a fire protection program that complies with NFPA 805, identifies seven exceptions to NFPA 805, and provides a method for licensees to request to use risk-informed, performance-based alternatives to provisions in NFPA 805.

Provision for Adoption of NFPA 805

In accordance with 10 CFR 50.48(c)(3)(i), a licensee may maintain a fire protection program that complies with NFPA 805 as an alternative to complying with paragraph (b) of this section for plants licensed to operate before January 1, 1979, or the fire protection license conditions for plants licensed to operate after January 1, 1979. The licensee shall submit a request in the form of an application for license amendment under § 50.90. The application must identify any orders and license conditions that must be revised or superseded, and contain any necessary revisions to the plant's technical specifications and the bases thereof.

Provisions for Exceptions to NFPA 805

The NRC identified provisions of the NFPA 805 Standard that were determined to be unacceptable or inappropriate to endorse in this rulemaking. A description of each exception and the bases for the exception follows:

Life Safety and Plant Damage/Business Interruption Goals, § 50.48(c)(2)(i) and (ii)

The Life Safety and Plant Damage/Business Interruption goals, objectives, and criteria in Sections 1.3, 1.4, and 1.5 of NFPA 805 are not endorsed in this rule. The Plant Damage/Business Interruption goal to provide reasonable assurance that the potential economic consequences of the risk of a fire are acceptable is not within the regulatory responsibility of the NRC under the Atomic Energy Act of 1954, as amended, to provide for the common defense and security and to protect the health and safety of the public. The Life Safety Goal provides for protection of plant personnel (including essential personnel) from the effects of a fire but is not fully within the regulatory responsibility of the NRC. Those portions of the Life Safety Goal that are within the scope of NRC regulatory responsibility, such as adequate protection for essential personnel, are required elsewhere in the standard. Therefore, the NRC is not endorsing the NFPA 805 Life Safety or Plant Damage/Business Interruption Goals.

Feed and Bleed, § 50.48(c)(2)(iii)

The NRC does not accept the use of a high-pressure charging/injection pump coupled with the pressurizer power operated relief valves (PORVs) as the sole fire protected shutdown path for maintaining reactor coolant inventory, pressure control, and decay heat removal capability (*i.e.*, feed-and-bleed) for pressurized water reactors (PWRs). Reliance on feed-and-bleed as the sole method for achieving these criteria does not provide sufficient defense-in-depth. Therefore, feed-and-bleed as the sole means of demonstrating achieving the nuclear safety performance criteria in Section 1.5.1(b) and (c) is not permitted.

Uncertainty Analysis, § 50.48(c)(2)(iv)

The uncertainty analysis required by Section 2.7.3.5 of the standard is not required for the deterministic approach because conservatism is included in the deterministic criteria.

Existing Cables, § 50.48(c)(2)(v)

Section 3.3.5.3 of the standard provides that electric cable construction shall comply with a flame propagation test acceptable to the AHJ. For this rulemaking, the NRC is requiring compliance with 10 CFR 50.48(c)(2)(v), which provides for the use of flame-retardant coatings on electric cables or an automatic fixed fire suppression system in lieu of installing cables meeting an acceptable flame propagation test. The electrical flame propagation test compliance was put in place after some licensees had installed cabling that could not be qualified to a flame propagation test. The NRC determined that flame-retardant coatings or a fixed fire suppression system provided an acceptable level of protection for these licensees (*see* Appendix A to BTP APCSB 9.5–1). Licensees should have these configurations as part of their licensing basis, where applicable. This provision, therefore, carries forward a previously accepted alternative to meeting a flame propagation test.

Additionally, the italicized exception to Section 3.3.5.3 of the standard is not endorsed because it would allow cables that did not comply with an acceptable flame propagation test to remain in place in a reactor plant without mitigation even though they were not approved in the licensing basis. Cables that do not meet this requirement could contribute to failure of operating or shutdown systems and the contribution to risk has not been calculated or approved. The criteria that electric cable constructions should pass flame propagation testing has been in NRC guidance since 1976 (Appendix A to BTP APCSB 9.5–1).

Water Supply and Distribution, § 50.48(c)(2)(vi)

The italicized exception to Section 3.6.4 of the standard is not endorsed. The exception would allow a licensee to have a "provisional" manual fire-fighting standpipe/hose station system in place of seismically qualified standpipes and hose stations even though it was not approved in the licensing basis. The NRC interprets Section 3.6.4, which is one of the fire protection elements and minimum design requirements of Chapter 3, as requiring seismically qualified standpipes and hose stations in all areas containing systems and components needed to perform the nuclear safety functions in the event of a safe shutdown earthquake. NRC guidance to supply water at least to standpipes and hose connections for manual fire-fighting in areas required for safe plant shutdown in the event of an earthquake, and that the standpipe system serving such hose stations be analyzed for seismic loading to assure system pressure integrity, has been in existence since 1976. Therefore, the NRC considers seismically qualified standpipes and hose stations of such importance that licensees who wish to use the exception to Section 3.6.4 in NFPA 805 must obtain NRC review and

approval in accordance with § 50.48(c)(2)(vii).

Performance-Based Methods, § 50.48(c)(2)(vii)

The prohibition in Section 3.1 of NFPA 805 that does not permit the use of performance-based methods for the Chapter 3 fundamental fire protection program elements and minimum design criteria is not endorsed. The NRC takes this exception in order to provide licensees greater flexibility in meeting the fire protection program elements and minimum design requirements of Chapter 3 by the use of performance-based methods (including the use of risk-informed methods) described in the NFPA 805 standard. This approach is acceptable to NRC because the rule requires NRC review and approval prior to the licensee's use of those methods, and the rule sets forth criteria for evaluating the acceptability of the licensee's proposed use of performance-based methods in meeting the fire protection program elements and minimum design requirements.

Alternatives to Compliance With NFPA 805, § 50.48(c)(4)

The final rule provides licensees the flexibility of requesting, via a license amendment, to use risk-informed or performance-based alternatives that deviate from compliance with NFPA 805. The NRC recognizes that licensees may propose acceptable approaches that are not encompassed by the criteria in NFPA 805. Therefore, the NRC is including a provision for requesting such approaches in the rule. However, to ensure adequate protection of public health and safety, the NRC is requiring that licensees obtain NRC review and approval to use those methods, and is providing criteria in § 50.48(c)(4) for review of their acceptability.

III. Comment Resolution on Proposed Rule

The 75-day public comment period for the proposed rule ended January 15, 2003. Comments were received from organizations and individuals. Copies of the comments are available for public inspection and copying for a fee at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The comments were submitted by an individual, an individual representing a public interest group, a utility with a nuclear reactor, two nuclear utility groups each representing six plants with nuclear reactors, a law firm, a law firm representing several utilities, and NEI. Most commenters supported the proposed rule and made recommendations to enhance or modify elements of the rule. One commenter opposed adoption of the proposed rule.

In the following paragraphs, the NRC discusses the resolution of the public comments by topic.

Need for License Amendment

A commenter suggested that the NRC amend 10 CFR 50.55a, "Codes and standards," to add a paragraph referencing NFPA 805, which could then be referenced in 10 CFR 50.48 as an optional alternative approach. The commenter stated that this approach would negate the need for licensees to obtain a license amendment in order to adopt NFPA 805 or approved alternative approaches under the provisions of 10 CFR 50.55a(c)(3). The commenter also stated that the process for obtaining NRC approval of alternate methods should not require a license amendment.

The NRC does not agree that amending 10 CFR 50.55a would negate the need for a license amendment in order for licensees to adopt NFPA 805. The NRC believes that, even if § 50.55a were revised as suggested by the commenter, it would not negate the need to change the license. To adopt NFPA 805, technical specifications and license conditions will need to be changed and such changes are amendments to the license. Regarding the use of methods, licensees may use methods such as fire modeling and fire PSAs without prior NRC review and approval. However, such use is at the licensee's risk and is subject to subsequent inspection by the NRC.

Risk-Informed Methodology

A commenter stated that NFPA 805 does not include risk-informed methodologies such as NEI 00–01, "Methodology for Post-Fire Circuit Analysis," therefore the regulatory text or implementing guidance should recognize the use of risk-informed methodologies to address the appropriate issues.

The NRC agrees that NFPA 805 does not include risk-assessment methods. Although fire models and fire PSA methods have been developed, technical issues remain regarding their acceptability for the full range of decisions in risk-informed regulation by industry.

Degraded Conditions

A commenter observed that the description of NFPA 805 in the **Federal Register** Notice (FRN) for the proposed rule states that the standard specifies the minimum fire protection requirements for existing light water reactors during all modes ("phases" in NFPA 805) of plant operation, including shutdown, degraded conditions, and decommissioning. The commenter stated that fires should not be postulated with degraded conditions unless the fire and the degraded condition have a common cause.

The NRC disagrees with this comment. In citing the paragraph from Section 1.1, "Scope," of the standard, the NRC was identifying the modes or phases of operation for which NFPA 805 was applicable. The NRC believes the wording is appropriate as it correctly identifies the scope of NFPA 805. However, the NRC was not imposing a requirement that a degraded condition be postulated in addition to a fire for purposes of analyses.

Existing Cables

A commenter stated that the italicized exception in Section 3.3.5.3 of NFPA 805 allowed existing cables in place prior to adoption of the standard to remain as is and argued that leaving these cables in place was consistent with the "safe today, safe tomorrow" philosophy. Therefore, the exception should be retained in the rule.

The NRC disagrees with the suggestion that the italicized exception in Section 3.3.5.3 of NFPA 805 be retained in the rule because it would allow existing electrical cable which does not comply with a flame propagation test acceptable to the NRC to remain as is even if the existing license basis required the cables to be qualified.

Use of Feed-and-Bleed

A commenter agreed with the NRC that feed-and-bleed is *one* available flow path to achieve and maintain safe shutdown but should not be considered the "preferred" or "sole" path. However, the commenter felt that feed-and-bleed should be considered as a viable path for risk calculations.

The NRC agrees that feed-and-bleed may be used in risk calculations. However, as previously noted, feed-and-bleed should not be the sole path.

Regarding § 50.48(c)(2)(iii) of the proposed rule, a commenter noted that, "This paragraph does not accept the use of a high-pressure charging/injection pump coupled with the pressurizer PORVs as the sole fire protected shutdown path * * *." The commenter stated that feed-and-bleed should be considered as one of the multiple methods when used in a risk-informed analysis of safe shutdown capability.

The NRC agrees with this comment. The purpose of § 50.48(c)(2)(iii) is to identify that this path is not to be relied

on as a *sole* fire protected shutdown path.

Previously Approved Licensing Basis

A commenter asserted that licensees may bring forward portions of their existing licensing basis or design configuration as alternatives to the Chapter 3 fundamental elements when adopting NFPA 805. The commenter stated that it is the licensee's responsibility to maintain the plant licensing basis, but the burden of proof is the NRC's if the NRC suggests that the licensing basis was not previously approved.

The NRC disagrees with the comment about the burden of proof. Because it is the licensee's responsibility to maintain the plant licensing basis, the burden of proof for previous approval is the licensee's. The NRC notes that this is the existing inspection and enforcement position which is generally applicable when a licensee claims that the NRC has previously approved a licensee commitment.

A commenter asked if the discussion under § 50.48(c)(3)(i) meant that existing approved exemptions remain valid under NFPA 805 and whether the licensee needed to identify that the associated safety evaluation remained in effect.

The NRC's position is that existing exemptions remain valid after transition to NFPA 805 as indicated in Section 3.1 of the standard, if not otherwise revoked by the NRC as part of the initial approval to transition to NFPA 805. The licensee's analysis of the facility to perform the transition to NFPA 805 should include a review of fire protection exemptions in effect at the time of application. The NRC will deny the application if the NRC determines that the licensee does not address the continued validity of any exemption in effect at the time of application. As stated in § 50.48(c)(3)(i), licensees must identify any orders or license conditions to be revised or superseded.

Burden Discussion

A commenter recommended that the text in the statement of considerations (SOC) for the proposed rule on "Unnecessary Burden" be replaced with the following, "Licensee adoption of the proposed rule or use of the techniques in the rule is expected to reduce unnecessary regulatory burdens by enabling licensees to cost-effectively adopt safe alternatives to overly conservative deterministic requirements."

NRC agrees that the rule provides licensees with the flexibility to adopt performance-based alternatives to existing prescriptive requirements and thus reduce unnecessary regulatory burden. The text of the final rule SOC has been modified accordingly.

Licensee Impact

A commenter stated that the discussion on licensee impact in the SOC should identify the primary impacts on licensees and that characterizing the impacts as "significant" is not accurate and should be deleted. The commenter provided a list of the primary impacts expected and stated that they should be reflected in the FRN for the final rule.

The NRC evaluated the primary impacts identified in the comment and agreed that they are appropriate and should be included in the discussion on licensee impact. The NRC modified the final rule discussion to reflect this comment. The NRC does not agree that the term significant is inaccurate because the analysis required by the final rule is expected to be approximately 11,250 person-hours per licensee.

Appendices

A commenter stated that, although NRC indicated in the SOC that it intended to allow licensees to adopt NFPA 805 including Appendices B, C and D the proposed language for 10 CFR 50.48(c) and 10 CFR 50.48(f) does not specifically adopt the appendices. The commenter also stated that the language in Appendices B, C, and D, was non-mandatory and that the NRC would need to develop additional guidance as to how the language of the appendices would be made mandatory. Another commenter noted that Appendices C and D of NFPA 805 are not methodologies but descriptions of attributes of methodologies.

The NRC agrees with the comment that the proposed rule did not incorporate Appendices B, C, and D by reference and that these appendices are not part of the standard. The NRC does not endorse the appendices in this rule and expresses no position as to their acceptability for use. However, licensees may, at their discretion and risk, use the appendices subject to subsequent NRC inspection. Further, the NRC agrees with the comment that Appendices C and D are not methodologies but are considered to be guidance for application of fire modeling or fire probabilistic safety assessment respectively.

Seismic Standpipes and Hose Stations

A commenter stated that the italicized exception to Section 3.6.4 of NFPA 805, which requires that provisions be made to supply water to standpipes and hose stations for manual fire suppression in the event of a safe shutdown earthquake (SSE), should be endorsed in the rule. The exception would allow provisions to restore a water supply and distribution system for manual fire-fighting purposes following an SSE.

The NRC does not agree that the exception should be endorsed because it would allow licensees to use alternate provisions to seismically qualified standpipes and hose stations even if the licensing basis requires seismically qualified standpipes and hose stations. Licensees with approved exemptions or deviations or whose licensing basis does not require seismically qualified standpipes and hose stations may comply with their existing licensing basis.

A commenter noted that Appendix A to BTP APCSB 9.5–1 did not require seismically qualified standpipes and hose stations for operating plants and plants with construction permits issued prior to July 1, 1976.

NRC agrees that Appendix A to BTP APCSB 9.5–1 made separate provisions for operating plants and plants with construction permits issued prior to July 1, 1976, and did not require seismically qualified standpipes and hose stations for those plants. Therefore, the requirement in Section 3.6.4 of NFPA 805 is not applicable to licensees with nonseismic standpipes and hose stations previously approved in accordance with Appendix A to BTP APCSB 9.5–1.

Use of NFPA 805 Methods by Other Licensees

A commenter stated that licensees who do not adopt NFPA 805 should not be precluded from using risk tools from NFPA 805.

The NRC agrees with the comment. However, licensees not adopting NFPA 805 in accordance with the final rule are not covered by the provisions for transitioning to NFPA 805. Such licensees who wish to use the risk tools in NFPA 805 will need to separately determine if their existing licensing basis would permit the use of such tools, and take appropriate action as necessary to change their licensing basis.

Approaches Used in Different Fire Areas

A commenter asked whether, in light of the fact that the rule is not intended to be implemented on a partial or selective basis, the NFPA 805 deterministic approach can be selected for one fire area and the performance-based approach for another.

Chapter 2 of the standard requires a licensee to select a deterministic or a performance-based approach to determine how to meet the performance criteria that apply to each fire area. Thus, Chapter 2 allows the use of different approaches for different fire areas. However,Chapter 2 does not allow NFPA 805 to be only partially implemented.

Meaning of the Term "Element"

A commenter stated that the word "element" in the discussion of plant change evaluations (Section 2.2.9 of the standard) should be changed to "attribute" to be consistent with language or terminology used in NFPA 805, Section 3.1. The term is used in Sections 2.2.1, 2.2.9, and 2.4.4 and Figure 2.2 of Chapter 2.

The NRC does not agree that the word "element" should be changed in Section 2.2.9 of the standard. In Chapter 2, the term "element" includes the fundamental elements of the fire protection program described in Chapter 3 of the standard (Section 2.2.1). Fundamental elements are necessary components of an acceptable fire protection program. Attributes are features or characteristics of the fundamental elements and may vary based on the plant licensing basis. Section 3.1 states that previously approved alternatives from the fundamental protection program attributes described in Chapter 3 take precedence over the requirements contained in Chapter 3. Therefore, Section 2.2.9 applies to previously approved program elements as well as previously approved attributes and the terminology in Section 2.2.9 is appropriate.

Additional Issue for Public Comment

The NRC requested public comment on whether a licensee is likely to revert to their previous licensing basis after being approved to use NFPA 805 and, if they did, would a license amendment be required to revert to their previous compliance basis. Two commenters stated that licensees were not likely to revert to their previous status because the regulatory environment under the requirements of NFPA 805 would be more flexible. The commenters also stated that a license amendment would be required to revert to the previous licensing basis after being approved to use NFPA 805.

The NRC has determined that the final rule need not include provisions governing the process for reversion from NFPA 805 to a licensee's former fire protection licensing basis, because it is unlikely that such reversions will occur.

Regulatory Analysis Burden Estimate, Problem Statement, and Estimated Consequences

A commenter stated that the NRC estimate of 20,000 to 65,000 person-hours needed for the initial plant-wide analysis for each licensee was excessive by a factor of three and should be revised.

The NRC agrees with this comment. The estimate of 20,000 to 65,000 person-hours was for four plants per year. The NRC estimate for the initial analysis for one plant is 11,250 person-hours. The NRC clarified the Regulatory Analysis and the OMB statement to state that the hours shown were an annualized estimate of four plants adopting NFPA 805.

A commenter noted that the Statement of the Problem section of the Regulatory Analysis states that the "alternative regulatory structure would potentially reduce the number and complexity of future licensee exemption or deviation requests * * *" The commenter stated that this section is inconsistent with the Alternatives section which states that use of the NFPA 805 methods would preclude the need for exemptions or deviations. The commenter stated that the text should be revised.

The NRC does not agree with this comment. The text in the Alternatives section of the Regulatory Analysis states that licensees may use approaches and methods contained in NFPA 805 rather than submitting an exemption or deviation request. Thus, use of the NFPA 805 methods should reduce the need for exemption or deviation requests. This text is consistent with the text in the Statement of the Problem section.

A commenter stated that the wording in the Estimated Consequences section suggests that fire protection features no longer required will be removed. The commenter stated that such features will likely be "abandoned in place" or continued to be used as the licensee determines. The NRC agrees with this comment and has revised the section to indicate that fire protection features no longer required may continue to be used, "abandoned in place," or removed at the discretion of the licensee.

One commenter stated that the NRC discussion in the Estimated Consequences section did not follow guidance in NUREG/BR–0058, Revision 3, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," in that NRC had not adequately demonstrated that the cost savings attributed to the action (in the proposed rule) would be substantial enough to justify taking the action. Further, the commenter stated that the cost savings calculation should be based on an assumption that all licensees will take advantage of the change as noted in Section 2.2 of the NUREG. The commenter noted that the NRC had not included reporting and recordkeeping costs in the regulatory analysis.

Based on this comment, the NRC reviewed the draft Regulatory Analysis and the draft Office of Management and Budget (OMB) statement for recordkeeping and reporting costs and determined that the person-hour estimates shown were for four plants adopting NFPA 805 annually, rather than a per-plant figure. Hence the number of hours shown as required was high by a factor of four for that of an individual plant. The NRC clarified the Regulatory Analysis and the OMB statement to state that the hours shown were an annualized estimate of 4 plants adopting NFPA 805. The NRC stated in the draft Regulatory Analysis that it was not possible to estimate the cost savings per plant as the savings would vary significantly for each plant. However, for some plants the savings in reduced downtime and spare parts maintenance could be several times the cost of adopting NFPA 805; therefore, for these plants the action is justified. Plants that do not adopt NFPA 805 are not affected.

The NRC based its cost calculations on an estimate of the number of plants likely to adopt NFPA 805 rather than on all plants. This approach is acceptable because NRC does not expect all plants to adopt NFPA 805. Industry estimates that approximately 25 plants may adopt NFPA 805 and NRC used that estimate in its calculations. Plants that do not adopt NFPA 805 are not affected. The NRC has revised the Regulatory Analysis to include reporting and recordkeeping costs.

Later Versions of NFPA 805

A commenter stated that the proposed rule should allow for the voluntary adoption of later versions of NFPA 805, unless NRC notifies licensees that a specific revision to NFPA 805 is not to be used. The commenter suggested language to be used in the rule for this purpose.

The NRC may not legally provide regulatory approval of future versions of NFPA 805 by rulemaking, because the NRC has no basis for determining the acceptability of all future versions of NFPA 805.

Other Comments

1. Comments on Implementation and Inspection Issues

A commenter requested that NRC consider skipping the first post-transition triennial inspection in reliance on the extensive program review being conducted by each licensee.

The NRC agrees that the inspection program should recognize the extent of the fire protection program review that would be conducted by the licensee. The NRC is considering alternatives to the triennial inspection or possibly modifying the focus of the triennial inspection to reflect the programmatic review performed by plants transitioning to NFPA 805.

A commenter suggested that, as has been done for other rules, the NRC should exercise enforcement discretion for noncompliances identified during the transition to the new fire protection requirements.

The NRC agrees with the comment and is requesting Commission permission to allow enforcement discretion for noncompliances identified during the transition to the new requirements. This action would encourage licensees to self-identify problems for placement in their corrective action programs.

A commenter asserted that the NRC should conform inspection guidance and the process for resolving noncompliances to the risk-informed, performance-based methodology in the new rule.

The NRC agrees with this comment and will conform the inspector guidance and the process for resolving noncompliances to the risk-informed, performance-based methods in the rule, for those licensees that transition to NFPA 805. No change will occur for licensees that continue to comply with their existing fire protection licensing basis.

A commenter suggested that the NRC follow the inspection practice for the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and adopt a 10-year inspection cycle.

The NRC believes that the frequency appropriate for NRC inspection of fire protection programs differs significantly from the frequency appropriate for licensee inspection of piping and supports conducted under 10 CFR 50.55a, which references requirements in the ASME Boiler and Pressure Vessel Code. A significant difference is that § 50.55a itself establishes a 10-year interval for licensee conduct of inservice inspection and inservice testing under a fixed version of the ASME Code edition and addenda. Whereas, the greater frequency of NRC inspections of licensee fire protection programs is appropriate because of the likelihood for changes to plant configurations, procedures, and practices affecting fire protection programs to occur more often. Accordingly, the NRC does not intend to change the inspection frequency.

A commenter suggested that the NRC exercise enforcement discretion to eliminate the need to come into compliance with deviations from current licensing basis requirements if compliance will be attained by transitioning to the new requirements under NFPA 805.

The NRC is requesting Commission permission to allow enforcement discretion during the transition period to the new requirements. If enforcement discretion is implemented, licensees would need to take appropriate compensatory actions for any identified noncompliance and to place the noncompliance in the corrective action program. Corrective actions may be to restore compliance with existing requirements or to implement a performance-based approach that meets the requirements of NFPA 805.

2. Comments on the Process for Adopting NFPA 805

A commenter suggested that the final rule define the scope of fundamental attributes broadly enough to encompass current fire protection programs and adopt a simple and predictable process for finding that fundamental attributes have been previously approved by the NRC.

The NRC disagrees with the commenter's suggestion that the final rule should define the scope of fundamental attributes to encompass current fire protection programs. The NRC considers Chapter 3 of NFPA 805 sufficient to describe the fundamental fire protection elements for a risk-informed, performance-based fire protection program using NFPA 805. The attributes of current fire protection program elements vary from plant-to-plant and determining generic fundamental fire protection elements applicable to the full range of as-yet-unknown risk-informed or deterministic approaches is beyond the scope of this rulemaking. Section 3.1 of NFPA 805 provides that previously approved attributes of a licensee's current fire protection program may be retained. Therefore, licensees may evaluate previously approved attributes for their plants and determine whether they wish to retain those attributes. The NRC is working with industry to develop a predictable process to be described in the implementing guidance document for identifying previously approved attributes. The licensee is responsible for maintaining its licensing basis including previous NRC approvals.

A commenter stated that the final rule should have a simple, swift process for approving the transition license amendment.

The NRC believes the process described in the rule for approving the license amendment is appropriate. The NRC expects that the implementing guidance will provide additional guidance that will help with the approval process.

3. Comments on the Acceptability of NFPA 805 as a Fire Protection Program

Performance-Based Program. A commenter expressed concerns about whether a risk-informed or performance-based fire-protection program provides a sufficient level of protection of public health and safety compared to existing deterministic requirements. The commenter noted events where the industry experienced unexpected consequences from methods for maintenance and testing, and cited events at Browns Ferry and Davis-Besse as examples. The commenter also expressed a concern that, in light of the terrorist attacks on the World Trade Center, blast and fire standards should be deterministic.

The NRC disagrees with the comment. The NRC evaluated the NFPA 805 program and determined that, when implemented as an integrated whole, NFPA 805 provides criteria for an acceptable fire protection program and provides an acceptable level of protection of public health and safety. This determination is based on a review of the program versus regulatory requirements of GDC 3 and 10 CFR 50.48(a), as well as the criteria for an acceptable fire protection program in RG 1.189, the risk application methods criteria in RG 1.174, and the NFPA 805 criteria for the use of performance-based methods and risk information. The NRC agrees that unexpected consequences may result from maintenance and testing and notes that such consequences may occur whether under a deterministic or a performance-based fire protection program. The events at Browns Ferry and Davis-Besse emphasize the importance of defense-in-depth and the maintenance of safety margins. Both of these fundamental aspects of fire protection must be maintained under NFPA 805. Thus, the NRC believes that proper implementation of NFPA 805 will be as

effective as the current deterministic-based requirements in providing reasonable assurance of adequate protection with respect to fire protection.

Regarding terrorist type of attacks, the NRC has taken action as a result of the events that occurred at the World Trade Center and continues to evaluate additional actions that may be appropriate.

Use of Fire Models. A commenter questioned the use of fire models under NFPA 805 because of the uncertainty associated with them.

The NRC disagrees that fire models should not be used because of the uncertainty associated with them. NFPA 805 provides for the use of fire models to support performance-based approaches and gives information on the use and application of fire modeling in Appendix C. Section 2.4.1.2.2 of the standard provides that fire models must be applied within the limitations of the fire model. Any uncertainty associated with a fire model must be quantified and included, as appropriate, in the performance-based approach. The NRC believes that NFPA 805 provides appropriate requirements for use of fire models relative to associated uncertainty.

Use of NEI 00–01. A commenter questioned whether industry document, NEI 00–01, "Guidance for Post-Fire Safe Shutdown Circuit Analysis," was sufficiently a "consensus" standard to be used in the NFPA 805 environment.

The NRC disagrees with the comment. The NRC has reviewed and commented on NEI 00–01 throughout its development and is considering endorsing NEI 00–01. If endorsed,NEI 00–01 will be a tool that licensees may use to determine the risk significance of fire effects on certain circuits. Such tools do not need to be consensus standards to be used within the NFPA 805 structure.

IV. Section-by-Section Analysis

Section 50.48(c). National Fire Protection Standard NFPA 805

The final rule adds a new paragraph (c) to 10 CFR 50.48 that permits nuclear power reactor licensees to voluntarily adopt NFPA 805, with certain exceptions stated in the regulatory text, as an alternative set of fire protection requirements for the operation of light-water reactors. NFPA 805, if adopted by licensees, constitutes an acceptable means for licensees of currently operating reactors to comply with 10 CFR 50.48(a), and is an alternative to meeting their existing fire protection requirements.

Section 50.48(c)(1). Approval of Incorporation by Reference

This paragraph states that NFPA 805, 2001 Edition, was approved for incorporation by reference by the Director of the Federal Register. The appendices to NFPA 805, which are not part of the standard, are not incorporated by reference.

Section 50.48(c)(2). Exceptions, Modifications, and Supplementation of NFPA 805

This paragraph states that references in § 50.48 to NFPA 805 are to the 2001 Edition, with certain delineated exceptions, modifications, and supplementation described in paragraphs (c)(2)(i)–(vii) of the final rule.

Section 50.48(c)(2)(i). Life Safety Goal, Objectives, and Criteria

This paragraph provides that the Life Safety Goal, Objectives, and Criteria of NFPA 805 Chapter 1 are not endorsed by the NRC.

Section 50.48(c)(2)(ii). Plant Damage/Business Interruption Goal, Objectives, and Criteria

This paragraph provides that the Plant Damage/Business Interruption Goal, Objectives, and Criteria of NFPA 805 Chapter 1 are not endorsed by the NRC.

Section 50.48(c)(2)(iii). Use of Feed-and-Bleed

This paragraph provides that the use of a high-pressure charging/injection pump coupled with the PORVs is not acceptable as the sole fire-protected shutdown path for maintaining reactor coolant inventory, pressure control, and decay heat removal capability (*i.e.*, feed-and-bleed) for PWRs.

Section 50.48(c)(2)(iv). Uncertainty Analysis

This paragraph provides that a licensee need not prepare an uncertainty analysis in accordance with Section 2.7.3.5 when using a deterministic approach as specified in Section 2.2.6 and Chapter 4 of NFPA 805

Section 50.48(c)(2)(v). Existing Cables

This paragraph provides that in lieu of installing cables meeting flame propagation tests as required by Section 3.3.5.3 of the standard, a licensee may use either cables with a flame-retardant coating or an automatic fixed fire suppression system to provide an equivalent level of fire protection. In addition, the italicized exception to Section 3.3.5.3 is not endorsed.

Section 50.48(c)(2)(vi). Water Supply and Distribution

This paragraph provides that a "provisional" manual fire-fighting standpipe/hose station system may not be used in place of seismically qualified standpipes and hose stations unless previously approved in the licensing basis. Licensees who wish to use the italicized exception in Section 3.6.4 of NFPA 805 must submit a request for a license amendment in accordance with paragraph (c)(2)(vii). However, because the NRC considers seismically qualified standpipes and hose stations of such importance, the NRC believes that licensees who wish to use the exception in Section 3.6.4 of NFPA 805 via a license amendment may have difficulty satisfying the three criteria in paragraph (c)(2)(vii).

Section 50.48(c)(2)(vii). Performance-Based Methods

This paragraph takes exception to the prohibition in Section 3.1 of NFPA 805 to the use of performance-based methods (including the use of risk-informed methods) for the fire protection program elements and minimum design requirements in Chapter 3. The NRC included this exception to allow licensees flexibility in meeting the fire protection program elements and minimum design requirements in Chapter 3. However, the NRC considers that the fire protection program elements and minimum design requirements in Chapter 3 are not suited to the performance-based approaches permitted in NFPA 805 on a generic basis, and that any performance-based approaches for these program elements or minimum design requirements should be approved on a plant-specific basis via a license amendment. Licensees proposing such performance-based approaches for the fire protection program elements and minimum design requirements in Chapter 3 must submit an application for a license amendment to the NRC in accordance with § 50.48(c)(4). The Director of the Office of Nuclear Reactor Regulation (NRR), or a designee, may approve the application if the Director or designee determines that the proposed performance-based approach:

(i) Satisfies the performance goals, performance objectives, and performance criteria specified in NFPA 805 related to nuclear safety and radiological release.

(ii) Maintains safety margins.

(iii) Maintains fire protection defense-in-depth (fire prevention, fire detection, fire suppression, mitigation, and post-fire safe shutdown capability).

Section 50.48(c)(3)(i)

This paragraph allows licensees to adopt NFPA 805 as an alternative to complying with 10 CFR 50.48(b) or existing plant fire protection license conditions. This paragraph describes the method by which a licensee will submit their request to adopt NFPA 805. If the NRC approves a licensee's request to use NFPA 805, the Director of NRR or designee will issue a license amendment that: (1) Removes superseded license conditions and (2) includes a license condition imposing the use of NFPA 805 together with an implementation schedule. In addition, if necessary, the NRC will issue an order revoking unnecessary and superseded exemptions and orders.

Licensees who are approved under paragraph (c)(3)(i) to use NFPA 805 may return to compliance with paragraph (b) and their previous licensing basis. However, each licensee must comply with all applicable requirements, including submitting an application for a license amendment, and, as applicable, a request for exemption if the licensee wishes to reinstate a revoked exemption.

Section 50.48(c)(3)(ii)

This paragraph requires licensees to complete all of the Chapter 2 methodology (including evaluations and analyses) and to modify their fire protection plan before making changes to the fire protection program or to the plant configuration. This process ensures that the transition to an NFPA 805 configuration is conducted in a complete, controlled, integrated, and organized manner. This requirement also precludes licensees from implementing NFPA 805 on a partial or selective basis (*e.g.*, in some fire areas and not others, or truncating the methodology within a given fire area).

The evaluations and analyses process in Chapter 2 of NFPA 805 provides for the establishment of the fundamental fire protection program, identification of fire area boundaries and fire hazards, determination by analysis that the plant design satisfies the performance criteria, identification of SSCs required to achieve the performance criteria, conduct of plant change evaluations, establishment of a monitoring program, development of documentation, and configuration control. Chapter 2 of NFPA 805 also provides for the use of a deterministic or performance-based approach to determine that the performance criteria are satisfied and provides for the use of tools such as engineering analyses, fire models, nuclear safety capability assessments, and fire risk evaluations to support development of these approaches. The methodology for the use of these tools is established in Chapter 4 of NFPA 805.

Section 50.48(c)(4). Risk-Informed or Performance-Based Alternatives to Compliance With NFPA 805

This paragraph provides licensees with a mechanism to obtain NRC approval of alternatives to NFPA 805 including the use of performance-based approaches for the fire protection program elements and minimum design requirements in Chapter 3 of NFPA 805. The licensee's request should be in the form of a license amendment request and demonstrate that the licensee's proposed alternative satisfies the performance goals, objectives, and criteria specified in NFPA 805 for nuclear safety and radiological releases. The proposed alternative must also maintain safety margins and fire protection defense-in-depth (fire prevention, fire detection, fire suppression, mitigation, and post-fire safe shutdown capability). Addressing these criteria allows the NRC to determine that the alternative implements the performance goals, objectives, and criteria in Chapter 1 and complies with the requirements of GDC 3.

Section 50.48(f)

This paragraph provides that licensees who have permanently ceased operations and submitted the certifications required by 10 CFR 50.82(a)(1) may maintain a fire protection program that complies with NFPA 805 and that fire protection program will be deemed to be acceptable for complying with the requirements of paragraph (f).

V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive Rulemaking Forum Web site is located at *http://ruleforum.llnl.gov*. These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (PERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html*. The subject document may be accessed using the ADAMS accession number (*e.g.*, ML##########) provided below.

The NRC staff contact. The NRC project manager for this rulemaking in the Office of Nuclear Reactor Regulation is Joseph L. Birmingham. Mr. Birmingham can be reached by telephone at (301— 415–2829, or via e-mail to *jlb4@nrc.gov*.

Document	PDR	Web	PERR	NRC Staff
SECY–98–0058	X	X	ML992910106	
SECY–98–0144	X	X	ML992880068	
SECY–00–0009	X	X	ML003671923	
SECY–00–0191	X	X	ML003742883	
SRM dated 06/30/1998	X	X	ML003753120	
SRM dated 03/01/1999	X		ML003753601	
SRM dated 02/24/2000	X	X	ML003686350	
Federal Register Notice	X	X	ML040540680	X
Regulatory Analysis	X	X	ML040540542	X
Environmental Assessment	X	X	ML033440262	X
Comments Received	X	X	ML023570335	
Comments Received	X	X	ML030230288	
Comments Received	X	X	ML030160870	
Comments Received	X	X	ML030160873	
Comments Received	X	X	ML030170147	
Comments Received	X	X	ML030230293	
Comments Received	X	X	ML030230345	
Comments Received	X	X	ML030240260	

VI. Voluntary Consensus Standards

The National Technology Advancement and Transfer Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless the use of such standards is inconsistent with applicable law or otherwise impractical. Public Law 104–113 requires Federal agencies to use industry consensus standards to the extent practical, it does not require Federal agencies to endorse a standard in its entirety. The law does not prohibit an agency from generally adopting a voluntary consensus standard while taking exception to specific portions of the standard if those provisions are deemed to be "inconsistent with applicable law or otherwise impractical." Furthermore, taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of limited provisions which are not acceptable to the agency.

Under this final rule, the NRC is amending its regulations to incorporate by reference the National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition," (NFPA 805), as excepted, as an alternative set of fire protection requirements. NFPA 805 is a national consensus standard developed by participants with broad and varied interests, in which all interested parties (including the NRC and licensees of nuclear power plants) participate.

In a staff requirements memorandum dated September 10, 1999, the Commission indicated its intent that a rulemaking identify all portions of an adopted voluntary consensus standard which are not adopted and to provide a justification for not adopting such portions. The portions of NFPA 805 which the NRC proposes not to adopt, or to partially adopt, are identified in the preceding Section II. The justification for not adopting portions of NFPA 805, as set forth in these statements of consideration, satisfy the requirements of Section 12(d)(3) of Public Law 104–113, Office of Management and Budget (OMB) Circular A–119, and the Commission's direction in the staff requirements memorandum dated September 10, 1999.

In accordance with the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119, the NRC requested public comment during the proposed rulemaking regarding whether other national or international consensus standards could be endorsed as an alternative to NFPA 805 and no alternative standard was identified.

VII. 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, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. Through its evaluation of the provisions and requirements of NFPA 805 for fire protection and prevention of radiological release, the NRC determined that there would not be any significant radiological or nonradiological impacts to the environment from implementation of the NFPA 805 fire protection program. Under NFPA 805, the environment would continue to be adequately protected because the methods used for fire detection, suppression, and mitigation are the same as those used under the existing fire protection requirements. Further, there will be no change in the release of radiological or nonradiological effluents to the environment from those releases expected under existing fire protection programs.

This determination is based on an evaluation of the goals, objectives, and performance criteria in NFPA 805. These criteria provide for defense-in-depth to control fires; control of plant reactivity, coolant inventory, and pressure; decay heat removal; vital auxiliaries; and process monitoring to minimize radioactive releases. The NRC has determined that the environmental impacts of the proposed action, the no-action alternative, and an alternative in which the NRC would develop its own risk-informed standard, were similar. Further, the NRC determined that the proposed action does not involve the use of any different resources than those considered in the current rule.

The NRC provided every State Liaison Officer a copy of the environmental assessment and the proposed rule for this action and requested their comments on the environmental assessment. No comments were received from the State Liaison Officers and no changes were made to the environmental assessment.

VIII. Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

There is a one-time burden to the public of 11,290 hours for each licensee, who chooses to use NFPA 805, to complete the required one-time plant-wide re-analysis of the reactor's fire protection systems, equipment, features, and procedures, and to submit a letter of intent to adopt NFPA 805. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

The Commission has prepared a Regulatory Analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection at the NRC's Public Document Room, located at One White Flint North, Room 01-F15, 11555 Rockville Pike, Rockville, Maryland. The analysis is also available as indicated under the Availability of Documents heading of the **SUPPLEMENTARY INFORMATION** section.

X. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule would not have a significant economic impact on a substantial number of small entities. This final rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the definition of "small entities" found

in the Regulatory Flexibility Act or within the size standards established by the NRC in 10 CFR 2.810.

XI. Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule, because the rule does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). The final rule establishes voluntary alternative fire protection requirements for licensees with *construction* permits prior to January 1, 1979 (all existing light-water reactor plants). Licensees may adopt NFPA 805 as an alternative set of fire protection requirements by submitting a license amendment request. However, current licensees may continue to comply with existing requirements. Any additional burden incurred by adopting NFPA 805 would be at the licensee's discretion. The final rule does not impose any new requirements and, therefore, does not constitute a backfit as defined in 10 CFR 50.109(a)(1).

XII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

■ For the reasons given 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. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for 10 CFR part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, (42 U.S.C. 5841) as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.48, paragraph (c) is added and the introductory text of paragraph (f) is revised to read as follows:

§ 50.48. Fire protection.

* * * * *

(c) *National Fire Protection Association Standard NFPA 805.*

(1) *Approval of incorporation by reference.* National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805), which is referenced in this section, was approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. Copies of NFPA 805 may be purchased from the NFPA Customer Service Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101 and in PDF format through the NFPA Online Catalog (*www.nfpa.org*) or by calling 1–800–344–3555 or (617) 770–3000. Copies are also available for inspection at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738, and at the NRC Public Document Room, Building One White Flint North, Room O1-F15, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Copies are also available 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.*

(2) *Exceptions, modifications, and supplementation of NFPA 805.* As used in this section, references to NFPA 805 are to the 2001 Edition, with the following exceptions, modifications, and supplementation:

(i) *Life Safety Goal, Objectives, and Criteria.* The Life Safety Goal, Objectives, and Criteria of Chapter 1 are not endorsed.

(ii) *Plant Damage/Business Interruption Goal, Objectives, and Criteria.* The Plant Damage/Business Interruption Goal, Objectives, and Criteria of Chapter 1 are not endorsed.

(iii) *Use of feed-and-bleed.* In demonstrating compliance with the performance criteria of Sections 1.5.1(b) and (c), a high-pressure charging/injection pump coupled with the pressurizer power-operated relief valves (PORVs) as the sole fire-protected safe shutdown path for maintaining reactor coolant inventory, pressure control, and decay heat removal capability (*i.e.*, feed-and-bleed) for pressurized-water reactors (PWRs) is not permitted.

(iv) *Uncertainty analysis.* An uncertainty analysis performed in accordance with

Section 2.7.3.5 is not required to support deterministic approach calculations.

(v) *Existing cables.* In lieu of installing cables meeting flame propagation tests as required by Section 3.3.5.3, a flame-retardant coating may be applied to the electric cables, or an automatic fixed fire suppression system may be installed to provide an equivalent level of protection. In addition, the italicized exception to Section 3.3.5.3 is not endorsed.

(vi) *Water supply and distribution.* The italicized exception to Section 3.6.4 is not endorsed. Licensees who wish to use the exception to Section 3.6.4 must submit a request for a license amendment in accordance with paragraph (c)(2)(vii) of this section.

(vii) *Performance-based methods.* Notwithstanding the prohibition in Section 3.1 against the use of performance-based methods, the fire protection program elements and minimum design requirements of Chapter 3 may be subject to the performance-based methods permitted elsewhere in the standard. Licensees who wish to use performance-based methods for these fire protection program elements and minimum design requirements shall submit a request in the form of an application for license amendment under § 50.90. The Director of the Office of Nuclear Reactor Regulation, or a designee of the Director, may approve the application if the Director or designee determines that the performance-based approach;

(A) Satisfies the performance goals, performance objectives, and performance criteria specified in NFPA

805 related to nuclear safety and radiological release;

(B) Maintains safety margins; and

(C) Maintains fire protection defense-in-depth (fire prevention, fire detection, fire suppression, mitigation, and post-fire safe shutdown capability).

(3) *Compliance with NFPA 805.*

(i) A licensee may maintain a fire protection program that complies with NFPA 805 as an alternative to complying with paragraph (b) of this section for plants licensed to operate before January 1, 1979, or the fire protection license conditions for plants licensed to operate after January 1, 1979. The licensee shall submit a request to comply with NFPA 805 in the form of an application for license amendment under § 50.90. The application must identify any orders and license conditions that must be revised or superseded, and contain any necessary revisions to the plant's technical specifications and the bases thereof. The Director of the Office of Nuclear Reactor Regulation, or a designee of the Director, may approve the application if the Director or designee determines that the licensee has identified orders, license conditions, and the technical specifications that must be revised or superseded, and that any necessary revisions are adequate. Any approval by the Director or the designee must be in the form of a license amendment approving the use of NFPA 805 together with any necessary revisions to the technical specifications.

(ii) The licensee shall complete its implementation of the methodology in Chapter 2 of NFPA 805 (including all required evaluations and analyses) and, upon completion, modify the fire protection plan required by paragraph (a) of this section to reflect the licensee's decision to comply with NFPA 805, before changing its fire protection program or nuclear power plant as permitted by NFPA 805.

(4) *Risk-informed or performance-based alternatives to compliance with NFPA 805.* A licensee may submit a request to use risk-informed or performance-based alternatives to compliance with NFPA 805. The request must be in the form of an application for license amendment under § 50.90 of this chapter. The Director of the Office of Nuclear Reactor Regulation, or designee of the Director, may approve the application if the Director or designee determines that the proposed alternatives:

(i) Satisfy the performance goals, performance objectives, and performance criteria specified in NFPA 805 related to nuclear safety and radiological release;

(ii) Maintain safety margins; and

(iii) Maintain fire protection defense-in-depth (fire prevention, fire detection, fire suppression, mitigation, and post-fire safe shutdown capability).

* * * * *

(f) Licensees that have submitted the certifications required under § 50.82(a)(1) shall maintain a fire protection program to address the potential for fires that could cause the release or spread of radioactive materials (*i.e.*, that could result in a radiological hazard). A fire protection program that complies with NFPA 805 shall be deemed to be acceptable for complying with the requirements of this paragraph.

* * * * *

Dated at Rockville, Maryland, this 8th day of June, 2004.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–13522 Filed 6–15–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM285; Special Conditions No. 25–269–SC]

Special Conditions: Boeing Model 767–2AX Airplane; Certification of Cooktops

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 767–2AX airplane, (serial number 33685), modified by Associated Air Center. This modified airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification includes the installation of an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for addressing the potential hazards that may be introduced by cooktops. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 3, 2004. Comments must be received on or before August 2, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM285, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. 285.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2194; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. We are requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for

comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background Information

On November 22, 2002, Associated Air Center, P.O. Box 540728, 8210 Lemmon Ave, Love Field, Dallas, Texas 75234, applied for a Supplemental Type Certificate (STC) to modify the Boeing Model 767–2AX airplane (serial number 33685). The Model 767–2AX is a large transport category airplane powered by two GE CF6–80C2 engines, with a maximum takeoff weight of 395,000 pounds. The modified Model 767–2AX airplane operates with a 2-pilot crew (8 crew rest seats), up to 3 flight attendants, and can hold up to 32 passengers.

The modification includes the installation of an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are therefore needed.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Associated Air Center must show that the Boeing Model 767–2AX airplane (serial number 33685), as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A1NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate Data Sheet No. A1NM are 14 CFR part 25, as amended by amendments 25–1 through 25–37, with reversions to earlier amendments. It also includes voluntary compliance with later amendments, special conditions, equivalent safety findings, and exemptions listed in the Type Certificate Data Sheet.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 767–2AX airplane (serial number 33685), modified by Associated Air Center because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, this Boeing Model 767–2AX airplane (serial number 33685) must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Associated Air Center apply at a later date for a supplemental type certificate to modify any other model included on the Type Certificate No. A1NM to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the modification of the Boeing Model 767–2AX airplane (serial number 33685) will include installation of a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards represented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food, which may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious passenger and airplane safety implications if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically powered burners. The use of an open flame cooktop (for example natural gas) is beyond the scope of these special conditions and would require separate rulemaking action. The requirements identified in these special conditions are in addition to those considerations identified in Advisory Circular (AC) 25–10, "Guidance for Installation of Miscellaneous Non-required Electrical Equipment," and those in AC 25–17, "Transport Airplane Cabin Interiors Crashworthiness Handbook." The intent of these special conditions is to provide a level of safety that is consistent with that on similar airplanes without cooktops.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 767–2AX airplane (serial number 33685), modified by Associated Air Center. Should Associated Air Center apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A1NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 767–2AX airplane (serial number 33685), modified by Associated Air Center. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 767–2AX airplane (serial number 33685), modified by Associated Air Center.

Cooktop Installations With Electrically-Powered Burners

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents (soups or sauces, for example) from the effects of flight loads and turbulence.

(a) Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop.

(b) Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable.

(c) Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (that is, power on any burner) during taxi, takeoff, and landing (TTL).

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop caused by materials or grease inadvertently coming in contact with the burners.

Note: Two acceptable means of complying with this requirement are as follows:

- Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended (this would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered). In addition, a fire detector must be installed in the vicinity of the cooktop, which provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. A fire on or around the cooktop must not block access to the extinguisher. One of the fire extinguishers required by § 25.851 may be used to satisfy this requirement if the total complement of extinguishers can be evenly distributed throughout the cabin. If this is not possible, then the extinguisher in the galley area would be additional.

OR

- An automatic, thermally-activated fire suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of Part III of Appendix F of part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils. These procedures and time intervals must be included in the Instructions for Continued Airworthiness (ICA). The ventilation system ducting must be protected by a flame arrestor.

Note: The applicant may find additional useful information in Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, "Air Conditioning Systems for Subsonic Airplanes," dated August 1, 1991.

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to airplane corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

10. A readily deployable cover must be provided to cover the cooktop during taxi, takeoff, and landing (TT&L). The deployment of the cover must automatically shut off power to the cooktop.

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13580 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM281; Special Conditions No. 25–265–SC]

Special Conditions: Raytheon Aircraft MU–300–10 and 400 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Aircraft Company Model MU–300–10 and 400 airplanes modified by Elliott Aviation Technical Products Development, Inc. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Honeywell AZ–252 Advanced Air Data Computer and optional BA–250 and AM–250 Altimeters. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 3, 2004. Comments must be received on or before July 16, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM281, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM281. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon is unnecessary as the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 22, 2004, Elliott Aviation Technical Products Development, Inc., Quad City Airport, P.O. Box 100, Moline, Illinois 61266–0100, applied for a supplemental type certificate (STC) to modify Raytheon Aircraft Company Models MU–300–10 (Diamond II) and 400 (Beechjet) airplanes. The Raytheon airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 15,780 pounds. These airplanes operate with a 2-pilot crew and can seat up to 9 passengers. The proposed modification incorporates the installation of a Honeywell AZ-252 Advanced Air Data Computer with optional pilot's BA–250 Altimeter and Co-pilot's AM–250 Altimeter. The information this equipment presents is flight critical. The avionics/electronics and electrical systems to be installed on these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Elliott Aviation must show that the Raytheon Aircraft Company Model MU–300–10 and 400 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16SW, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A16SW include 14 CFR part 25, as amended by Amendments 25–1 through 25–40; §§ 25.1351(d), 25.1353(c)(5), and 25.1450 as amended by Amendment 25–41; §§ 25.29, 25.255, and 25.1353(c)(6) as amended by Amendment 25–42; § 25.361(b) as amended by Amendment 25–46; and 14 CFR part 36 as amended by Amendment 36–1 through 36–12.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for modified Model MU–300–10 and 400 airplanes, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Model MU–300–10 and 400 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Elliott Aviation apply at a later date for supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The modified Model MU–300–10 and 400 airplanes will incorporate avionics/electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model MU–300–10 and 400 airplanes. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance is shown with either HIRF protection special condition paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated

wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Raytheon Aircraft Company Model MU–300–10 and 400 airplanes. Should Elliott Aviation Technical Products Development, Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 14 CFR 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Raytheon Aircraft Company Model MU–300–10 and 400 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Raytheon Aircraft Company Model MU–300–10 and 400 airplanes modified by Elliott Aviation Technical Products Development, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 3, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13577 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–29–AD; Amendment 39–13673; AD 2004–03–34 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that currently requires replacing existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with new, improved screw, nut, and washers. The actions specified by that AD are intended to prevent the latch cable assembly from disconnecting from the latch block assembly of the door mounted escape slide, which could result in an escape slide not deploying in an emergency situation. This amendment revises the parts installation paragraph to allow certain nuts to be installed and is intended to address the identified unsafe condition.

DATES: Effective July 21, 2004.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 24, 2004 (69 FR 7553, February 18, 2004).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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.*

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, 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) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2004–03–34, amendment 39–13478 (69 FR 7553, February 18, 2004), which is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, was published in the **Federal Register** on March 24, 2004 (69 FR 13761). The action proposed to continue to require replacing the existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with new, improved screw, nut, and washers. In addition, the action proposed to revise the parts installation paragraph to allow certain nuts to be installed on the latch block assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The changes in this action add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

There are approximately 2,919 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,129 airplanes of U.S. registry will be affected by this AD. The FAA estimates that it will take approximately 2 work hours for each airplane specified as Group 1 in the referenced service bulletin, and approximately 1 work hour for each airplane specified as Group 2 in the referenced service bulletin, to accomplish the required actions; the average labor rate is estimated to be $65 per work hour. Parts and materials are standard and are to be supplied by the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $130 per Group 1 airplane, and $65 per Group 2 airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing 39–13478 (69 FR 7553, February 18, 2004), and by adding a new airworthiness directive (AD), amendment 39–13673, to read as follows:

2004–03–34 R1 Boeing: Docket 2004–NM–29–AD. Revises AD 2004–03–34, Amendment 39–13478.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as listed in Boeing Special Attention Service Bulletin 737–25–1434, dated March 22, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the latch cable assembly from disconnecting from the latch block assembly of the door mounted escape slide, which could result in an escape slide not deploying in an emergency situation, accomplish the following:

Replacement

(a) Within 36 months after the effective date of this AD, replace existing screw, nut, and washers that attach the latch cable assembly to the latch block assembly of the door mounted escape slides, with new, improved screw, nut, and washers; per the Work Instructions of Boeing Special Attention Service Bulletin 737–25–1434, dated March 22, 2001.

Parts Installation

(b) As of the effective date of this AD, no person may install either of the parts specified in paragraphs (b)(1) and (b)(2) of this AD on the latch block assembly of any airplane.

(1) A nut, part number (P/N) BACN10R10L, that has been removed from any airplane.

(2) A screw, P/N NAS623–3–8.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOC) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for repair of the latch cable assembly and the latch block assembly for the door mounted escape slide, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 737–25–1434, dated March 22, 2001. The incorporation by reference of that document was approved previously by the Director of the Federal Register as of March 24, 2004 (69 FR 7553, February 18, 2004). Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.

Effective Date

(e) This amendment becomes effective on July 21, 2004.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13500 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–79–AD; Amendment 39–13671; AD 2004–12–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes. This action requires repetitive inspections for cracks or evidence of damage/distortion of the anti-skid drive coupling clips for the hubcaps of the main landing gear (MLG) wheels; repetitive measurement of the gap and height dimensions of the coupling clips; corrective actions, if necessary; and eventual replacement of all coupling clips with new, improved coupling clips. This action is necessary to prevent excessive gaps in the anti-skid drive coupling clips for the hubcaps of the MLG, which could result in momentary loss of the normal braking system at low speeds, and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 21, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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.*

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on April 6, 2004 (69 FR 17984). That action proposed to require repetitive inspections for cracks or evidence of damage/distortion of the anti-skid drive coupling clips for the hubcaps of the main landing gear (MLG) wheels; repetitive measurement of the gap and height dimensions of the coupling clips; corrective actions, if necessary; and eventual replacement of all coupling clips with new, improved coupling clips.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 220 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required general visual inspection and measurement of dimensions "G" and "H," at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the general visual inspection and measurement of dimensions "G" and "H", on U.S. operators is estimated to be $28,600, or $130 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to do the required replacement of the coupling clips, at an average labor rate of $65 per work hour. Required parts will cost approximately $600 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $146,300, or $665 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

2004–12–12 Empresa Brasileira De Aeronautica S.A. (Embraer): Amendment 39–13671. Docket 2003–NM–79–AD.

Applicability: Model EMB–120 series airplanes having serial numbers 120003, 120004, and 120006 through 120359 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive gaps in the anti-skid drive coupling clips for the hubcaps of the main landing gear (MLG), which could result in momentary loss of the normal braking system at low speeds, and reduced controllability of the airplane, accomplish the following:

General Visual Inspection, Measurement of Clip Dimensions, and Corrective Actions

(a) Within 400 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a general visual inspection for cracks or evidence of damage/distortion of the anti-skid drive coupling clips for the MLG wheel hubcap; and measure the "G" (gap) and "H" (height) dimensions of the coupling clips; and do any applicable corrective action; per the Accomplishment Instructions of EMBRAER Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003. Any applicable corrective action must be done prior to further flight per the service bulletin. Repeat the inspection and dimension measurement thereafter at every wheel change or wheel speed transducer change.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Replacement of Coupling Clips

(b) Within 800 flight hours or 12 months after the effective date of this AD, whichever occurs first: Replace any anti-skid drive coupling clip for the MLG wheel hubcap that was not previously replaced per paragraph (a) of this AD, with a new, improved part specified in and per Part III of EMBRAER Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003. Repeat the applicable actions required by paragraph (a) of this AD thereafter at every wheel change or wheel speed transducer change.

Parts Installation

(c) As of the effective date of this AD, no person may install an anti-skid drive coupling clip, part number 40–91115, on any airplane, unless the part number is identified as 40–91115 REV. D.

Credit for Actions Done per Previous Issue of Service Bulletin

(d) Accomplishment of the specified actions before the effective date of this AD per EMBRAER Service Bulletin 120–32–0088, dated November 18, 2002, is considered acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 120–32–0088, Revision 01, dated October 1, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2003–01–01, dated February 6, 2003.

Effective Date

(g) This amendment becomes effective on July 21, 2004.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13335 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–08–AD; Amendment 39–13670; AD 2004–12–11]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to check the airplane logbook to determine whether certain inboard and outboard flap flexshafts have been replaced with parts of improved design. If the parts of improved design are not installed, you are required to replace certain inboard and/or outboard flap flexshafts with the parts of improved design. The pilot is allowed to do the logbook check. If the pilot can positively determine that the parts of improved design are installed, no further action is required. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to prevent rupture of the flap flexshafts due to corrosion, which could cause the flap system to become inoperable.

DATES: This AD becomes effective on July 26, 2004.

As of July 26, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–08–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer,

FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Models PC–12 and PC–12/45 airplanes equipped with an inboard and/or outboard flap flexshaft, part numbers (P/N) 945.02.02.203 and/or 945.02.02.204. The FOCA reports several occurrences of corrosion found on the inner drive cables of these flap flexshafts.

The FOCA determined that moisture from the pressurized cabin could enter the flap flexshafts through the fittings of the protection hose causing corrosion. This corrosion could cause the flap flexshafts to rupture.

What is the potential iinpact if FAA took no action? If not prevented, corrosion on the flap flexshafts could cause flap flexshafts to rupture and lead to the flap system becoming inoperable.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Models PC–12 and PC–12/45 airplanes of the same type design that are equipped with an inboard and/or outboard flap flexshaft, P/N 945.02.02.203 and/or P/N 945.02.02.204. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 9, 2004 (69 FR 18843). The NPRM proposed to require you to check the airplane logbook to determine whether certain inboard and outboard flap flexshafts have been replaced with parts of improved design. If the parts of improved design are not installed, you would be required to replace certain inboard and/or outboard flap flexshafts with the parts of improved design.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Revise the Stated Result of the Unsafe Condition

What is the commenter's concern? The manufacturer states that failure of the flap system will not lead to loss of control of the airplane. The manufacturer explains that the flap computer (FCWU) protects the system against asymmetric flap deployment with a failure rate of 10E–9 in the event of a flexshaft rupture (and other failure modes). The pilot has no possibility to override this protection.

The manufacturer wants us to state that rupture of the flap flexshafts due to corrosion could cause the flap system to become inoperative but does not result in loss of control of the airplane.

What is FAA's response to the concern? We agree with the manufacturer. After reviewing additional information provided by the FOCA of Switzerland about the result of the unsafe condition on the flap flexshafts, we will change the final rule AD action based on this comment.

Comment Issue No. 2: Change the Costs of Compliance Section

What is the commenter's concern? The manufacturer states that of the 260 airplanes affected by this AD, only 65 need to have the replacement parts installed. The manufacturer wants the cost of compliance changed to reflect the cost of installing the replacement parts for these 65 airplanes instead of all 260 airplanes.

The manufacturer has also agreed to cover the cost of replacement parts for all airplanes even though the warranty credit period has expired. The manufacturer also wants us to change the cost of compliance to reflect this reduction.

What is FAA's response to the concern? We partially agree with the manufacturer. We agree that there may be only 65 airplanes currently on the United States (U.S.) registry that need to have the replacements parts installed. However, because parts could have been replaced on an airplane after it left the manufacturer, we used the total number of affected airplanes in the Costs of Compliance section. We have no way of determining the exact number of airplanes that will need to have the replacements done.

We are not changing the final rule AD action based on this comment. We are, however, adding a section to cover the cost for doing the logbook check. Since all of the affected airplanes will probably not need to have the replacement parts installed, a logbook check will have to be done on all of the affected airplanes in order to make this determination.

Comment Issue No. 3: Change Paragraph (e)(5)

What is the commenter's concern? The manufacturer states that the language in paragraph (e)(5) prohibits you from ever installing any version of the inboard and outboard flap flexshafts other than part numbers (P/N) 945.02.02.205 and 945.02.02.206. Therefore, airplanes manufactured in the future with a new design part number for the flap flexshafts will be in automatic non-compliance with this AD.

The manufacturer wants this language changed to prohibit ever installing P/Ns 945.02.02.203 and 945.02.02.204 but allows you to install new flap flexshafts introduced in the future.

What is FAA's response to the concern? We agree with the commenter. Preventing future installations of new design parts was not the intent of this AD.

We will change the final rule AD action based on this comment.

Comment Issue No. 4: Withdraw the Proposed AD Action To Mandate Compliance With Pilatus PC12 Service Bulletin No. 27–015

What is the commenter's concern? The manufacturer states that there is no unsafe condition. The manufacturer further explains that the flap computer (FCWC) protects the system against asymmetric flap deployment with a failure rate of 10E–9 in the event of a flexshaft rupture (and other failure modes). This failure does not result in loss of control of the airplane and the pilot has no possibility to override this protection.

The manufacturer also states that they can confirm that over 90 percent of the U.S. registered airplanes have already had the replacement parts installed.

The manufacturer wants the proposed AD action withdrawn.

What is FAA's response to the concern? We do not agree that there is no unsafe condition. We agree that approximately 90 percent of the affected airplanes may have already had the replacement parts installed. However, at least 10 percent of the affected airplanes still need the replacement done. In addition, the only way to legally prevent these unsafe parts from being installed in the future is through AD action. This would include airplanes brought into the U.S. and put on the U.S. registry.

Therefore, to ensure that all affected airplanes do not have the unsafe parts installed, we are not changing the final rule AD action based on this comment.

Comment Issue No. 5: Make the AD Serial Number Specific

What is the commenter's concern? The commenter states that the manufacturer has been incorporating the new P/Ns in the production line of new airplanes since 2003 making the

inclusion of airplanes produced after Manufacturer Serial Number (MSN) 489 illogical. Making the AD serial number specific speeds compliance and makes everyone's life easier.

The commenter wants the AD changed to be serial number specific as specified in Pilatus PC12 Service Bulletin No. 27–015.

What is FAA's response to the concern? We partially agree with the commenter. We agree that serial number specific ADs are easier to track; however, parts could be swapped from one of the earlier affected models and installed on a MSN outside of the range specified in the service information. To safeguard against this, we included a logbook check of all airplanes prior to doing any replacements.

We are not changing the final rule AD action based on this comment.

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes noted above and minor editorial corrections. We have determined that these changes:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 260 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the logbook check:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	Not applicable	$65	$65 × 260 = $16,900.

We estimate the following costs to accomplish the replacement:

Labor cost per flap flexshaft	Parts cost per flap flexshaft	Total cost per airplane	Total cost on U.S. operators
2 workhours per flap flexshaft (4 flap flexshafts per airplane) × $65 per hour = $130 per flap flexshaft.	Parts covered under warranty by the manufacturer.	$130 × 4 flap flexshafts = $520 to replace all 4 flap flexshafts.	Maximum cost for replacing all 4 flap flexshafts on all 260 airplanes = $520 × 260 = $135,200.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time for the replacement that will be required by this AD is "within the next 30 days after the effective date of this AD."

Why is this compliance time presented in calendar time instead of hours TIS? The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, a compliance time of calendar time is utilized.

Regulatory Findings

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

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–08–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. FAA amends § 39.13 by adding a new AD to read as follows:

2004–12–11 Pilatus Aircraft Ltd.: Amendment 39–13670; Docket No. 2004–CE–08–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on July 26, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model PC–12 and PC–12/45 airplanes, all serial numbers, that are:

(1) equipped with an inboard and/or outboard flap flexshaft, part number (P/N) 945.02.02.203 and/or P/N 945.02.02.204; and

(2) certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to prevent rupture of the flap flexshafts due to corrosion, which could cause the flap system to become inoperable.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following. If you already replaced both the inboard and outboard flap flexshafts, P/N 945.02.02.203 and P/N 945.02.02.204, following Pilatus PC12 Service Bulletin No. 27–015, dated June 4, 2003, then paragraph (e)(5) of this AD is the only paragraph that applies to you:

Actions	Compliance	Procedures
(1) *For affected airplanes with a manufacturer serial number (MSN) of 489 or lower:* check the airplane logbook to determine if P/N 945.02.02.203 and P/N 945.02.02.204 inboard and outboard flap flexshafts are installed.	Within the next 30 days after July 26, 2004 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(2) *For affected airplanes with a MSN of 490 and above:* check the airplane logbook to ensure that P/N 945.02.02.203 and P/N 945.02.02.204 inboard and outboard flap flexshafts have not been installed since delivery.	Within the next 30 days after July 26, 2004 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(3) If you can positively determine that both P/Ns 945.02.02.203 and 945.02.02.204 inboard and outboard flap flexshafts are not installed, then no replacement is required.	Not Applicable	Not applicable.
(4) If you cannot positively determine that both P/Ns 945.02.02.203 and 945.02.02.204, inboard and outboard flap flexshafts are not installed, then you must replace each one or both with P/N 945.02.02.205 and P/N 945.02.02.206, as applicable (or a later FAA-approved manufactured part of improved design).	Before further flight after the logbook checks required in paragraph (e)(1) and (e)(2) of this AD.	Follow Pilatus PC12 Service Bulletin No. 27–015 as specified in paragraph (f) of this AD.
(5) Do not install inboard and outboard flap flexshafts, P/Ns 945.02.02.203 and 945.02.02.204.	As of July 26, 2004 (the effective date of this AD).	Not applicable.

What Revision Levels Do the Affected Service Bulletin Incorporate?

(f) The service bulletin required to do the actions required in this AD incorporates the following pages:

Affected pages	Revision level	Date
1 and 2	A	November 13, 2003.
3 through 11	Original Issue	June 4, 2003.

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106, telephone: (816) 329–4059; facsimile: (816) 329–4090.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Pilatus PC12 Service Bulletin No. 27–015, pages 1 and 2, Revision A, dated November 13, 2003, pages 3 through 11, Original issue, dated June 4, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; 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.*

Is There Other Information That Relates to This Subject?

(i) Swiss AD Number HB–2004–068, dated March 4, 2004, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on June 3, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13334 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–376–AD; Amendment 39–13666; AD 2004–12–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce RB211 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, that currently requires modification of the nacelle strut and wing structure. This amendment requires, for certain airplanes, repetitive detailed inspections of certain aft bulkhead fasteners for loose or missing fasteners, and corrective action if necessary. For certain other airplanes, this amendment requires a one-time detailed inspection of the middle gusset of the inboard side load fitting for proper alignment and realignment if necessary; a one-time eddy current inspection of certain fastener holes for cracking, and repair if necessary; and a detailed inspection of certain fasteners for loose or missing fasteners; and replacement with new fasteners if necessary. The actions specified by this AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. These actions are intended to address the identified unsafe condition.

DATES: Effective July 21, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–24–07, amendment 39–11431 (64 FR 66370, November 26, 1999), which is applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, was published as a supplemental Notice of Proposed Rulemaking in the **Federal Register** on April 15, 2003 (68 FR 18170). The action proposed to continue to require modification of the nacelle strut and wing structure. The action proposed to require, for certain airplanes, repetitive detailed inspections of certain aft bulkhead fasteners for loose or missing fasteners, and corrective action if necessary. For certain other airplanes, the action proposed to require a one-time detailed inspection of the middle gusset of the inboard side load fitting for proper alignment and realignment if necessary; a one-time eddy current inspection of certain fasteners holes for cracking; and repair if necessary; and a detailed inspection of certain fasteners for loose or missing fasteners; and replacement with new fasteners if necessary. Additionally, the action proposed to require that certain actions specified in Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002 (specified in the supplemental NPRM as one of the appropriate sources of service information), be done using Boeing-supplied tools.

Request for Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments Received That Resulted in Changes to the AD

Requests To Extend Repetitive Inspection Interval

Several commenters request that the repetitive inspection interval of every six months proposed by paragraph (b) of the supplemental NPRM be extended. Two commenters state that repetitive inspection intervals of every 3,000 flight cycles would be less of a burden for the operators. Another commenter advises that the airplane manufacturer's intent was to require repetitive inspections every 12,000 flight cycles or 72 months, whichever occurs first.

The FAA concurs that the repetitive inspection interval may be extended somewhat. We understand that the manufacturer has recommended an interval of every 12,000 flight cycles or 72 months. However, we have recently received reports of field experience that show the fasteners can loosen in less than 72 months. Therefore, we have revised paragraph (b) of the AD to specify a repetitive inspection interval not to exceed 6,000 flight cycles or 36 months, whichever occurs first.

Requests To Clarify Paragraph (f) of the Supplemental NPRM

One commenter states that the way the supplemental NPRM is written, it would require the actions specified in paragraph (f) of the supplemental NPRM to be accomplished after each repetitive inspection required by paragraph (b) of the supplemental NPRM. Two commenters request that the supplemental NPRM be revised to clearly specify that accomplishment of the requirements of paragraph (f) of the supplemental NPRM is terminating action.

We agree with the need to clarify paragraph (f) of the supplemental NPRM. The requirements of paragraph (f) of the AD (to increase the diameter of the fastener holes and to install new fasteners) apply to those airplanes on which the actions specified in paragraph (d) of the AD have been accomplished. We have revised paragraph (f) of the AD to reflect that clarification. Additionally, we agree that the actions specified in paragraph (f) of this AD terminates the repetitive inspection requirements of this AD. We have revised the AD accordingly.

Comments Received That Resulted in No Change to the Supplemental NPRM

Requests To Withdraw Rulemaking Until New Service Information Is Issued

Several commenters request that the supplemental NPRM be withdrawn and that, instead, new rulemaking be proposed to specify that the initial inspection specified in paragraph (b) of the supplemental NPRM be accomplished within 90 days after the release of a new Boeing service bulletin (Boeing Alert Service Bulletin 757–54A0047). The commenters state that using the new service information would simplify and clarify the actions proposed in the supplemental NPRM.

We do not agree that this AD should be withdrawn. We have not reviewed or approved new service information specified by the commenters. In this case, we find that to withdraw this AD and initiate new proposed rulemaking (providing for public opportunity to comment) would significantly delay the rulemaking process and would be inappropriate in light of the identified unsafe condition. Therefore, no change is necessary to the AD in this regard. In the future, if the manufacturer elects to provide new service information, the service information can be evaluated and approved in accordance with paragraph (h) of this AD.

Request To Extend Compliance Time of Paragraph (b) of the Supplemental NPRM

One commenter requests that, for airplanes that have completed the modification specified in Boeing Service Bulletin 757–54–0035, the compliance time specified in paragraph (b) of the supplemental NPRM be extended. The commenter states that the compliance time should be extended because the previous modification was done on those airplanes in a shop environment.

We do not agree that extending the compliance time specified in paragraph (b) of this AD is necessary. The requirements of paragraph (b) of this AD apply only to airplanes that have not been modified per Boeing Service Bulletin 757–54–0035. Therefore, no change is necessary in this regard to the AD.

Requests To Revise Inspection Method for Loose or Missing Fasteners

Two commenters request that a method of inspecting for loose or missing fasteners without the engine in place be specified. The commenters state that the inspection method specified in the supplemental NPRM is burdensome to accomplish with the engine in place.

We do not agree with the commenters' request. Since the manufacturer has not provided us with service information describing such a method of inspection, we have not reviewed and approved such an inspection method. However, under the provisions of paragraph (h) of the AD, we may approve requests for an alternative inspection method if data are submitted to substantiate that such an alternative inspection method would provide an acceptable level of safety.

Request for an Alternative Inspection Method

One commenter, the manufacturer, requests that a simple gap check be performed with a feeler or wire gage in lieu of the inspection in paragraph (c) of the supplemental NPRM. The commenter explains that this can be done with the strut still installed, which is described in Boeing Service Bulletin 757–54–0035, Revision 2. The commenter further recommends that a minimum gap of 0.030 inch be maintained between the middle gusset on the inboard side load fitting and the strut clevis lug.

We do not agree with permitting such an alternative method of inspection at this time, since the gap check has not been sufficiently defined for us to review and approve. However, under the provisions of paragraph (h) of the AD, we may approve requests for an alternative inspection method if data are submitted to substantiate that such an alternative method would provide an acceptable level of safety.

Request To Use Alternative Method of Oversizing Holes

One commenter requests approval for using procedures to oversize holes specified in the Structural Repair Manual (SRM) in lieu of using Boeing-supplied tools specified in paragraph (g) of the supplemental NPRM. The commenter notes that there is a limited supply of those tools.

We do not agree with the commenter's request. In certain cases, operator supplied tools have contributed to unsafe conditions. However, under the provisions of paragraph (h) of the AD, we may approve requests for an alternative method of oversizing holes if data are submitted to substantiate that such a method to oversize holes would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Change to the Code of Federal Regulations

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this AD, we have retained the language of the supplemental NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry will be affected by this AD.

The modification that is currently required by AD 99–24–07 takes approximately 1,049 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. This work hour figure includes the time it will take to remove and reinstall the struts from the airplane as well as the time required to gain and close access to the adjacent wing structure. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $12,000,560, or $68,185, per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 7 of Revision 2 of Boeing Service Bulletin 757–54–0035, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in the fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in the fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table I of the service bulletin.

It will take approximately 1 work hour per airplane to accomplish the new detailed inspection of the middle gusset, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection required by this AD is estimated to be $11,440, or $65 per airplane.

It will take approximately 8 work hours per airplane to accomplish the new fastener removal and eddy current inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the removal and inspection required by this AD is estimated to be $91,520, or $520 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing amendment 39–11431 (64 FR 66370, November 26, 1999), and by adding a new airworthiness directive (AD), amendment 39–13666, to read as follows:

2004–12–07 Boeing: Amendment 39–13666. Docket 2000–NM–376–AD. Supersedes AD 99–24–07, Amendment 39–11431.

Applicability: Model 757 series airplanes equipped with Rolls Royce RB211 engines, line numbers 1 through 735 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance (AMOC) in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Restatement of Requirements of AD 99–24–07

Modification

(a) Modify the nacelle strut and wing structure according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997; Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD. All of the terminating actions described in the service bulletins and listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 6 of Boeing Service Bulletin 757–54–0035, on page 7 of Revision 1 of the service bulletin, and on Page 7 of Revision 2 of the service bulletin, as applicable, must be accomplished according to those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph. After the effective date of this AD, use only Revision 2 of the service bulletin.

(1) Prior to the accumulation of 37,500 total flight cycles, or prior to 20 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 3,000 flight cycles after January 3, 2000 (the effective date of AD 99–24–07, amendment 39–11431).

New Requirements of This AD

Inspections/Corrective Actions

(b) For airplanes on which the modification required by paragraph (a) of this AD has not been done according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997: Before the accumulation of 15,000 total flight cycles, or within 6 months after the effective date of this AD, whichever is later, do a detailed inspection of the 20 aft bulkhead fasteners of the lower spar fitting for loose or missing fasteners, according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Before further flight, replace any loose or missing fasteners with new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15. 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form. Repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles or 36 months, whichever occurs first. Accomplishment of the actions required by paragraph (a) of this AD constitutes terminating action for the requirements of this paragraph.

Note 2: The 20 aft bulkhead fasteners are located in Panel 7 at Locations 36, 37, and 41. The number of fasteners at Location 37 has increased from 2 to 8 fasteners. Figure 30 of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, illustrates the location of the fasteners.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(c) For airplanes on which the modification required by paragraph (a) of this AD has been done according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997: Within 15,000 flight cycles after doing the modification required by paragraph (a) of this AD, or within 3 years after the effective date of this AD, whichever is later; do a one-time detailed inspection of the middle gusset of the inboard side load fitting for proper alignment, according to Part II of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form. If the gusset is not aligned properly, before further flight, machine the gusset to the specified angle according to the service bulletin.

(d) Before further flight after doing paragraph (c) of this AD, do the actions required by paragraphs (d)(1) and (d)(2) of this AD.

(1) Remove the aft bulkhead fasteners of the lower spar fitting and do a one-time eddy current inspection of those fastener holes for cracking, according to Part V of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form.

(2) Do a detailed inspection of the 8 fasteners of the lower spar fitting for loose or missing fasteners, according to a method approved by the Manager, Seattle ACO. Before further flight, replace any loose or missing fasteners with new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form.

Note 4: The 8 fasteners are located in Panel 7 at Location 37. The number of fasteners at Location 37 has increased from 2 to 8 fasteners. Figure 30 of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form, illustrates the location of the fasteners.

(e) If any cracking is found during any inspection required by this AD: Before

further flight, repair according to a method approved by the Manager, Seattle ACO; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) If no cracking is found during the inspection required by paragraph (d) of this AD, before further flight, increase the diameter of the fastener holes and install new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form.

(g) Except as identified in Figures 3 and 5 of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form, the actions must be done using Boeing-supplied tools.

Alternative Methods of Compliance

(h)(1) An AMOC or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) AMOCs, approved previously in accordance with AD 99–24–07, amendment 39–11431, are approved as AMOCs with paragraph (a) of this AD.

Note 5: Information concerning the existence of approved AMOCs with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Unless otherwise specified, the actions shall be done in accordance with Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

Effective Date

(k) This amendment becomes effective on July 21, 2004.

Issued in Renton, Washington, on May 25, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13144 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17496; Airspace Docket No. 04–AAL–04]

Establishment of Class E Airspace; Allakaket, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Allakaket, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP) and a new Textual Departure Procedure. This Rule results in new Class E airspace upward from 700 feet (ft.) and 1,200 feet above the surface at Allakaket, AK.

DATES: *Effective Date:* 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, April 19, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Allakaket, AK (69 FR 20835). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new Standard Instrument Approach Procedures and a new Textual Departure Procedure for the Allakaket Airport. The new approaches are Area Navigation-Global Positioning System (RNAV GPS) Runway (RWY) 5, original and (2) RNAV (GPS) Runway 23, original. New Class E controlled airspace extending upward from 700 feet and 1,200 feet above the surface in the Allakaket Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Allakaket, Alaska. This additional Class E airspace was created to accomodate aircraft executing two new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Allakaket Airport, Allakaket, Alaska.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 _ Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Allakaket, AK [New]

Allakaket Airport, AK
(Lat. 66°33′07″ N., long. 152°37′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Allakaket Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 66°09′ N. 153°40′ W. to 66°40′ N. 153°00′10″ W. to 66°09′ N. 153°00′ W. to point of beginning, excluding the Fairbanks Class E airspace, the Indian Mountain Class E airspace, and that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on June 8, 2004.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–13579 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17497; Airspace Docket No. 04–AAL–05]

Revision of Class E Airspace; Kipnuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Kipnuk, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This Rule results in additional Class E airspace upward from 700 feet (ft.) above the surface at Kipnuk, AK.

DATES: *Effective Date:* 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, April 19, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace upward from 700 ft.above the surface at Kipnuk, AK (69 FR 20837). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new Standard Instrument Approach Procedures at the Kipnuk Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) RWY 33 original and (2) RNAV (GPS) RWY 15, original. Additional Class E controlled airspace extending upward from 700 feet above the surface in the Kipnuk Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 revises Class E airspace at Kipnuk, Alaska. This additional Class E airspace was created to accommodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Kipnuk Airport, Kipnuk, Alaska.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kipnuk, AK [Revised]

Kipnuk Airport, AK
(Lat. 59°55′59″ N., long. 164°01′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Kipnuk.

* * * * *

Issued in Anchorage, AK.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–13578 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 270

[Docket No. 030421094–4155–02]

RIN 0693–AB53

Procedures for Implementation of the National Construction Safety Team Act

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Final rule.

SUMMARY: The Director of the National Institute of Standards and Technology ("NIST"), Technology Administration, United States Department of Commerce ("Director"), issues a final rule that amends regulations found at 15 CFR part 270, that implements the National Construction Safety Team Act ("Act"). An interim final rule with a request for public comments clarifying NIST's role in recommending improvements to building codes, standards, and practices, and clarifying the relationship between investigations conducted under the Act and criminal investigations of the same building failure, and establishing procedures regarding the establishment and deployment of National Construction Safety Teams and for the conduct of investigations under the Act was published in the **Federal Register** on November 28, 2003. This final rule responds to comments received in response to the November 28, 2003 document.

DATES: This rule is effective on July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. James E. Hill, Acting Director, Building and Fire Research Laboratory, National Institute of Standards and Technology, Mail Stop 8600, Gaithersburg, MD 20899–8600, telephone number (301) 975–6850.

SUPPLEMENTARY INFORMATION:

Background

The National Construction Safety Team Act, Public Law 107–231, was enacted to provide for the establishment of investigative teams ("Teams") to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life. The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States. A Team will (1) establish the likely technical cause or causes of the building failure; (2) evaluate the technical aspects of evacuation and emergency response procedures; (3) recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to (1) and (2); and recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation. Section 2(c)(1) of the Act requires that the Director develop procedures for certain activities to be carried out under the Act as follows: Regarding conflicts of interest related to service on a Team; defining the circumstances under which the Director will establish and deploy a Team; prescribing the appropriate size of Teams; guiding the disclosure of information under section 7 of the Act; guiding the conduct of investigations under the Act; identifying and prescribing appropriate conditions for provision by the Director of additional resources and services Teams may need; ensuring that investigations under the Act do not impede and are coordinated with any search and rescue efforts being undertaken at the site of the building failure; providing for regular briefings of the public on the status of the investigative proceedings and findings; guiding the Teams in moving and preserving evidence; providing for coordination with Federal, State, and local entities that may sponsor research or investigations of building failures; and regarding other issues.

NIST published an interim final rule with a request for public comments in the **Federal Register** on January 30, 2003 (68 FR 4693), seeking public comment on general provisions regarding implementation of the Act and on provisions establishing procedures for the collection and preservation of evidence obtained and the protection of information created as part of investigations conducted pursuant to the Act, including guiding the disclosure of information under section 7 of the Act (§§ 270.350, 270.351, and 270.352) and guiding the Teams in moving and preserving evidence (§ 270.330). These general provisions and procedures, comprising Subparts A and D of the rule, are necessary to the conduct of the investigation of the World Trade Center disaster, already underway, and became effective immediately upon publication. The comment period closed on March 3, 2003. On May 7, 2003, NIST published a final rule in the **Federal Register** (68 FR 24343), addressing the comments received.

NIST published an interim final rule with a request for public comments in the **Federal Register** on November 28, 2003 (68 FR 66073), seeking public comment on amendments to § 270.1, Description of rule; purpose, applicability, of the final rule to clarify NIST's role in recommending improvements to building codes, standards, and practices and to clarify the relationship between investigations conducted under the Act and criminal investigations of the same building failure; an amendment to the definition of *Credentials*, contained in § 270.2, to clarify that credentials are issued by the Director and to better define the term; and an amendment to § 270.313, Requests for Evidence, to clarify that collections of evidence under that section are investigatory in nature and are not research. NIST also sought public comment on procedures set forth in the interim final rule regarding conflicts of interest related to service on a Team (§ 270.106); defining the circumstances under which the Director will establish and deploy a Team (§ 270.102); prescribing the appropriate size of Teams (§ 270.104); guiding the conduct of investigations under the Act (§ 270.200); identifying and prescribing appropriate conditions for provision by the Director of additional resources and services Teams may need (§ 270.204); ensuring that investigations under the Act do not impede and are coordinated with any search and rescue efforts being undertaken at the site of the building failure (§ 270.202); providing for regular briefings of the public on the status of the investigative proceedings and findings (§ 270.206); providing for coordination with Federal, State, and local entities that may sponsor research or investigations of building failures (§ 270.203); and regarding other issues.

The comment period closed on December 29, 2003.

Summary of Public Comments Received by NIST in Response to the November 28, 2003, Interim Final Rule, and NIST's Response to Those Comments

NIST received ten responses to the request for comments. One response was from a private, not-for-profit organization that develops model

building codes. Two responses were from industry associations. One response was from an association of local building officials, and one response was from an association of state building officials. One response was from a local government agency. One response was from the NCST Federal Advisory Committee, and three responses were from individual members of that committee. A detailed analysis of the comments follows.

General Comments

Comment: One commenter expressed the view that it is important to the future of the public's health, welfare and life safety that the Act be adequately funded by Congress at the earliest time possible.

Response: This comment is outside the scope of this rulemaking.

Comment: One commenter recommended that the regulations provide for the establishment of a directory of pre-approved and credentialed individuals that are available to act as Team members.

Response: NIST intends to establish such a list under its internal procedures.

Comment: One commenter recommended deleting the word "technical" from the causes of building failure and from the aspects of evacuation and emergency response procedures in § 270.100(b) because it limits the work of Teams.

Response: The Act requires NIST to assess the technical causes of building failures. Specifically, section 2(b)(2)(A) and (B) of the Act state that a Team shall establish the likely technical cause or causes of the building failure and that a Team shall evaluate the technical aspects of evacuation and emergency response procedures.

Comment: One commenter recommended that NIST revise the first sentence of § 270.1(b)(1) by expanding the stated purpose of investigations by Teams to include improving "the safety of building occupants and emergency egress and response measures."

Response: NIST has revised § 270.1(b)(1) by adding language contained in the preamble to the Act. The preamble states that the purpose of the Act is "to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life."

Comments Regarding Criteria for the Establishment and Deployment of Teams

Comment: One commenter recommended that NIST develop and include language that specifically describes situations that will result in investigation by a Team and that the language should be similar, in detail and description, to that currently used by the National Transportation Safety Board ("NTSB").

Response: The Act authorizes the Director to establish a Team for deployment "after events causing the failure of a building or buildings that has resulted in substantial loss of life or that posed significant potential for substantial loss of life." The variety of "events" that could cause building failures yielding such results is extremely broad. In addition, the same type of "event" might in some circumstances cause a building failure yielding such results and in other circumstances might not cause a building failure or might cause a building failure that does not result in substantial loss of life or pose significant potential for substantial loss of life. The broad nature of this authority requires broad discretion for the Director in determining whether a particular event results in a situation that is within the scope of the Act. In addition, NIST has reviewed the NTSB criteria and finds that the criteria set forth in § 270.102 are similar in detail and description to that currently used by the NTSB.

Comment: One commenter recommended that NIST work cooperatively with the construction industry and with the building and fire regulatory communities to define the terms in the Act "substantial loss of life or a potential for substantial loss of life."

Response: The Director's decision to establish a Team after an event that caused the failure of a building or buildings that resulted in substantial loss of life or posed significant potential for substantial loss of life will require consideration of the entire context of the building failure, the event that caused it, the likelihood that an investigation will likely result in significant and new knowledge or recommendations for building code revision, and the factors identified in § 270.102(b). Not defining "substantial loss of life or a potential for substantial loss of life" leaves the Director with the broad discretion needed to make this determination.

Comment: Two commenters recommended changing the wording of § 270.100(a) to indicate that historically, in the United States, building failures from fires, earthquakes, hurricanes, tornadoes, and other disasters that have resulted in a substantial loss of life or that posed significant potential for substantial loss of life have occurred several times per year, rather than less than once per year.

Response: NIST has revised § 270.100(a) to state that NIST expects that the Director will establish and deploy a Team to conduct an investigation at a frequency of approximately once per year or less based on prior NIST experience.

Comment: One commenter stated that § 270.100(b) requires an editorial correction as follows: "Teams established under the Act and this part will investigate these", change "these" to "the".

Response: NIST disagrees. In § 270.100(b), "these" refers back to the building systems described in the previous sentence, the failure of which could be a technical cause of a building failure.

Comment: One commenter recommended that the wording in § 270.102(a)(1)(ii) be changed to read: "a fire that resulted in a building failure of the building of origin and/or spreads beyond the building of origin."

Response: NIST has revised the referenced section to read "a fire that resulted in a building failure of the building of origin and/or spread beyond the building of origin."

Comment: One commenter stated that the Federal Response Plan cited in § 270.102(a)(1)(iv) had been revised and renamed the National Response Plan. The commenter recommended that NIST revise that section to reflect this change.

Response: NIST has changed the reference in § 270.102(a)(1)(iv) to read "National Response Plan."

Comment: One commenter recommended deleting paragraph 270.102(b)(4) because it is highly unlikely that an NCST investigation would substantially duplicate local or state capabilities, and replacing it with "Whether an investigation is likely to result in relevant knowledge for mitigation of the building failure."

Response: NIST disagrees. NIST will retain the original language of paragraph 270.102(b)(4) to make clear that no matter how infrequently the situation occurs, in deciding whether to establish and deploy a Team, the Director will consider whether an NCST investigation would substantially duplicate a local or state investigation. NIST has revised § 270.102(a)(2) to address the importance of gaining relevant

knowledge for mitigation of building failures.

Comments Regarding the Size and Composition of a Team

Comment: Two commenters suggested adding structural and electrical engineering to the disciplines that may be represented on a Team as listed in § 270.104(b)(5).

Response: NIST agrees and has added these disciplines.

Comment: One commenter recommended adding Code administration and enforcement to the disciplines that may be represented on a Team as listed in § 270.104(b)(5).

Response: NIST disagrees. Code administration and enforcement are not disciplines that would participate in investigating the technical causes of a building failure. Rather, they are disciplines involved in the implementation of recommendations resulting from an investigation. If the expertise provided by these disciplines is needed in the course of an investigation, NIST may engage appropriate representatives as contractors or consultants to the Team, but it is unlikely that they would be Team members.

Comment: One commenter suggested that Teams involve the local building official in the investigation and draw on the resources of the local building department during investigations.

Response: Section 6(3) of the Act states that in order to support Teams in carrying out the Act, the Director may "confer with employees and request the services, records, and facilities of State and local governmental authorities." When appropriate. local building officials may be requested to serve on or support Teams in their investigations. If a local building department possesses evidence necessary to an NCST investigation, it may voluntarily submit such information to NIST pursuant to 15 CFR 270.312.

Comments Regarding the Duties of a Team

Comment: One commenter recommended that § 270.105(b)(3) be revised to include that in addition to recommending, as necessary, specific improvements to building standards, codes and practices based on its findings, a Team be required to provide the supporting rationale for each recommendation.

Response: Supporting rationale for a Team's recommendations will be included in its report as required by section 8 of the Act and § 270.205(a) of the regulations.

Comment: One commenter requested that NIST change the word "Cooperate" in § 270.105(c)(6) to "Not impede" to describe a Team's interaction with State and local authorities carrying out any activities related to a Team's investigation.

Response: Section 4(c)(4) of the Act requires a Team to cooperate with State and local authorities carrying out any activities related to a Team's investigation.

Comment: One commenter requested that NIST remove from § 270.105(d)(4) the authority to move, or to further articulate the nature of the "records" to be moved as a result of the investigation. The commenter questioned whether this authority includes the official records of the jurisdiction.

Response: No change has been made in response to this comment. The authority to move such records is granted by section 4(a)(4) of the Act. The Act limits this authority by stating that it is to be carried out "as provided by the procedures developed under section 2(c)(1)." The procedures for collection and preservation of evidence are set forth in subpart D of the regulations.

Comments Regarding the Conduct of Investigations

Comment: One commenter asked that NIST add an additional task to the list of tasks that may be completed during an investigation. The commenter requested that NIST add a new paragraph 270.200(c)(2)(xii): "Review best practices in codes adoption and administration to determine the extent to which the circumstances that led to this building failure have statewide, regional or national implications."

Response: NIST agrees that this is a task that might be completed during an investigation that proceeds beyond preliminary reconnaissance. Rather than adding a new task, NIST has incorporated this task into the task described in § 270.200(c)(2)(ix) by revising that section to read: "Analyze the relevant building practices, including code adoption and enforcement practices, to determine the extent to which the circumstances that led to this building failure have regional or national implications."

Comment: One commenter recommended that NIST revise § 270.200(c)(2)(iv) to require that the Team make a determination whether the building was constructed in accordance with the adopted code, determine what code was in force when the building was approved for construction and identify any renovations, repairs, additions, etc. that were made during the life of the building and how those were addressed with respect to the adopted code at the time they were made.

Response: A Team may determine what code or codes were in force when the building was designed and approved for construction, and identify any renovations, repairs, additions, etc. that were made during the life of the building and the relevant code provisions that were in force when such work was done. However, determining whether a building was built in accordance or complied with code requirements is a code enforcement authority and is not part of the statutory authority granted to NIST under the Act. As a result of its investigation, a Team will recommend any changes to current building standards, codes, and practices that would improve the safety and structural integrity of buildings in the United States.

Comment: One commenter recommended that NIST provide additional guidance in § 270.200(c)(2)(v) on how a Team should identify the most probable technical cause when no computer model is available to address a particular issue.

Response: The tasks listed in § 270.200(c)(2) are examples of tasks that Teams might need to perform in conducting an investigation. None of the tasks is required in any investigation, and it is not possible to provide a complete list of every task that a Team might need to perform to complete its investigation. If no computer model is available, a Team will do what is necessary to reconstruct the event and identify the most probable technical cause of the building failure without a computer model.

Comment: One commenter recommended that § 270(c)(2)(x) be revised from "Identify specific areas in building and fire codes, standards, and building practices that may warrant revisions based on investigation findings." To "identification of specific criteria in building and fire codes and standards and practices—with an understanding that building and fire are broad and include mechanical, electrical, *e.g.*, all codes that warrant revisions, proposed changes to those documents and development of supporting rationale."

Response: The specific criteria differ from code to code. A Team cannot address every change to every code in the United States that may result from a Team's general recommendation for an improvement to building codes. Each jurisdiction or industry will be responsible for adopting changes to the

specific criteria contained in its codes, standards, and practices that warrant change based on a Team's recommendation.

Comments Regarding the Priority of Investigations and the Coordination of Investigations With Search and Rescue Efforts and With Federal, State, and Local Entities

Comment: One commenter asked that NIST clarify that a Team would have priority over civil litigants.

Response: No change has been made in response to this comment. The Act does not provide NIST with authority for Teams to take priority over civil litigants.

Comment: One commenter stated that, contrary to the wording of § 270.202, FEMA does not have local offices. The commenter suggested that NIST revise the reference in § 270.202 to read: "including FEMA urban search and rescue teams, local emergency management agencies, and local emergency response groups.

Response: NIST has made this change.

Comment: One commenter hoped that the NIST teams will realize that search and rescue efforts and recovery efforts will be the top priorities of local officials and that the NIST team should perform their investigation in such a manner that they will not impede the efforts of local officials.

Response: NIST recognizes that search and rescue efforts and recovery efforts are the top priorities following a building disaster. Section 4(c)(1) of the Act and § 270.202 state that NIST will coordinate its investigation with such efforts.

Comment: One commenter stated that notification of the establishment and deployment of a Team by publication in the **Federal Register** is too slow a process. The commenter recommended that NIST should notify the jurisdiction's chief building code enforcement and fire official, as well as neighboring local jurisdictions, of such actions directly by phone or e-mail to establish a positive working relationship and to expedite a cooperative working environment.

Response: NIST agrees. As required by section 2(a) of the Act and implemented by § 270.103 of the regulations, the Director will promptly publish in the **Federal Register** notice of the establishment of each Team. In addition, NIST will promptly notify appropriate authorities having jurisdiction over a building failure site. NIST also is in the process of contacting and establishing relationships with state and local authorities with whom Teams conducting an investigation may have to coordinate. With the help of other Federal agencies, NIST is developing a list of the appropriate contacts in each jurisdiction for the purpose of immediate notification of the establishment and deployment of a Team.

Comment: One commenter recommended that NIST develop details and a formal protocol document to spell out and facilitate cooperation with state and local authorities in carrying out activities related to a Team's investigation.

Response: NIST agrees. Section 270.203 sets forth NIST's intent to enter into Memoranda of Understanding with Federal, State, and local entities, as appropriate, to ensure the coordination of investigations.

Comments Regarding Reports

Comment: One commenter recommended that language be added to § 270.205 to clarify the intended recipients of Team reports. The commenter recommended that the primary recipients be organizations which are private sector voluntary consensus standards writing organizations operating under approved guidelines of the American National Standards Institute (ANSI).

Response: All final Team reports will be made publicly available and will be posted on the NIST Web site. NIST encourages standards organizations to access the reports. NIST cannot take on the burden of identifying all appropriate recipients of each Team's final report.

Comment: One commenter urged NIST to take care in framing and briefing the press on recommendations from investigations so as to take into consideration the potential impact on the construction industry, government, leasing of buildings, and the public.

Response: NIST agrees and will do so, taking into account public safety and welfare.

Comment: One commenter recommended that the reporting of "any recommended specific improvements to building standards, codes, and practices," required by § 270.205(a)(3) include specific code changes with supporting rationale.

Response: Section 2(b)(2)(C) of the Act and § 270.105(b)(3) of the regulations state that a Team will recommend, as necessary, specific improvements to building standards, codes, and practices based on its findings. It is the responsibility of appropriate standards and codes organizations and authorities to consider adoption of a Team's recommendations and to develop specific code change proposals and language. Section 9(2) of the Act authorizes NIST to promote (consistent with existing procedures for the establishment of building standards, codes, and practices) the appropriate adoption of its recommendations by the Federal Government and encourage the appropriate adoption of those recommendations by other agencies and organizations. Reports will include the supporting rationale for any recommendations made.

Additional Information

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Administrative Procedure Act

Prior notice and an opportunity for public comment are not required for this rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to 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.

There are no collections of information involved in this rulemaking.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 270

Administrative practice and procedure; buildings and facilities; disaster assistance; evidence; investigations; National Institute of

Standards and Technology; science and technology; subpoena.

Dated: June 8, 2004.

Hratch G. Semerjian,

Acting Director.

■ For the reasons set forth in the preamble, title 15 of the Code of Federal Regulations is amended as follows:

PART 270—NATIONAL CONSTRUCTION SAFETY TEAMS

■ 1. The authority citation for part 270 continues to read as follows:

Authority: Pub. L. 107–231, 116 Stat. 1471 (15 U.S.C. 7301 *et seq.*).

■ 2. Section 270.1 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 270.1 Description of rule; purpose; applicability.

* * * * *

(b)(1) The purpose of the Act is to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life. * * *

* * * * *

■ 3. Section 270.100 is amended by revising paragraph (a) to read as follows:

§ 270.100 General.

(a) Based on prior NIST experience, NIST expects that the Director will establish and deploy a Team to conduct an investigation at a frequency of approximately once per year or less.

* * * * *

■ 4. Section 270.102 is amended by revising paragraphs (a)(1)(ii), (a)(1)(iv), and (a)(2) to read as follows:

§ 270.102 Conditions for establishment and deployment of a Team.

(a) * * *

(1) * * *

(ii) A fire that resulted in a building failure of the building of origin and/or spread beyond the building of origin.

* * * * *

(iv) An act of terrorism or other event resulting in a Presidential declaration of disaster and activation of the National Response Plan; and

(2) A fact-finding investigation of the building performance and emergency response and evacuation procedures will likely result in significant and new knowledge or building code revision recommendations needed to reduce or mitigate public risk and economic losses from future building failures.

* * * * *

■ 5. Section 270.104 is amended by revising paragraph (b)(5) to read as follows:

§ 270.104 Size and composition of a Team.

* * * * *

(b) * * *

(5) Teams may include members who are experts in one or more of the following disciplines: civil, structural, mechanical, electrical, fire, forensic, safety, architectural, and materials engineering, and specialists in emergency response, human behavior, and evacuation.

* * * * *

■ 6. Section 270.200 is amended by revising paragraph (c)(2)(ix) to read as follows:

§ 270.200 Technical conduct of investigation.

* * * * *

(c) * * *

(2) * * *

(ix) Analyze the relevant building practices, including code adoption and enforcement practices, to determine the extent to which the circumstances that led to this building failure have regional or national implications.

* * * * *

■ 7. Section 270.202 is amended by revising the first sentence to read as follows:

§ 270.202 Coordination with search and rescue efforts.

NIST will coordinate its investigation with any search and rescue or search and recovery efforts being undertaken at the site of the building failure, including FEMA urban search and rescue teams, local emergency management agencies, and local emergency response groups. * * *

[FR Doc. 04–13364 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9131]

RIN 1545–BB47

Administrative Simplification of Section 481(a) Adjustment Periods in Various Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to regulations under sections 263A and 448 of the Internal Revenue Code. The amendments apply to taxpayers changing a method of accounting under the regulations and are necessary to conform the rules governing those changes to the rules provided in general guidance issued by the IRS for changing a method of accounting. Specifically, the amendments will allow taxpayers changing their method of accounting under the regulations to take any adjustment under section 481(a) resulting from the change into account over the same number of taxable years that is provided in the general guidance.

DATES: *Effective Date:* These regulations are effective on or after June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Christian Wood, 202–622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2003, the IRS and Treasury published in the **Federal Register** (68 FR 25310) proposed amendments to the regulations (REG–142605–02) under sections 263A and 448 of the Internal Revenue Code (Code). These amendments pertain to the period for taking into account the adjustment required under section 481 to prevent duplications or omissions of amounts resulting from a change in method of accounting under section 263A or 448. Neither public comments in response to the proposed regulations nor any request to speak at a public hearing were received. The proposed regulations under sections 263A and 448 are adopted as revised by this Treasury decision.

The proposed regulations provided that they are applicable to taxable years ending on or after the date those regulations are published as final regulations. However, the proposed regulations allowed taxpayers to rely on them for taxable years ending on or after May 12, 2003, by filing a Form 3115, "Application for Change in Accounting Method," in the time and manner provided in the regulations (in the case of a change in method of accounting under section 448) or applicable administrative procedure (in the case of a change in method of accounting under section 263A) for such a taxable year that reflects a section 481 adjustment period that is consistent with the proposed regulations. Taxpayers may continue to rely on the proposed regulations for taxable years ending on or after May 12, 2003, but ending before June 16, 2004.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Christian Wood and Grant Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** In § 1.263A–7, paragraph (b)(2)(ii) is revised to read as follows:

§ 1.263A–7 Changing a method of accounting under section 263A.

* * * * *

(b) * * *

(2) * * *

(ii) *Adjustment required by section 481(a).* In the case of any taxpayer required or permitted to change its method of accounting for any taxable year under section 263A and the regulations thereunder, the change will be treated as initiated by the taxpayer for purposes of the adjustment required by section 481(a). The taxpayer must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (for example, see Rev. Proc. 2002–9 (2002–1 C.B. 327) and Rev. Proc. 97–27 (1997–1 C.B. 680) (also see § 601.601(d)(2) of this chapter)). This paragraph applies to taxable years ending on or after June 16, 2004.

* * * * *

■ **Par. 3.** Section 1.448–1 is amended as follows:

■ 1. Paragraphs (g)(2)(i) and (g)(3)(i) are revised.

■ 2. Paragraphs (g)(3)(ii) and (g)(3)(iii) are removed.

■ 3. Paragraph (g)(3)(iv) is redesignated as paragraph (g)(3)(ii) and the introductory language is revised.

■ 4. Paragraph (g)(6) is removed.

■ 5. Paragraph (i)(1) is amended by removing the language "and (4)" and adding "(4), and (5)" in its place.

■ 6. Paragraph (i)(5) is added.

The revisions and addition read as follows:

§ 1.448–1 Limitation on the use of the cash receipts and disbursements method of accounting.

* * * * *

(g) * * *

(2) * * *

(i) *In general.* Except as otherwise provided in paragraphs (g)(2)(ii) and (g)(3) of this section, a taxpayer required by this section to change from the cash method must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (for example, see Rev. Proc. 2002–9 (2002–1 C.B. 327) and Rev. Proc. 97–27 (1997–1 C.B. 680) (also see § 601.601(d)(2) of this chapter)), provided the taxpayer complies with the provisions of paragraph (h)(2) or (3) of this section for its first section 448 year.

* * * * *

(3) * * *

(i) *Cessation of trade or business.* If the taxpayer ceases to engage in the trade or business to which the section 481(a) adjustment relates, or if the taxpayer operating the trade or business terminates existence, and such cessation or termination occurs prior to the expiration of the adjustment period described in paragraph (g)(2)(i) or (ii) of this section, the taxpayer must take into account, in the taxable year of such cessation or termination, the balance of the adjustment not previously taken into account in computing taxable income. For purposes of this paragraph (g)(3)(i), the determination as to whether a taxpayer has ceased to engage in the trade or business to which the section 481(a) adjustment relates, or has terminated its existence, is to be made under the principles of § 1.446–1(e)(3)(ii) and its underlying administrative procedures.

(ii) *De minimis rule for a taxpayer other than a cooperative.* Notwithstanding paragraph (g)(2)(i) and (ii) of this section, a taxpayer other than a cooperative (within the meaning of section 1381(a)) that is required to change from the cash method by this section may elect to use, in lieu of the adjustment period described in paragraph (g)(2)(i) and (ii) of this section, the adjustment period for *de minimis* section 481(a) adjustments provided in the applicable administrative procedure issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method. A taxpayer may make an election under this paragraph (g)(3)(ii) only if —

* * * * *

(i) * * *

(5) *Effective date of paragraph (g)(2)(i).* Paragraph (g)(2)(i) of this section applies to taxable years ending on or after June 16, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: June 1, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 04–13585 Filed 6–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[T.D. TTB–12]

RIN 1513–AA93

Removal of Requirement To Disclose Saccharin in the Labeling of Wine, Distilled Spirits, and Malt Beverages (2003R–575P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This document amends the Alcohol and Tobacco Tax and Trade Bureau's labeling regulations to remove the requirement for bottlers of wine, distilled spirits, and malt beverages to show a warning on products containing saccharin. The regulatory amendments

in this document reflect the National Toxicology Program's revised findings about saccharin and the removal of the statutory requirement for the warning.

DATES: This rule is effective on June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, Maryland 20660; (301–290–1460) or e-mail *Lisa.Gesser@ttb.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act, 27 U.S.C. 205(e)(2), authorizes the Administrator of the Alcohol and Tobacco Tax and Trade Bureau (TTB), as a delegate of the Secretary of the Treasury, to prescribe regulations which will provide the consumer with "adequate information" as to the identity and quality of alcohol beverage products. Under this authority, parts 4, 5, and 7 of title 27 of the Code of Federal Regulations (27 CFR 4, 5, and 7) prescribe the labeling requirements for wines, distilled spirits, and malt beverages, respectively. Prior to January 24, 2003, the Secretary of the Treasury had delegated this responsibility to the Administrator's predecessor, the Director of the former Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (ATF-Treasury). The regulations requiring basic mandatory labeling information for alcohol beverage products have been in effect for over 50 years.

On November 23, 1977, President Carter signed into law the Saccharin Study and Labeling Act, Public Law 95–203, 91 Stat. 1451. Section 4(a)(1) of the Saccharin Study and Labeling Act added paragraph (o) to 21 U.S.C. 343, requiring the following statement on the labels of all food and beverage products that contained saccharin:

> Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

In 1984 and 1985, ATF-Treasury began receiving petitions from industry members requesting to use saccharin as a sugar substitute in alcohol beverage manufacturing. The Food and Drug Administration regulations, 21 CFR 180.37 (21 U.S.C. 348, 371), did not and still do not preclude the use of saccharin in the production of alcohol beverages. In recognition of the congressional mandate as expressed in the Saccharin Study and Labeling Act and pursuant to section 205(e)(2) of the Federal Alcohol Administration Act, ATF-Treasury published Treasury Decision ATF–220 on December 20, 1985 at 50 FR 51851 (as corrected in 51 FR 4338, published February 4, 1986).

Treasury Decision ATF–220 amended the regulations in 27 CFR parts 4, 5, and 7 to require bottlers of alcohol beverage products containing saccharin (including sodium saccharin, calcium saccharin and ammonium saccharin) to label their products with a health warning statement identical to that set forth in the Saccharin Study and Labeling Act.

On May 15, 2000, the U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program published the 9th Report on Carcinogens. The Report delisted saccharin, which had been listed in the Report as "reasonably anticipated to be a human carcinogen" since 1981. The Report explained that saccharin was removed from the list after a review of the carcinogenicity data for saccharin. The Report concluded:

> Saccharin will be removed from the Report on Carcinogens, because the rodent cancer data are not sufficient to meet the current criteria to list this chemical as *reasonably anticipated to be a human carcinogen*. This is based on the perception that the observed bladder tumors in rats arise by mechanisms not relevant to humans, and the lack of data in humans suggesting a carcinogenic hazard.

Section 517, Title V, Appendix A, Consolidated Appropriations Act of 2001 (Pub. L. 106–554, 114 Stat. 2763), repealed 21 U.S.C. 343(o), the saccharin warning statement requirement, as well as subsections (c) and (d) of section 4 of the Saccharin Study and Labeling Act. Accordingly, we are amending 27 CFR parts 4, 5, and 7 by removing the saccharin warning statement requirement for the labeling of wine, distilled spirits, and malt beverages. These regulatory changes are made solely to reflect the statutory change noted above, and are in no way intended to reflect or prejudice our review of a recent petition we have received, proposing a number of new and broader labeling requirements.

Inapplicability of Notice and Delayed Effective Date Requirements

Because the regulatory changes in this document remove a requirement imposed by the Saccharin Study and Labeling Act, which was repealed, TTB has determined it is impractical and unnecessary to issue these regulations with prior public notice and comment procedures under 5 U.S.C. 553(b) or subject to the effective date limitation in section 553(d).

Executive Order 12866

This final rule does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) do not apply to this final rule because no notice of proposed rulemaking is required by 5 U.S.C. 553(b).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

■ For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, parts 4, 5, and 7 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 4.32 [Amended]

■ 2. Amend § 4.32 by removing and reserving paragraph (d).

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 3. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.32 [Amended]

■ 4. Amend § 5.32 by removing and reserving paragraph (b)(6).

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 5. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.22 [Amended]

■ 6. Amend § 7.22 by removing and reserving paragraph (b)(5).

Signed: March 8, 2004.

Arthur J. Libertucci,

Administrator.

Approved: April 9, 2004.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 04–13404 Filed 6–15–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101 and 104

[USCG–2004–17086]

Application for Continuous Synopsis Record (CSR) (Form CG–6309)

AGENCY: Coast Guard, DHS.

ACTION: Notice of Forms availability; announcement of approval date and clarification.

SUMMARY: The Coast Guard announces the approval of the collection of information associated with the Application for a Continuous Synopsis Record by the Office of Management and Budget (OMB). The Coast Guard also makes clarifications to the Notice of Availability of this application, published in the **Federal Register** on February 27, 2004, and addresses the comments received from the public.

DATES: Form CG–6039, Application for Continuous Synopsis Record, was approved on April 2, 2004 (OMB control number 1625–0002). Form CG–6038A, Amendments to the CSR and Index of Amendments to the CSR, was approved on April 23, 2004 (OMB control number 1625–0017).

FOR FURTHER INFORMATION CONTACT: If you have any questions regarding this notice or the CSR contact Lieutenant Commander Kirsten R. Martin, telephone (202) 267–0503, e-mail *kmartin@comdt.uscg.mil* or Chief Warrant Officer Jim Upthegrove, telephone (202) 267–0102, e-mail *jupthegrove@comdt.uscg.mil,* U.S. Coast Guard Office of Compliance (G–MOC–1). If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: *Privacy Act:* Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Comments

The Coast Guard received two general comments from the public. One commenter expressed concern with the short submission time for the application of the Continuous Synopsis Record. The Coast Guard recognizes the difficult timelines for compliance with the requirements for the International Ship and Port Facility Security (ISPS) Code. The Coast Guard Marine Safety Center has identified through all practical means those vessels subject to International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS) requiring International Ship Security Certificates (ISSCs) and Continuous Synopsis Records (CSRs) to be onboard prior to July 1, 2004. These vessels are receiving priority scheduling at each step of the process. We have instituted a concurrent issue process for ISSCs and initial CSRs to enable Coast Guard field units to deliver both documents upon satisfactory completion of the onboard verification exam. Upon receipt of an approval letter for their vessel security plan, owners and operators are strongly encouraged to coordinate closely with their local Officer in Charge, Marine Inspection (OCMI) and the Continuous Synopsis Record Desk (CSR Desk) without delay to ensure timely onboard verification and document issuance.

The other comment stated that there was possible confusion regarding what vessels are required to carry an ISSC and a CSR. The requirements of the ISPS Code, including ISSCs and CSRs, are applicable to those vessels identified in Chapter I of SOLAS, which defines cargo ships as "any ship which is not a passenger ship" and specifically exempts "cargo ships of less than 500 gross tonnage" and "ships not propelled by mechanical means." Some members of the maritime community have confused the requirements of the ISPS Code with the requirements of the Maritime Transportation Security Act of 2002 (MTSA). While the ISPS Code and the MTSA closely parallel one another, there are several instances where they diverge considerably. Among them are applicability, and the requirements for documents such as ISSC and CSR. Barges or non self-propelled vessels are not subject to SOLAS, and therefore do not have to carry a CSR.

Clarification

We received some requests from the public and industry to clarify certain wording in the Notice of Availability that was published in the **Federal Register** February 17, 2004 (69 FR 9206). The following clarifications are provided to assist both the public and pertinent implementation and compliance agencies, including the Coast Guard.

"Gross Tonnage," means the gross tonnage measurement of the vessel under 46 U.S.C. chapter 143 Convention measurement (referring to International Convention on Tonnage Measurement of Ships, 1969, also known as ITC). This parameter is also described as "GT" or "GT ITC". It follows that any wording that refers to "tons" should be read as "tonnage." Also, in accordance with SOLAS definitions, the way to refer to a passenger vessel's applicability requirement, shall read "more than 12 passengers" instead of "12 or more passengers."

Furthermore, some definitions were mentioned in the notice and were provided as a ready source of information. The Coast Guard has found that they might be a potential source of confusion as it could be interpreted that these definitions are new or revised definitions of existing terms. To clarify this, the intent of this notice is to adhere to the existing definitions as defined in the Maritime Transportation Security Act of 2002 (MTSA) and SOLAS. These definitions are already clearly defined and are applicable for the CSR Notice of Availability.

Collection of Information

This notice calls for no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The CSR notice

published on February 27, 2004 [USCG–2004–17086; 69 FR 9206], proposed modifications to two existing OMB-approved collections of information-1625–0002 (formerly 2115–0007) and 1625–0017 (formerly 2115–0056). The February 27, 2004, CSR notice stated that—

- Certain vessels are required to carry onboard a CSR by the solas chapter XI-1;
- This requires information to be provided, by the public, to the coast, guard; and
- These reporting and recordkeeping requirements are a collection of information.

The Coast Guard did not receive any collection-of-information-related comments to the February 27, 2004 (69 FR 9206), document. We received approval from OMB on April 2, 2004, and April 23, 2004, for collections 1625–0002 (form CG–6039, Application for Continuous Synopsis Record) and 1625–0017 (form CG–6038A, Amendments to the CSR and Index of Amendments to the CSR) respectively. As these collections were approved on an "emergency" basis, they are scheduled to expire on August 31, 2004. When this document is published, we will resubmit these collections to OMB for three-year approval. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Dated: June 7, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 04–13469 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL60

Sensori-Neural Aids

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Veterans Affairs (VA) medical regulations concerning sensori-neural aids. An existing regulation authorizes VA to provide sensori-neural aids (*i.e.*, eyeglasses, contact lenses, hearing aids) to seven specific groups of veterans identified in the regulation. The first four groups consist of veterans with the highest priority for care under VA's enrollment system, generally those with compensable service-connected disabilities, former prisoners of war, and those receiving increased VA pension based on their being housebound or in need of regular aid and attendance. Since this rule was first published, Congress changed the law to provide that veterans awarded the Purple Heart should have priority equal to former prisoners of war under VA's enrollment system. The intended effect of this final rule is to amend the regulation to allow veterans in receipt of a Purple Heart to receive sensori-neural aids.

DATES: *Effective Date:* July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Frederick Downs, Jr., Chief Consultant, Prosthetics and Sensory Aids Service Strategic Healthcare Group (113), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8515. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 31, 2003 (68 FR 44913) VA published a proposed rule amending VA's medical regulations at 38 CFR Part 17 to allow veterans in receipt of a Purple Heart to receive sensori-neural aids. VA provided a 60-day comment period that ended on September 29, 2003. VA received one comment, in which the commenter expressed support for the amended regulation. No changes are made based on this comment.

Based on the rationale set forth in the proposed rule and this document, VA is adopting the provisions of the proposed rule as a final rule without change. The authority for the rule has been revised because Congress changed the authority for the regulation.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary of Veterans Affairs (VA) hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will affect only veterans receiving certain VA benefits and does not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 3, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.149 is amended by:
■ a. Redesignating paragraphs (b)(3) through (b)(7) as paragraphs (b)(4) through (b)(8), respectively; and
■ b. Adding a new paragraph (b)(3).
■ c. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 17.149 Sensori-neural aids.

* * * * *

(b) * * *

(3) Those awarded a Purple Heart;

* * * * *

(Authority: 38 U.S.C. 501, 1707(b))

[FR Doc. 04–13592 Filed 6–15–04; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0166; FRL–7361–6]

Humates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes three exemptions from the requirement of a tolerance for residues of humic acid (CAS No. 1415–93–6); humic acid, sodium salt (CAS No. 68131–04–4); and humic acid, potassium salt (CAS No. 68514–28–3) when used as inert ingredients in a formulated pesticide product. The Agency is acting on its own initiative, under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a establishing these tolerance exemptions. This regulation eliminates the need to establish a maximum permissible level for residues of humic acid; humic acid, sodium salt; and humic acid, potassium salt.

DATES: This regulation is effective June 16, 2004. Objections and requests for hearings must be received on or before August 16, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0166. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@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 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background and Statutory Findings

In the **Federal Register** of June 13, 2003 (68 FR 35349) (FRL–7309–7), EPA issued a proposed rule under section 408(e) of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170). The Agency proposed to establish exemptions from the requirement of a tolerance for residues of humic acid (CAS No. 1415–93–6); humic acid, sodium salt (CAS No. 68131–04–4); and humic acid, potassium salt (CAS No. 68514–28–3) in 40 CFR 180.1001(d).

No comments were received via EPA's electronic public docket. However, a staff member of the Washington State Department of Agricultural sent a comment directly to the Agency's contact via email. The staff member asked why the exemptions for the humate materials were being created under 40 CFR 180.1001(d) instead of 40 CFR 180.950. The commenter indicated his belief that an exemption under 40 CFR 180.950 would be a more logical choice for humate materials.

In response to this comment, the Agency's Lower Risk Pesticide Chemical Focus Group evaluated humic acid, and its sodium and potassium salts to determine the appropriateness of a List 4A classification for these materials. Given that humate materials are naturally occurring materials, and essentially a component of dirt, classification as List 4A is consistent with previous List classifications on other "weathered" materials. Tolerance exemptions for List 4A materials such as humic acid (CAS No. 1415–93–6); humic acid, sodium salt (CAS No. 68131–04–4); and humic acid, potassium salt (CAS No. 68514–28–3) are established in 40 CFR 180.950.

Based on the reasons set forth in the preamble to the proposed rule, and considering the comment received by the Agency in response to the proposed rule, EPA is establishing three new tolerance exemptions for humic acid (CAS No. 1415–93–6); humic acid, sodium salt (CAS No. 68131–04–4); and humic acid, potassium salt (CAS No. 68514–28–3).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0166 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 16, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 2046–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0166, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Because this action will not have an adverse impact on small business, I certify, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this action will not have a significant economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food

processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2004

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.910 [Amended]

■ 2. In § 180.910, the table is amended by removing the entry for humic acid, sodium salt.

■ 3. In § 180.950, the table in paragraph (e) is amended by adding alphabetically the following inert ingredients:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical	CAS No.
* * *	* *
Humic acid	1413–93–6
Humic acid, potassium salt	68514–28–3
Humic acid, sodium salt	68131–04–4
* * *	* *

[FR Doc. 04–12913 Filed 6–15–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0373; FRL–7346–1]

Sulfuryl Fluoride; Pesticide Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of January 23, 2004, establishing tolerances for residues of sulfuryl fluoride and inorganic fluoride from postharvst fumigation uses of sulfuryl fluoride in or on stored commodities. In the regulatory text of the document, the tolerance level for "wheat, grain, postharvest" was incorrectly listed. This document corrects the typographical error.

DATES: This document is effective on June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6742; e-mail address: *mcneilly.dennis@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0373. 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, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr.*

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

II. What Does this Correction Do?

In the **Federal Register** of January 23, 2004 (69 FR 3240) (FRL–7342–1), EPA published a final rule that established

tolerances for residues of sulfuryl fluoride and inorganic fluoride from postharvst fumigation uses of sulfuryl fluoride in or on stored commodities. In the regulatory text of the document, the tolerance level for "wheat, grain, postharvest" was inadvertently listed as "40.04" in § 180.145(a)(3). The correct tolerance level is "40.0". This document corrects that typographical error.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 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 final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting a typographical error in a previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

This final rule implements a technical amendment to the Code of Federal Regulations which has no substantive impact on the undelying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since the action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 27, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.145 is corrected by revising the entry for "wheat, grain, postharvest" in the table in paragraph (a)(3) to read as follows:

§ 180.145 Flourine compounds; tolerances for residues.

(a) * * *

(3) * * *

Commodity	Parts per million
* * *	* *
Wheat, grain, postharvest	40.0
* * *	* *

* * * * *

[FR Doc. 04–13288 Filed 6–15–04; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[ET Docket No. 01–278; FCC 04–98]

Radio Frequency Identification

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On May 24, 2004 (69 FR 29459), the Commission published final rules in the Third Report and Order. The Third Report and Order allows for operation of improved radio frequency identification systems in the 433.5–434.5 MHz ("433 MHz") band. This document contains a correction to the § 0.457 (d)(1)(vii), which was inadvertently added.

DATES: Effective June 23, 2004.

FOR FURTHER INFORMATION CONTACT: Hugh VanTuyl (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov*, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document proposing to amend parts 0 and 15 in the **Federal Register** of May 24, 2004 (69 FR 29459). This document corrects the **Federal Register** as it appeared. In FR Doc. 04–11537, published on May 24, 2004 (69 FR 29459), the Commission is correcting § 0.457 (d)(1)(vii), to read as § 0.457 (d)(1)(vi). In rule FR Doc. 04–11537 published on May 24, 2004 (69 FR 29459), the Commission is correcting § 0.457 (d)(1)(vii), to read as § 0.457 (d)(1)(vi),:

On page 29464, in the first column, the paragraph designation is corrected to read as § 0.457 (d)(1)(vi).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–13487 Filed 6–15–04; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.031104274–4011–02; I.D. 060804G]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter II Fishery for Loligo Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for Loligo squid in the Exclusive Economic Zone (EEZ) will be closed effective June 19, 2004. Vessels issued a Federal permit to harvest Loligo squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* squid per trip for the remainder of the quarter (through June 30, 2004). This action is necessary to prevent the fishery from exceeding its Quarter II quota and allow for effective management of this stock.

DATES: Effective 0001 hours, June 19, 2004, through 2400 hours, June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, fax 978–281–9135, e-mail *don.frei@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the Loligo squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2004 specification of DAH for *Loligo* squid was set at 16,872.4 mt (69 FR 4861, February 2, 2004). This amount is allocated by quarter, as shown below.

TABLE. *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons [1]	Research Set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II (Apr-Jun)	17.61	2,971.2	N/A
III (Jul-Sep)	17.3	2,918.9	N/A
IV (Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.4	127.5

[1]Quarterly allocations after 127.6 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter II will be harvested. Therefore, effective 0001 hours, June 19, 2004, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, July 1, 2004, when the Quarter III quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: June 9, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–13588 Filed 6–10–04; 3:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040521153–4153–01; I.D. 043004C]

RIN 0648–AS20

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issues this final rule, correcting amendment to the regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to correct previous rulemakings and to provide consistency with current regulations. This final rule is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

DATES: Effective on June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone off Alaska under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS approved and implemented the Interim Groundfish Observer Program in 1996 (61 FR 56425, November 1, 1996). Regulations implementing the Observer Program provide the regulatory framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, the regulations authorize mandatory observer coverage requirements for vessels and shoreside processors and establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

A final rule to amend regulations governing the Observer Program was published in the **Federal Register** on December 6, 2002 (67 FR 72595). The intent of the final rule was to: (1) extend the applicability period of the regulations which would have otherwise expired on December 31, 2002; (2) clarify and improve observer certification and decertification processes; (3) change the duties and responsibilities of observers and observer providers to eliminate ambiguities and strengthen regulations; and (4) grant NMFS the authority to place NMFS staff and other qualified persons aboard vessels and at shoreside or stationary floating processors to increase NMFS' ability to interact effectively with observers, fishermen, and processor employees.

Subsequent to the publication of the December 6, 2002 (67 FR 72595) final rule in the **Federal Register**, NMFS staff discovered several errors in 50 CFR part 679. This correcting amendment corrects those errors in the CFR by updating terminology and cross references, removing redundant text, and consolidating some paragraphs for additional clarity and consistency. The following amendments are technical and non-substantive in nature and have no relationship to compliance by the public. For these reasons, prior notice and comment are unnecessary and NOAA is proceeding to this final rule to effectuate the correcting amendment to the regulations.

Need for Corrections

In § 679.1(f), the date of "December 31, 2002" is changed to "December 31, 2007" to reflect the current expiration date of the regulations governing the Observer Program.

Currently, observers must successfully complete a "briefing" prior to their deployment and receive an endorsement which reflects the type of briefing they completed. This rule amends section 679.2 by changing the word "certification" to "endorsement" within the definition of "Briefing" for consistency with current terminology elsewhere in the regulations.

Also in § 679.2, the definitions of "Affiliates," "Decertification," "Direct financial interest" and "Suspension" contain the terms "observer contractor" or "observer contractors." This term, "observer contractor," was changed to "observer provider," which is defined elsewhere in § 679.2. This action removes this term "observer contractor" and replaces it with "observer provider" for consistency with other text in 50 CFR 679.

In § 679.50(i)(2)(ii), the colon after the end of the paragraph title is replaced with a period.

In § 679.50(i)(2)(i)(C)(*4*), the reference to (i)(2)(ix)(C) is removed and replaced with (i)(2)(x)(C).

In § 679.50(i)(2)(ii)(A), the reference to (i)(2)(ix)(E) is removed and replaced with (i)(2)(x)(E).

In § 679.50(i)(2)(iii)(B), the reference to (i)(2)(ix)(C) is removed and replaced with (i)(2)(x)(C).

The last sentence at § 679.50(i)(2)(vi)(E) which reads, "Unless alternate arrangements are approved by the Observer Program Office," is redundant with the first line of the next paragraph. The provision is restated for no particular reason. This final rule removes this redundant text from (i)(2)(vi)(E).

The term "Stationary floating processor" is defined at § 679.2. Regulations at § 679.50(i)(2)(vii)(D), (i)(2)(ix), (i)(3)(i)(A), (i)(3)(i)(B), (i)(3)(i)(C), (i)(3)(ii), (j)(2)(i)(A)(*1*)(*i*), (j)(2)(i)(A)(*1*)(*ii*), and (j)(2)(i)(A)(*1*)(*iii*) use terminology which is inconsistent with this definition, including "floating stationary processors," "floating stationary processing facility," "floating stationary processor facility," "floating processor facilities," and "floating processor." For consistency within the regulations, this final rule removes these terms and replaces them with "stationary floating processor" or "stationary floating processors."

The title to § 679.50(i)(2)(x)(G) is revised to read "Observer provider contracts" to better characterize the contents of the paragraph, consistent with other paragraphs in this section. The title to paragraph (i)(2)(x)(I) was inadvertently omitted. This final rule also adds the title "Other reports" to paragraph (i)(2)(x)(I) for consistency with other paragraphs in this section.

Observer coverage requirements for vessels are specified at § 679.50(c) and for shoreside or stationary floating processors at § 679.50(d). Regulations at § 679.50(i)(2)(x)(G)(*1*) and (i)(2)(x)(G)(*2*) together reference all of the observer coverage requirements for vessels at

§ 679.50(c). This final rule removes cross references in § 679.50(i)(2)(x)(G)(*1*) to (c)(1)(i) and (c)(1)(iv) and replaces them with a cross reference to § 679.50(c). Paragraph § 679.50(i)(2)(x)(G)(*2*) is removed because a similar change for that paragraph would make it redundant with paragraph (i)(2)(x)(G)(*1*). Regulations at § 679.50(i)(2)(x)(G)(*3*) and (i)(2)(x)(G)(*4*) together reference the observer coverage requirements for shoreside processors or stationary floating processors at § 679.50(d). This final rule removes cross references in § 679.50(i)(2)(x)(G)(*3*) to (d)(1), replaces it with a cross reference to § 679.50(d), and redesignates it as paragraph (i)(2)(x)(G)(*2*). Paragraph § 679.50(i)(2)(x)(G)(*4*) is removed because a similar change for that paragraph, that is, replacing the reference to (d)(2) with § 679.50(d), would make it redundant with paragraph (i)(2)(x)(G)(*3*). Finally, § 679.50(i)(2)(x)(G)(*5*) is redesignated as (i)(2)(x)(G)(*3*).

This final rule corrects a cross reference in § 679.50(i)(2)(x)(I)(*5*) by removing the text "(h)(2)(i) and (h)(2)(ii)" and replacing it with the text "(j)(2)(i) and (j)(2)(ii)".

Last, this final rule corrects the numbering at § 679.50(j)(2)(i)(A)(*3*) and redesignates the paragraph as (j)(2)(i)(A)(*3*).

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries, NOAA (AA) finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and comment are unnecessary as this rule has a non-substantive effect on the public. This correcting amendment updates terminology, corrects cross references to other regulatory text, removes redundant text, and consolidates some paragraphs for additional clarity and consistency. NOAA finds that because of the non-substantive nature of the correction, no particular public interest exists in this final rule for which there is justification or need for prior notice and comment.

Because this correcting amendment does not institute any substantive obligations for the public, the requirement for a 30–day delay in the effective date to this action pursuant to 5 U.S.C. 553(d) does not apply.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C., or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 8, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. At each of the locations in the "Location" column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the amount of times specified in the "Frequency" column.

Location	Remove	Add	Frequency
§ 679.1(f)	(applicable through December 31, 2002)	(applicable through December 31, 2007)	1
§ 679.2 Definition for "Briefing"	certification	endorsement	1
§ 679.2 Definition for "Affiliates"	observer contractor	observer provider	2
§ 679.2 Definition for "Direct financial interest" and "Decertification"	observer contractor	observer provider	1
§ 679.2 Definition for "Decertification" and "Suspension"	observer contractors	observer providers	1
§ 679.50(i)(2)(i)(C)(*4*)	(i)(2)(ix)(C)	(i)(2)(x)(C)	1
§ 679.50(i)(2)(ii)	*Ensure that observers complete duties in a timely manner.*	*Ensure that observers complete duties in a timely manner.*	1
§ 679.50(i)(2)(ii)(A)	(i)(2)(ix)(E)	(i)(2)(x)(E)	1
§ 679.50(i)(2)(iii)(B)	(i)(2)(ix)(C)	(i)(2)(x)(C)	1
§ 679.50(i)(2)(vi)(E)	duties. Unless alternate arrangements are approved by the Observer Program Office.	duties.	1
§ 679.50(i)(2)(vii)(D)	floating	stationary floating	1
§ 679.50(i)(2)(ix)	floating processor facilities	stationary floating processors	1
§ 679.50(i)(2)(x)(G)	*Copies of observer provider contracts with entities requiring observer services and with observers.*	*Observer provider contracts.*	1
§ 679.50(i)(2)(x)(I)	Reports	*Other reports.* Reports	1
§ 679.50(i)(2)(x)(I)(*5*)	(h)(2)(i) or (h)(2)(ii)	(j)(2)(i) or (j)(2)(ii)	1
§ 679.50(i)(3)(i)(A) and (j)(2)(i)(A)(*1*)(*i*)	floating stationary processor facility	stationary floating processors	1

Location	Remove	Add	Frequency
§ 679.50(i)(3)(i)(B) and (j)(2)(i)(A)(*1*)(*ii*)	floating stationary processing facility	stationary floating processors	1
§ 679.50(i)(3)(i)(C), and (j)(2)(i)(A)(*1*)(*iii*)	floating stationary processing facilities	stationary floating processors	1
§ 679.50(i)(3)(ii)	floating stationary processors	stationary floating processors	1

■ 3. In § 679.50, the section heading is revised, paragraphs (i)(2)(x)(G)(*2*) and (i)(2)(x)(G)(*4*) are removed, paragraph (i)(2)(x)(G)(*3*) is redesignated as (i)(2)(x)(G)(*2*), paragraph (i)(2)(x)(G)(*5*) is redesignated as (i)(2)(x)(G)(*3*), and paragraph (i)(2)(x)(G)(*1*) and newly redesignated paragraph (i)(2)(x)(G)(*2*) are revised to read as follows:

§ 679.50 Groundfish Observer Program (applicable through December 31, 2007).

* * * * *

(i) * * *

(2) * * *

(x) * * *

(G) * * *

(*1*) Vessels required to have observer coverage as specified at paragraph (c) of this section;

(*2*) Shoreside or stationary floating processors required to have observer coverage as specified at paragraph (d) of this section; and

* * * * *

[FR Doc. 04–13590 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 115
Wednesday, June 16, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–022–4]

RIN 0579–AB81

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting errors in the preamble to a proposed rule that would amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed and to allow the distribution of the avocados during all months of the year. The proposed rule was published in the **Federal Register** on May 24, 2004 (69 FR 29466–29477, Docket No. 03–022–3).

DATES: We will consider all comments that we receive on Docket No. 03–022–3 on or before July 23, 2004.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–022–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–022–3.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–022–3" on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION: On May 24, 2004, we published a proposed rule in the **Federal Register** (69 FR 29466–29477, Docket No. 03–022–3) in which we proposed to amend the fruits and vegetable regulations in 7 CFR part 319 to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We also proposed to allow the distribution of the avocados during all months of the year. To reflect these proposed changes, we also proposed to make other changes in the regulations, such as removing restrictions on the ports through which the avocados may enter the United States and the corridor through which the avocados must transit the United States.

This document corrects errors in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. Specifically, in the discussion of the findings of the pest risk assessment (PRA) prepared for the proposed rule, there is a series of bullet points in which we report the results of the PRA's evaluation of the phytosanitary measures that would be applied under the proposed rule. In two of those bullet points, we have updated the estimated number of fruit-fly-infested avocados that would (1) enter fruit fly susceptible areas each year and (2) be discarded in fruit fly susceptible areas each year to reflect changes made to the PRA itself shortly before the publication of the proposed rule.

Therefore, this document corrects the **SUPPLEMENTARY INFORMATION** section of the proposal as follows:

SUPPLEMENTARY INFORMATION: In FR Doc. 04–11709, published on May 24, 2004 (69 FR 29466–29477), make the following corrections:

1. On page 29467, column 1, line 23, is corrected by removing the number "143" and adding the number "208" in its place.
2. On page 29467, column 1, line 32, is corrected by removing the number "8" and adding the number "11" in its place.

Done in Washington, DC, this 9th day of June, 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–13557 Filed 6–15–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV04–981–3 PR]

Almonds Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Almond Board of California (Board) for the 2004–05 and subsequent crop years from $0.020 to $0.025 per pound of almonds received. Of the $0.025 per pound assessment, $0.014 would be available as credit-back for handlers who conduct their own promotional activities. The Board locally administers the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and

necessary to administer the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by June 28, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable almonds beginning August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Board for the 2004–05 and subsequent crop years from $0.020 to $0.025 per pound of almonds received. Of the $0.025 per pound assessment, $0.014 would be available as credit-back for handlers who conduct their own promotional activities.

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

For the 2003–04 and subsequent crop years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 20, 2004, and recommended 2004–05 expenditures of $24,027,344. In comparison, last year's budgeted expenditures were $20,547,385. The recommended assessment rate of $0.025 would be $0.005 higher than the rate currently in effect, and the credit-back portion of the assessment rate would be $0.004 more than the rate currently in effect.

The major expenditures recommended by the Board for the 2004–05 crop year include $7,115,000 for advertising and market research, $9,215,000 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), $1,730,000 for salaries, $1,200,000 for nutrition research, $947,321 for production research, $808,000 for food quality programs, $460,042 for environmental research, $200,000 for travel, $130,000 for office rent, $125,000 for a crop estimate, and $95,000 for an acreage survey. Budgeted expenses for these items in 2003–2004 were $6,375,312 for advertising and market research, $7,587,750 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), $1,500,000 for salaries and wages, $1,000,000 for nutrition research, $850,332 for production research, $823,948 for food quality programs, $254,903 for environmental research, $200,000 for travel, $122,472 for office rent, $120,750 for a crop estimate, and $90,780 for an acreage survey.

The Board recommended increasing the assessment rate from $0.020 per pound to $0.025 per pound of almonds handled. Of the $0.025 per pound assessment, $0.014 per pound would be available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval. The Board recommended increasing the assessment rate to generate adequate revenue to fund the Board's 2004–05 budgeted expenses and to maintain a financial reserve. Section 981.81(c) authorizes a financial reserve of approximately one-half year's budgeted expenses. One-half of the 2004–05 crop year's budgeted expenses of $24,027,344 equals $12,013,672. The Board's financial reserve at the end of the 2004–05 crop year is projected to be $3,067,437, which is well within the authorized reserve.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized an estimate of 1,056,000,000 pounds of assessable almonds for the 2004–05 crop year. If realized, this would provide estimated assessment revenue of $11,616,000 from all handlers, and an additional $8,131,200 from those handlers who do not participate in the credit-back program, for a total of $19,747,200. In addition, it is anticipated that $7,347,581 will be provided by other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources would be adequate to cover budgeted expenses. Any unexpended funds from the 2004–05 crop year may be carried over to cover expenses during the succeeding crop year. Funds in the reserve at the end of the 2004–05 crop year are estimated to be approximately $3,067,437, which would be within the amount permitted by the order.

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

Although this assessment rate would be in effect for an indefinite period, the Board will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2004–05 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 6,000 producers of almonds in the production area and approximately 119 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over $5,000,000 worth of almonds and about 62 percent of handlers shipped under $5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately $199,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2004–05 and subsequent crop years from $0.020 to $0.025 per pound of almonds. Of the $0.025 per pound assessment, $0.014 per pound would be available as credit-back for handlers who conduct their own promotional activities consistent with § 981.441 of the order's regulations and subject to Board approval.

The Board met on May 20, 2004, and recommended 2004–2005 expenditures of $24,027,344 and an assessment rate of $0.025 per pound. Of the $0.025 per pound assessment, $0.014 per pound would be available as credit-back for handlers who conduct their own promotional activities. The proposed assessment rate of $0.025 would be $0.005 higher than the current rate, and the credit-back portion would be $0.004 more than the current rate. The quantity of assessable almonds for the 2004–05 crop year is estimated at 1,056,000,000 pounds. The proposed assessment rate would provide estimated assessment revenue of $11,616,000 from all handlers, and an additional $8,131,200 from those handlers who do not participate in the credit-back program, for a total of $19,747,200. In addition, it is anticipated that $7,347,581 will be provided by other sources, including interest income, MAP funds, grant funds, miscellaneous income, and reserve/carryover funds. When combined, revenue from these sources would be adequate to cover budgeted expenses. The projected financial reserve at the end of 2004–05 would be $3,067,437, which would be within the maximum permitted under the order.

The major expenditures recommended by the Board for the 2004–05 crop year include $7,115,000 for advertising and market research, $9,215,000 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), $1,730,000 for salaries, $1,200,000 for nutrition research, $947,321 for production research, $808,000 for food quality programs, $460,042 for environmental research, $200,000 for travel, $130,000 for office rent, $125,000 for a crop estimate, and $95,000 for an acreage survey. Budgeted expenses for these items in 2003–2004 were $6,375,312 for advertising and market research, $7,587,750 for public relations and other promotion and education programs including a Market Access Program (MAP) administered by USDA's Foreign Agricultural Service (FAS), $1,500,000 for salaries and wages, $1,000,000 for nutrition research, $850,332 for production research, $823,948 for food quality programs, $254,903 for environmental research, $200,000 for travel, $122,472 for office rent, $120,750 for a crop estimate, and $90,780 for an acreage survey.

The Board considered alternative assessment rate levels, including the portion available for handler credit-back. After deliberating the issue, the Board recommended increasing the assessment rate to $0.025 per pound, with $0.014 available for handler credit-back. In arriving at its budget, the Board considered information from its various committees. Alternative expenditure levels were discussed by these groups, based on the value of various activities to the industry. The committees ultimately recommended appropriate activities and funding levels, which were adopted by the Board.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2004–05 season could range between $1.50 and $1.80 per pound of almonds. Therefore, the estimated assessment revenue for the 2004–05 crop year (disregarding any amounts credited pursuant to §§ 981.41 and 981.441) as a

percentage of total grower revenue could range between 1.2 and 1 percent, respectively.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 20, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2004–05 crop year begins on August 1, 2004, and the marketing order requires that the rate of assessment for each crop year apply to all assessable almonds handled during such crop year; (2) a final decision on the increase should be made as soon as possible so handlers can plan accordingly; (3) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.343 is revised to read as follows:

§ 981.343 Assessment rate.

On and after August 1, 2004, an assessment rate of $0.025 per pound is established for California almonds. Of the $0.025 assessment rate, $0.014 per assessable pound is available for handler credit-back.

Dated: June 10, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–13690 Filed 6–14–04; 12:56 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, –100C, and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727, 727C, 727–100, –100C, and –200 series airplanes. This proposal would require an inspection of the forward trunnion attach fittings of the main landing gear (MLG), inspections of the attach fitting holes of the forward trunnion attach fittings if necessary, replacement of the forward trunnion attach fittings if necessary, and corrective actions if necessary. This action is necessary to detect and correct cracks and corrosion on the attach fitting holes of the forward trunnion attach fittings of the MLG, which could result in the collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–131–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. 2003–NM–131–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: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; 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 2003–NM–131–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. 2003–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of cracks and corrosion in the attach bolt holes of the forward trunnion attach fittings of the main landing gear (MLG) on certain Boeing Model 727 series airplanes. Forward trunnion attach fittings made of 7079–T6 aluminum are prone to stress corrosion cracking even if they have been shot peened. This condition, if not detected and corrected, could result in the collapse of the MLG.

Other Related Rulemaking

On October 2, 2001, the FAA issued AD 2001–20–09, amendment 39–12457 (66 FR 51843, October 11, 2001), applicable to all Boeing Model 727 series airplanes, which currently requires repetitive inspections of the bearing support fitting of the forward trunnion on the MLG to detect corrosion and cracking; follow-on actions, if necessary; and repair/rework of the support fitting, or replacement with a new or repaired/reworked fitting. That AD is to be done in accordance with Boeing Alert Service Bulletin 727–57A0179, Revision 3, dated September 2, 1999; Boeing Alert Service Bulletin 727–57A0179, Revision 4, dated July 13, 2000; or Boeing Service Bulletin 727–57A0179, Revision 5, dated December 20, 2000. The actions specified by that AD are intended to prevent failure of the support fitting, which could result in collapse of the MLG during normal operations; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–57A0132, Revision 3, dated March 20, 2003, which describes procedures for an inspection of the forward trunnion attach fittings of the MLG to determine the part number; detailed and high frequency eddy current inspections of the attach fitting holes of the forward trunnion attach fittings having part number 65–19296–1 through –8 (made of 7079–T6 aluminum) for cracks and corrosion if necessary; and corrective actions if necessary. The corrective actions include reworking the attach fitting holes, repairing the attach fitting holes, and replacing the forward trunnion attach fitting with a new forward trunnion attach fitting. Replacement of the 7079–T6 attach fittings with a 7075–T73511 or 7050–T7451 attach fitting is considered terminating action for the service bulletin.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Boeing Alert Service Bulletin 727–57A0132, Revision 3, dated March 20, 2003, described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

The compliance time in section 1.E. of the Boeing Alert Service Bulletin 727–57A0132, Revision 3, dated March 20, 2003, specifies to do the actions "For airplanes over 20 years old (since the original airplane delivery date) that have a 7079–T6 MLG forward trunnion attach fitting" at the later time of "two years after the release of Revision 3 the service bulletin" or "ten years after the last inspection/rework of the attach fitting per a prior release of this service bulletin." However, for these same airplanes, paragraph (b) of this proposed AD specifies to do the actions at the latest of the following times:

1. Prior to airplanes reaching 240 months old since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness; or

2. Within 18 months after the effective date of this AD; or

3. Within 120 months after the last inspection/rework/repair of the attach fitting per Boeing Service Bulletin 727–57A0132, dated June 28, 1974; Revision 1, dated October 31, 1975; or Revision 2, dated April 24, 1981; or Boeing Alert Service Bulletin 727–57A0132, Revision 3, dated March 20, 2003.

We have determined that "For airplanes over 20 years old" may be interpreted as the AD applies only to airplanes with the stated age as of the effective date of the AD. We have determined that the age of the airplanes is intended to be the initial threshold. Thus, "prior to airplanes reaching 240 months old" will include all affected airplanes. We have also determined that "original airplane delivery date" may be interpreted differently by different operators. We find that "date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first" is generally understood within the industry and records will always exist that establish these dates with certainty. We also did not include the qualifying phrase "that have a 7079–T6 MLG forward trunnion attach fitting" because the first action in the proposed AD is to determine which airplanes have a 7079–T6 forward trunnion attach fitting of the MLG.

Although the service bulletin recommends one option for the compliance time as "two years after the release of Revision 3 the service bulletin," we have determined that the two year interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing this option for the compliance time for this AD, we coordinated with the manufacturer and considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 hour). In light of all of these factors, we find that the compliance time of "within 18 months after the effective date of this AD" represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Although paragraph 7 of "Part II" of the Accomplishment Instructions of the service bulletin only lists part number P/N 65–19296U13 (LH) or P/N 65–19296U14 (RH) as acceptable new attach fittings, paragraphs (d)(2) and (e) of the proposed AD lists the following acceptable new attach fittings: P/N65–19296–9, –10, –13, or –14; P/N 65–

99909–1724 or –1727; P/N 65–19296U13 or P/N 65–19296U14.

Although the service bulletin specifies concurrent accomplishment of Boeing Alert Service Bulletin 727–57A0179, Revision 3 or later, this AD does not require concurrent accomplishment of service bulletin 727–57A0179, Revision 3 or later. AD 2001–20–09 already requires accomplishment of the actions in Boeing Alert Service Bulletin 727–57A0179, Revision 3, dated September 2, 1999; Revision 4, dated July 13, 2000; or Boeing Service Bulletin 727–57A0179, Revision 5, dated December 20, 2000.

Cost Impact

There are approximately 523 airplanes of the affected design in the worldwide fleet. The FAA estimates that 309 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $20,085, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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.

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 2003–NM–131–AD.

Applicability: Boeing Model 727, 727C, 727–100, –100C, and –200 series airplanes, line numbers 1 through 887 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks and corrosion on the attach fitting holes of the forward trunnion attach fittings of the main landing gear (MLG), which could result in the collapse of the MLG, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means Boeing Alert Service Bulletin 727–57A0132, Revision 3, dated March 20, 2003.

Initial Inspection

(b) Perform an inspection of the forward trunnion attach fittings of the MLG to determine the part number (P/N) of the attach fitting, in accordance with "Part 1" of the Accomplishment Instructions of the service bulletin, at the latest of the times specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD:

(1) Prior to airplanes reaching 240 months old since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness; or

(2) Within 18 months after the effective date of this AD; or

(3) Within 120 months after the last inspection/rework/repair of the attach fitting per Boeing Service Bulletin 727–57A0132, dated June 28, 1974; Revision 1, dated October 31, 1975; or Revision 2, dated April 24, 1981; or Boeing Alert Service Bulletin 727–57A0132, Revision 3, dated March 20, 2003.

Corrective Actions

(c) If, during the inspection required by paragraph (b) of this AD, both attach fittings are found to have P/N 65–19296–9, –10, –13, or –14; P/N 65–99909–1724 or –1727; P/N 65–19296U13 or P/N 65–19296U14 (attach fitting made of 7075–T73511 or 7050–T7451 aluminum); no further action is required by this paragraph.

(d) If, during the inspection required by paragraph (b) of this AD, any attach fitting is found to have P/N 65–19296–1 through –8 inclusive (attach fitting made of 7079–T6 aluminum): Before further flight, perform the actions in paragraphs (d)(1) and (d)(2) of this AD, as applicable.

(1) Do detailed and high frequency eddy current inspections of the attach fitting holes for cracks and corrosion, repair any crack or corrosion found, and rework the attach fitting holes in accordance with Figures 4 and 5 of the service bulletin, except as provided by paragraph (d)(2) of this AD.

(2) If the attach fitting hole cannot be reworked or repaired in accordance with Figures 4 and 5 of the service bulletin: Before further flight, replace the attach fitting with a new attach fitting that has P/N 65–19296–9, –10, –13, or –14, P/N 65–99909–1724 or –1727, P/N 65–19296U13, or P/N 65–19296U14, in accordance with paragraph 7 of "Part II" of the Accomplishment Instructions of the service bulletin. Accomplishment of this replacement is terminating action for that fitting.

Terminating Action

(e) Within 120 months after the effective date of this AD, replace attach fittings that have P/N 65–19296–1 through –8 (attach fittings made of 7079–T6 aluminum) with new attach fittings that have P/N 65–19296–9, –10, –13, or –14, P/N 65–99909–1724 or –1727, P/N 65–19296U13, or P/N 65–19296U14 (attach fittings made of 7075–T73511 or 7050–T7451 aluminum), in accordance with paragraph 7 of "Part II" of the Accomplishment Instructions of the service bulletin. Replacement of all attach fittings made of 7079–T6 aluminum with new attach fittings made of 7075–T73511 or 7050–T7451 aluminum terminates the requirements of paragraph (d) of this AD.

Parts Installation

(f) As of the effective date of this AD, no person shall install, on any airplane, an attach fitting, P/N 65–19296–1, –2, –3, –4, –5, –6, –7, or –8 (attach fitting made of 7079–T6 aluminum), unless it has been inspected/reworked/repaired in accordance with paragraph (d) of this AD.

Alternative Methods of Compliance

(g)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any rework/repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has

been authorized by the Manager, Seattle ACO, to make such findings. For a rework/repair method to be approved, the approval must specifically reference this AD.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13501 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18019; Directorate Identifier 2003–NE–65–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TFE731–2 and –3 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) TFE731–2 and –3 series turbofan engines with certain part number (P/N) low pressure turbine (LPT) stage 1 disks installed. This proposed AD would require for TFE731–2 and –2C series engines, initial and repetitive measurements and calculations to determine acceptance, and adjustment or replacement if necessary, of the LPT stage 1 nozzle assembly. This proposed AD would also require for TFE731–3, –3A, –3AR, –3B, –3BR, and –3R series engines, replacement of LPT stage 1 disks with serviceable disks. This proposed AD also allows replacement of the LPT stage 1 disk with a disk having a part number not listed in the proposed AD as optional terminating action to the repetitive actions. This proposal results from a report of an uncontained failure of the LPT stage 1 disk installed in a TFE731–3–1H turbofan engine. We are proposing this AD to prevent additional uncontained failure of the LPT stage 1 disk, and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by August 16, 2004.

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 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Honeywell Engines and Systems (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial Aviation), fax: (602) 365–5577 (General Aviation), (602) 365–2832 (Commercial Aviation).

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

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5246; fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we posted new AD actions on the DMS and assigned a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form "Docket No. FAA–200X–XXXXX." Each DMS docket also lists the Directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–18019; Directorate Identifier 2003–NE–65–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

In June of 2003, we became aware of a report of a TFE731–3–1H turbofan engine that experienced an uncontained failure of LPT stage 1 disk, P/N 3072351–5. Analysis by the manufacturer revealed that the disk, which only had 107 hours of operation accumulated since new, failed due to vibration-induced high-cycle-fatigue (HCF) cracking in the web area of the disk. Analysis and testing of these vibrations have revealed that the disk design is sensitive to significant nozzle throat-area variations such as those caused by inappropriate maintenance of the vanes of the LPT stage 1 nozzle assembly. Two other uncontained disk failures involving TFE731–3 series

engines occurred over the past 16 years and were considered at the time to have been caused by inappropriate maintenance practices performed on the LPT stage 1 nozzle assembly. We have determined that similarly designed LPT stage 1 disks, P/Ns 3072070–All, 3072351–All, 3073013–All, 3073113–All, 3073497–All, and 3074103–All, (where All denotes all dash numbers), are sensitive for the same reasons described for disk P/N 3072351–5. This condition, if not corrected, could result in uncontained failure of the LPT stage 1 disk, and possible damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell International Inc. Service Bulletin No. TFE731–72–3369RWK, Revision 6, dated June 26, 2002, that describes procedures for inspection, measurement and adjustment, or replacement if necessary, of the LPT stage 1 nozzle assembly. These procedures reduce the potential for vibration-induced HCF cracking in the web area of the disk.

Differences Between the Proposed AD and the Manufacturer's Service Information

Although Honeywell International Inc. SB No. TFE731–72–3369RWK, Revision 6, dated June 26, 2002, requires the inspections, measurements and adjustments, and replacements of the LPT stage 1 nozzle assembly to be done by certain approved repair stations, this proposed AD allows the actions to be done by any repair station certificated to perform the repair work.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require:

- For TFE731–2 and –2C series engines with LPT stage 1 disk, P/Ns 3072070–All, or 3073013–All, (where All denotes all dash numbers) installed, initial and repetitive measurements and calculations to determine the acceptance, and adjustment or replacement if necessary of the LPT stage 1 nozzle assembly. These actions are to be done at the next major periodic inspection (MPI) or at next access to the LPT stage 1 nozzle assembly, whichever occurs first, but not to exceed 2,200 hours time-in-service (TIS) since the last LPT stage 1 nozzle assembly inspection.
- For TFE731–3, –3A, –3AR, –3B, –3BR, and –3R series engines with LPT stage 1 disk, P/N 3072351–All, 3073113–All, 3073497–All, or 3074103–All, installed, replacement of the LPT stage 1 disk with a serviceable disk, at next major periodic inspection or at next access to the LPT stage 1 nozzle assembly, but not to exceed 1,500 hours time-in-service since last inspection, or before December 31, 2011, or at disk life limit, whichever occurs first.
- As optional terminating action to the repetitive actions of the proposed AD, replacement of the LPT stage 1 disk with a serviceable disk.
- For the purposes of this proposed AD, a serviceable LPT stage 1 disk is a disk having a part number not listed in this proposed AD.

The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 5,462 TFE731–2 and –3 series turbofan engines of the affected design in the worldwide fleet. We estimate that 3,572 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 8 work hours per engine to perform the proposed measurements and calculations during MPI, and about 2 work hours per engine to replace the disk during MPI. The average labor rate is $65 per work hour. Required replacement parts would cost about $30,000 per engine. We expect about 1,900 engines to have the LPT stage 1 disk replaced. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $58,151,000.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Honeywell International Inc.: Docket No. FAA–2004–18019; Directorate Identifier 2003–NE–65–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 16, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) TFE731–2 and -2C series, and TFE731–3, -3A, -3AR, -3B, -3BR, and -3R series turbofan engines, with low pressure turbine (LPT) stage 1 disks, part numbers (P/Ns) 3072070-All, 3072351-All, 3073013-All, 3073113-All, 3073497-All, and 3074103-All, (where All denotes all dash numbers), installed. These engines are installed on, but not limited to, the following airplanes:

Avions Marcel Dassault Falcon 10 and Mystere Falcon 50 series
Learjet 31, 35, 36, and 55 series
Lockheed-Georgia 1329–25 series
Israel Aircraft Industries 1124 series and 1125 Westwind series
Cessna Model 650, Citations III and VI
Raytheon British Aerospace HS–125 series
Sabreliner NA–265–65

Unsafe Condition

(d) This AD results from a report of an uncontained failure of the LPT stage 1 disk installed in a TFE731–3–1H turbofan engine. We are issuing this AD to prevent uncontained failure of the LPT stage 1 disk, and possible damage to the airplane.

Compliance

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

Initial Inspection for TFE731–2 and –2C Series Engines

(f) For TFE731–2 and –2C series engines with LPT stage 1 disk, P/N 3072070-All, or

3073013-All, installed, at the next major periodic inspection (MPI) or at next access to the LPT stage 1 nozzle assembly, after the effective date of this AD, whichever occurs first, but not to exceed 2,200 hours time-in-service (TIS) since the last LPT stage 1 nozzle assembly inspection, do the following:

(1) Measure and determine the acceptance of the LPT stage 1 nozzle assembly using paragraphs 2.A.(3) through 2.A.(5) of Honeywell International Inc. Service Bulletin (SB) No. TFE731–72–3369RWK, Revision 6, dated June 26, 2002; and

(2) If necessary, adjust the LPT stage 1 nozzle assembly using paragraph 2.B of Honeywell International Inc. SB No. TFE731–72–3369RWK, Revision 6, dated June 26, 2002 or replace with a serviceable LPT stage 1 nozzle assembly.

Repetitive Inspections for TFE731–2 and –2C Series Engines

(g) Thereafter, for TFE731–2 and –2C series engines, at every MPI, but not to exceed 2,200 hours time-in-service since the last LPT stage 1 nozzle assembly inspection, do the following:

(1) Measure and determine the acceptance of the LPT stage 1 nozzle assembly using paragraph 2.A.(3) through 2.A.(5) of Honeywell International Inc. SB No. TFE731–72–3369RWK, Revision 6, dated June 26, 2002; and

(2) If necessary, adjust the LPT stage 1 nozzle assembly using paragraph 2.B of Honeywell International Inc. SB No. TFE731–72–3369RWK, Revision 6, dated June 26, 2002 or replace with a serviceable LPT stage 1 nozzle assembly.

Disk Replacement for TFE731–3, –3A, –3AR, –3B, –3BR, and –3R Series Engines

(h) For TFE731–3, –3A, –3AR, –3B, –3BR, and –3R series engines with LPT stage 1 disk, P/N 3072351-All, 3073113-All, 3073497-All, or 3074103-All, installed, replace the LPT stage 1 disk with a serviceable disk, at next MPI or at next access to the LPT stage 1 nozzle assembly, after the effective date of this AD, or before December 31, 2011, or at disk life limit, whichever occurs first.

TFE731–3B and -3BR Series Engines

(i) For TFE731–3B and –3BR series engines, no replacement LPT stage 1 disk is available for disk P/N 3073497-All. Conversion from the TFE731–3B and -3BR series engines to the TFE731–3C series engine changes the turbine rotor configuration to allow installation of a serviceable LPT stage 1 disk.

Optional Terminating Action

(j) As optional terminating action to the repetitive inspections required by this AD, replace the applicable LPT stage 1 disk with a serviceable LPT stage 1 disk.

Definitions

(k) For the purposes of this AD:

(1) Next access to the LPT stage 1 nozzle assembly is defined as when the low-pressure tie-shaft is unstretched.

(2) A serviceable LPT stage 1 disk is defined as a disk having a part number not listed in this AD.

(3) A serviceable LPT stage 1 nozzle assembly is defined as an LPT stage 1 nozzle assembly that passes the acceptance referenced in paragraph (f)(1) or (g)(1) of this AD.

Additional Information

(l) For additional information regarding the training and tooling recommended to perform the inspection and adjustment of the LPT stage 1 nozzle assembly, contact Honeywell Engines, Systems & Services, Customer Support Center, M/S 26–06/2102–323, P.O. Box 29003, Phoenix, AZ 85038–9003, Telephone: (Domestic) 1–800–601–3099 (International) 1–602–365–3099, FAX: 1–602–365–3343.

Alternative Methods of Compliance

(m) The Manager, Los Angeles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(n) None.

Related Information

(o) None.

Issued in Burlington, Massachusetts, on June 4, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–13563 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–381–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A330, A340–200, and A340–300 series airplanes. This proposal would require repetitive detailed inspections for discrepancies of the grease and gear teeth of the radial variable differential transducer of the nose wheel steering gearbox; or repetitive detailed inspections for damage of the chrome on the bearing surface of the nose landing gear (NLG) main fitting barrel; as applicable. For airplanes on which any discrepancy or damage is found, this proposal would require either an additional inspection or corrective actions, as applicable. This action is necessary to prevent incorrect operation or jamming of the nose wheel steering, which could cause reduced controllability of the airplane on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–381–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. 2001–NM–381–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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 2001–NM–381–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. 2001–NM–381–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A330, A340–200, and A340–300 series airplanes. The DGAC advises that an operator of a Model A340 airplane reported the failure of the nose wheel steering (NWS) system. An investigation found abnormal wear of the gear teeth of the radial variable differential transducer (RVDT) gearbox, which led to incorrect driving of the command channel and monitoring-channel feedback sensors. Subsequent analyses of grease samples taken from the RVDT gearbox showed the presence of significant quantities of water in the grease, which, when frozen, could have jammed the gearboxes. The investigation also found chrome flaking and extensive corrosion of the nose landing gear (NLG) main fitting barrel under the NWS rotating sleeve.

The investigators concluded that abrasion from metallic particles in the grease caused the wear of the gear teeth. These metallic particles came from the corroded areas of the NLG main fitting barrel, and had been carried into the system by grease that was used during the normal lubrication of the rotating sleeve. The investigators also concluded that water entered the gearbox through the seal between the steering collar and the NLG main fitting; improvement of this seal is the subject of Airbus Modification 51318 (Airbus Service Bulletins A330–32–3164 and A340–32–4204).

Wear of the gear teeth of the RVDT caused by the metallic particles from corrosion in the grease, and jamming of the gearbox caused by water freezing in the grease, could result in incorrect operation or jamming of the NWS, which could cause reduced controllability of the airplane on the ground.

The subject area on certain Model A330 series airplanes is almost identical to that on the affected Model A340–200, and A340–300 series airplanes. Therefore, those Model A330 series airplanes may be subject to the unsafe condition revealed on the Model A340–200, and A340–300 series airplanes.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

• For Model A330 series airplanes: Airbus Service Bulletin A330–32–3134, Revision 02, excluding Appendix 01, dated August 8, 2003; and

• For Model A340–200 and A340–300 series airplanes: Airbus Service Bulletin A340–32–4172, Revision 02, excluding Appendix 01, dated August 8, 2003.

For certain airplanes, these service bulletins specify that operators may choose between two different inspections. Depending on the inspection choice, the service bulletins recommend different repetitive intervals. The service bulletins also state that operators may alternate between the inspection choices as long as the interval until the next inspection is the interval described for the last inspection performed.

The first inspection choice for airplanes without the Airbus Modification is repetitive inspections of the grease and gear teeth of the RVDT driving ring and the gears in the RVDT gearboxes to find discrepancies such as metallic particles in the grease, abnormal wear of the gear teeth, or missing rubber sealant at the mating face between the main fitting and the RVDT gearbox. If there are discrepancies, the service bulletins describe procedures for inspecting the chrome on the bearing surface of the NLG main fitting barrel under the NWS rotating sleeve for damage such as flaking, corrosion, or blistering.

The second inspection choice for airplanes without the Airbus Modification is repetitive inspections of the chrome on the bearing surface of the NLG main fitting barrel under the NWS rotating sleeve for damages such as flaking, corrosion, or blistering.

For certain other airplanes, the service bulletins recommend only the inspection of the chrome on the bearing surface of the NLG main fitting barrel, which is described in the paragraph above.

For all airplanes on which discrepancies and/or damage are found, the service bulletins specify that operators should take corrective actions. The corrective actions are included in the two Messier-Dowty service bulletins listed below. These corrective actions include degreasing bare base metal and protecting the metal with cadmium Cd10 or a complete paint scheme, restoring the rubber sealant, and/or contacting Messier-Dowty for disposition.

• For certain airplanes: Messier-Dowty Special Inspection Service Bulletin D23285–32–037, dated November 8, 2001.

• For certain other airplanes airplanes: Messier-Dowty Special Inspection Service Bulletin D23285–32–044, dated January 12, 2004.

Both Airbus service bulletins refer to the Messier-Dowty service bulletins as additional sources of service information for accomplishment of the inspections and any applicable corrective actions.

The DGAC classified the Airbus service bulletins as mandatory and issued French airworthiness directives 2001–503(B) R3, dated October 1, 2003; and 2001–504(B) R4, dated October 1, 2003; to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Among the Proposed Rule, Service Bulletins, and the French Airworthiness Directive

Operators should note that, although the Messier-Dowty service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Operators should also note that, although the Messier-Dowty service bulletins specify to submit reporting forms to the manufacturer, this proposed AD does not include such a requirement.

The French airworthiness directives do not give a compliance time for inspecting the chrome on the bearing surface of the NLG main fitting barrel for airplanes without Airbus Modification 51318 that have discrepancies of the grease and gear teeth of the RVDT driving ring and the gears in the RVDT gearboxes. This proposed AD would require that operators inspect the chrome within 3 months after the RVDT inspection.

The French airworthiness directives and the service bulletins do not define the type of inspections to be performed. This proposed AD calls the inspections "detailed inspections." Note 1 of this proposed AD defines this inspection.

Cost Impact

We estimate that 16 airplanes of U.S. registry would be affected by this proposed AD.

For operators of airplanes without Airbus Modification 51318, who choose to do the inspection of the grease and gear teeth of the RVDT gearbox, we estimate that it would take approximately 2 work hours per airplane to accomplish the proposed inspection and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $130 per airplane, per inspection cycle.

For operators of airplanes with Airbus Modification 51381, or for operators of airplanes without Airbus Modification 51381 who choose to do the proposed inspection of the chrome on the bearing surface of the NLG main fitting barrel, we estimate that it would take approximately 8 work hours per airplane to accomplish the inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $520 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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:

Airbus: Docket 2001–NM–381–AD.

Applicability: All Model A330, A340–200, and A340–300 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect operation or jamming of the nose wheel steering, which could cause reduced controllability of the airplane on the ground, accomplish the following:

Service Bulletin Reference

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(i) For the inspections specified in paragraphs (c) and (d) of this AD: For Model A330 series airplanes, Airbus Service Bulletin A330–32–3134, Revision 02, excluding Appendix 01, dated August 8, 2003; and for Model A340–200 and A340–300 series airplanes, Airbus Service Bulletin A340–32–4172, Revision 02, excluding Appendix 01, dated August 8, 2003; and

(ii) For further information about the inspections required by paragraphs (c) and (d) of this AD, and for the corrective actions specified in paragraph (e) of this AD: Messier-Dowty Special Inspection Service Bulletin D23285–32–037, dated November 8, 2001 (for airplanes without Airbus Modification 51381); and Messier-Dowty Special Inspection Service Bulletin D23285–32–044, dated January 12, 2004 (for airplanes with Airbus Modification 51381).

(2) Actions accomplished before the effective date of this AD per the Airbus service bulletins listed in Table 1 of this AD are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1.—PREVIOUS ISSUES OF SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
A330	A330–32–3134	Original Issue ...	September 11, 2001.
A330	A330–32–3134	01 ...	November 29, 2001.
A340–200 and A340–300	A340–32–4172	Original Issue ...	September 11, 2001.
A340–200 and A340–300	A340–32–4172	01 ...	November 29, 2001.

Initial Inspection and Related Investigative Action

(b) For airplanes without Airbus Modification 51381: At the latest of the times in paragraphs (b)(1), (b)(2), and (b)(3) of this AD, do the applicable initial inspection in paragraph (d) of this AD.

(1) Within 60 months after the date that the nose landing gear (NLG) was installed on the airplane.

(2) Within 60 months after the last major NLG overhaul accomplished before the effective date of this AD.

(3) Within 700 flight hours after the effective date of this AD.

(c) For airplanes with Airbus Modification 51381: At the latest of the times in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, do the applicable initial inspection in paragraph (d) of this AD.

(1) Within 60 months after the date that the NLG was installed on the airplane.

(2) Within 60 months after the last major NLG overhaul accomplished before the effective date of this AD.

(3) Within 60 months after the date that Airbus Modification 51381 was installed on the airplane.

(d) For airplanes without Airbus Modification 51318, do the inspection in either paragraph (d)(1) or (d)(2) of this AD, including any applicable related investigative action. For airplanes with Airbus Modification 51318, do the inspection in paragraph (d)(2) of this AD. Do the inspection at the applicable time in paragraph (b) or (c) of this AD, in accordance with the applicable service bulletin.

(1) Do a detailed inspection for discrepancies of the grease and gear teeth of the radial variable differential transducer (RVDT) driving ring and the gears in the RVDT gearboxes. If there are no discrepancies (such as metallic particles in the grease, abnormal wear of the gear teeth, or missing rubber sealant at the mating face between the main fitting and the RVDT gearbox), repeat the inspection per paragraph (e) of this AD. If there are discrepancies, within 3 months after the inspection, do the inspection in paragraph (d)(2) of this AD.

(2) Do a detailed inspection for damage of the chrome on the bearing surface of the NLG main fitting barrel under the NWS rotating sleeve. If there is no damage (such as flaking, corrosion, or blistering), repeat the inspection per paragraph (e) of this AD. If there is damage, do the corrective action in paragraph (f) of this AD.

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

Repetitive Inspections

(e) Repeat the applicable inspection required by paragraph (d) of this AD at the applicable interval in paragraph (e)(1) or (e)(2) of this AD until paragraph (f) of this AD is accomplished.

(1) If the most recent inspection performed is the inspection in paragraph (d)(1) of this AD, then repeat the selected inspection at intervals not to exceed 8 months.

(2) If the most recent inspection performed is the inspection in paragraph (d)(2) of this AD, then repeat the selected inspection at intervals not to exceed 18 months.

Corrective Actions

(f) Except as provided by paragraph (d)(1) of this AD, for airplanes on which any damage or discrepancy is found during any inspection required by paragraph (d) or (e) of this AD: Prior to further flight, do the corrective action in accordance with the applicable service bulletin. Where the service bulletin recommends contacting Messier-Dowty for appropriate action: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

No Reporting Requirements

(g) Where the Messier-Dowty service bulletins specify to submit a reporting form to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directives 2001–503(B) R3, dated October 1, 2003; and 2001–504(B) R4, dated October 1, 2003.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13562 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–214–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 and –300 series airplanes. This proposal would require modification of the bolt holes of the lower side of the body splice t-chord common to the paddle fitting of the lower wing panel. The modification includes performing a high frequency eddy current inspection of the fastener hole for cracks, repairing the hole if necessary, and replacing the fasteners with new inconel bolts. This action is necessary to prevent fatigue cracks in the lower t-chord at the bolt holes common to the paddle fittings that could result in fractures of one or more of the t-chord segments, which could lead to detachment of the lower wing panel and consequent loss of the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–214–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. 2003–NM–214–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: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590

SUPPLEMENTARY INFORMATION:

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 2003–NM–214–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. 2003–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during full scale fatigue testing of a Boeing Model 777 series airplane, fatigue cracks were found in the lower side of the body splice t-chord common to the paddle fitting bolt holes. Fatigue cracks were found on both sides of the airplane between stringers 1 and 14. This condition, if not prevented, could result in fractures of one or more of the t-chord segments, which could lead to detachment of the lower wing panel and consequent loss of the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 777–57A0040, Revision 1, dated July 10, 2003, which describes procedures for performing repetitive ultrasonic and high frequency eddy current (HFEC) inspections of the t-chord for cracks, and modification of the lower paddle fitting fasteners. The modification includes performing a high frequency eddy current inspection of the fastener hole for cracks, repairing the hole if necessary, and replacing the fasteners with new inconel bolts. The service bulletin also specifies contacting the manufacturer for certain repair conditions. Accomplishment of the modification ends the repetitive inspections.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed rule would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that the service bulletin specifies doing repetitive ultrasonic and HFEC inspections until the modification is accomplished. However, this proposal only specifies performing the modification of the bolt holes of the lower side of the body splice t-chord common to the paddle fitting of the lower wing panel (includes replacing the fasteners with new inconel bolts, performing an HFEC inspection of the fastener hole for cracks, and repairing the hole as applicable). We can better ensure long-term continued operational safety by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led us to consider placing less emphasis on special procedures and more emphasis on design improvements. We also considered that the work hours needed to do the inspections in Part 1 of the service bulletin are comparable to the work hours needed to do the modification in Part 2 of the service bulletin. We were informed that most likely the inspections would be skipped and only the modification would be accomplished. In consideration of all of these factors, we determined that performing the modification best addresses the unsafe condition, while still maintaining an adequate level of safety.

Operators should also note that, although the service bulletin specifies that the manufacturer may be contacted for additional instructions for repair of certain cracks, this proposal would require the repair to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 262 airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed rule, that it would take approximately 34 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $65 per work hour. Required parts would cost between approximately $21,686 and $24,803 per airplane. Based on these figures, the cost impact of the proposed rule on U.S. operators is estimated to be between $1,744,408 and $1,971, 949, or between $23,896 and $27,013 per airplane.

The cost impact figure discussed above is based on assumptions that no

operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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.

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 2003–NM–214–AD.

Applicability: Model 777–200 and –300 series airplanes, as listed in Boeing Service Bulletin 777–57A0040, Revision 1, dated July 10, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in the lower t-chord at the bolt holes common to the paddle fittings that could result in fractures of one or more of the t-chord segments, which could lead to detachment of the lower wing panel and consequent loss of the wing, accomplish the following:

Modification of the Lower Paddle Fitting Bolt Holes/Fastener Replacement

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, modify the bolt holes of the lower side of the body splice t-chord common to the paddle fitting of the lower wing panel (includes performing a high frequency eddy current inspection of the fastener hole for cracks, repairing the hole if necessary, and replacing the fasteners with new inconel bolts) by accomplishing all of the actions specified in "Part 2—Preventative Modification" of the Work Instructions of Boeing Service Bulletin 777–57A0040, Revision 1, dated July 10, 2003, except as provided by paragraph (b) of this AD. Any applicable repair must be accomplished before further flight.

(1) Prior to the accumulation of 20,000 total flight cycles or 60,000 total flight hours, whichever is first.

(2) Within 1,500 days or 8,000 flight cycles after the effective date of this AD, whichever is first.

(b) If any crack is found during the modification required by paragraph (a) of this AD, the service bulletin specifies to contact Boeing for additional instructions: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13561 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–33–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 and –400ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–300 and –400ER series airplanes. This proposal would require replacing the tie rods for the waste tank cradle, related investigative actions, corrective actions, and special retrofit action if necessary. This action is necessary to prevent possible failure of the main deck floor stanchions and consequent collapse of the main floor during an emergency landing, which could result in passenger injury and impede passenger evacuation from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–33–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. 2004–NM–33–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: Susan Rosanske, 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) 917–6448; 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 2004–NM–33–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. 2004–NM–33–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from the airplane manufacturer indicating that an internal design review revealed that the tie rods on certain Boeing Model 767–300 and –400ER series airplanes, which support the waste tank cradle, do not meet the 9g forward emergency landing load requirements. If a 9g forward event occurs, the tie rods could fail. Failure of the tie rods could result in damage to or possible failure of the main deck floor stanchions and consequent collapse of the main floor, which could result in passenger injury and impede passenger evacuation from the airplane in an emergency situation.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 767–38A0062 (for Model 767–300 series airplanes) and 767–38A0063 (for Model 767–400ER series airplanes), both dated August 15, 2002, which describe procedures for replacing the tie rods for the waste tank cradle with new, improved tie rods, related investigative actions, corrective actions, and special retrofit action if necessary. The related investigative actions are general and detailed visual inspections of the tie rods and fittings for structural damage (*i.e.*, deformation, cracks, or other damage). The corrective actions are measuring the old tie rods to adjust the new tie rods for proper fit; removing the old tie rods; and installing the new tie rods. The special retrofit action is contacting Boeing for special retrofit procedures in the event that structural damage is found during the related investigative actions. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletins

Although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA.

Cost Impact

There are approximately 97 airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $2,471 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $109,242, or $2,601 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

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 2004–NM–33–AD.

Applicability: Model 767–300 series airplanes, as listed in Boeing Alert Service Bulletin 767–38A0062, dated August 15, 2002; and Model 767–400ER series airplanes, as listed in Boeing Alert Service Bulletin 767–38A0063, dated August 15, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main deck floor stanchions and consequent collapse of the main floor during an emergency landing, which could result in passenger injury and impede passenger evacuation from the airplane, accomplish the following:

Replacement and Related Investigative and Corrective Actions and Retrofit Action

(a) Within 18 months after the effective date of this AD: Replace the four tie rods for the waste tank cradle with new tie rods and do all applicable related investigative actions/corrective and special retrofit actions by accomplishing all the actions in the Accomplishment Instructions of Boeing Alert Service Bulletins 767–38A0062 (for Model 767–300 series airplanes) and 767–38A0063 (for Model 767–400ER series airplanes), both dated August 15, 2002; as applicable. Do the actions in accordance with the applicable service bulletin except as provided by paragraph (b) of this AD. Accomplish any related investigative, corrective, or special retrofit action before further flight.

(b) If any deformation, crack, or other damage is found during any related investigative action required by paragraph (a) of this AD, and the bulletin specifies contacting Boeing for appropriate action: Before further flight, perform the special retrofit action per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a retrofit method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install any tie rod for the waste tank cradle having part number 251T0100–1401, 251T0100–1402, 251T0100–1403, or 251T0100–1404, on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on June 7, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13560 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18038; Directorate Identifier 2004–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc., (Formerly AlliedSignal, Inc., Formerly Textron Lycoming) T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B Series, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. (formerly AlliedSignal, Inc., formerly Textron Lycoming), T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, installed on, but not limited to, Bell 205 and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on, but not limited to, Bell AH–1 and UH–1 helicopters, certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27). This proposed AD would require operators to remove from service affected compressor, gas producer, and power turbine rotating components at reduced life limits, and would require use of replacement drawdown schedules for components on certain engine models that exceed the new limits. This proposal results from continuous analysis of field-returned hardware indicating smaller service life margins than originally expected. We are proposing this AD to prevent failure of the compressor, gas producer, and power turbine rotating components which could result in an uncontained failure of the engine and damage to the helicopter.

DATES: We must receive any comments on this proposed AD by August 16, 2004.

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 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Honeywell International Inc., Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493; fax: (602) 365–5577.

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

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we posted new AD actions on the DMS and assigned a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form "Docket No. FAA–200X–XXXXX." Each DMS docket also lists the Directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–18038; Directorate Identifier 2004–NE–01–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language and http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Honeywell International Inc. (formerly AlliedSignal Inc., formerly Textron Lycoming), has advised us that continuous analysis of field-returned hardware indicates smaller service life margins than originally intended for certain compressor, gas producer, and power turbine rotating components installed in T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, which are installed on, but not limited to, Bell 205 and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on, but not limited to, Bell AH–1 and UH–1 helicopters, certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27). This condition, if not corrected, could result in uncontained failure of the engine due to fatigue-cracked engine rotor disks.

Relevant Service Information

We have reviewed and approved the technical contents of the following service bulletins (SBs) that describe reduced limits for removal from service of affected compressor, gas producer, and power turbine rotating components:

- Lycoming SB No. 0002, Revision 2, dated March 6, 1989.
- Honeywell International Inc. SB No. T5313B/17–0020, Revision 7, dated November 21, 2002.
- Honeywell International Inc. SB No. T53–L–13B–0020, Revision 3, dated October 25, 2001.
- Honeywell International Inc. SB No. T53–L–13B/D–0020, Revision 2, dated November 25, 2002.
- Honeywell International Inc. SB No. T53–L–703–0020, Revision 2, dated November 25, 2002.

We have also reviewed and approved the technical contents of the following SBs that describe replacement drawdown schedules for components that exceed new limits listed in the SBs.

- Honeywell International Inc. SB No. T5313B–0125, dated March 15, 2001.
- Honeywell International Inc. SB No. T5317–0125, dated March 15, 2001.
- Honeywell International Inc. SB No. T53–L–13B–0125, dated April 5, 2001.
- Honeywell International Inc. SB No. T53–L–13B/D–0125, dated April 5, 2001.
- Honeywell International Inc. SB No. T53–L–703–0125, dated April 5, 2001.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would:

- Require operators to remove from service affected compressor, gas producer, and power turbine rotating components at reduced life limits; and
- Require use of replacement drawdown schedules for affected components that exceed the new limits.

The FAA Engine & Propeller Directorate has coordinated the reduced life limits for engines installed on surplus military aircraft certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27), with the FAA Rotorcraft Directorate. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 4,500 Honeywell International Inc. (formerly AlliedSignal, Inc., formerly Textron Lycoming), T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, installed on, but not limited to, Bell 205 and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on, but not limited to, Bell AH–1 and UH–1 helicopters, certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27), of the affected design in the worldwide fleet. We estimate that 300 engines installed on helicopters of U.S. registry would be affected by this proposed AD, and that the prorated cost of the life reduction per engine would be about $250,000. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $75,000,000.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation: 1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy

of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Honeywell International Inc. (formerly AlliedSignal, Inc., formerly Textron Lycoming): Docket No. FAA–2004–18038; Directorate Identifier 2004–NE–01–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 16, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc., (formerly AlliedSignal, Inc., formerly Textron Lycoming) T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, installed on, but not limited to, Bell 205 and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on, but not limited to, Bell AH–1 and UH–1 helicopters, certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27).

Unsafe Condition

(d) This AD results from continuous analysis of field-returned hardware indicating smaller service life margins than originally expected. We are issuing this AD to prevent failure of compressor, gas producer, and power turbine rotating components, which could result in an uncontained failure of the engine and damage to the helicopter.

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.

T5309, T5311, T53–L–9, and T53–L–11 Series Turboshaft Engines

(f) For T5309, T5311, T53–L–9, and T53–L–11 series turboshaft engines, within 100 operating hours after the effective date of this AD, compute the total operating hours and cycles and replace rotating components before they exceed the service life limits. Use 2.a. through 2.f. and Component Service Life Limits Table 1 of Accomplishment Instructions of Lycoming Service Bulletin (SB) No. 0002, Revision 2, dated March 6, 1989.

T5313B, T5317A, T5317A–1, and T5317B Turboshaft Engines

(g) For T5313B, T5317A, T5317A–1, and T5317B turboshaft engines, within 100 operating hours after the effective date of this AD, compute the total operating hours and cycles and replace the rotating components before they exceed the service life limits. Use 2.A. through 2.K. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T5313B/17–0020, Revision 7, dated November 21, 2002.

(h) For T513B, T5317A, T5317A–1, and T5317B turboshaft engines that have one or more rotating components that exceed the limits specified in Component Service Life Limits Table 1 of Honeywell International Inc. SB No. T5313B/17–0020, Revision 7, dated November 21, 2002, replace the components using the applicable drawdown schedule in Table 1 of Honeywell International Inc. SB No. T5313B–0125, dated March 15, 2001 or Honey well International Inc. SB No. T5317–0125, dated March 15, 2001.

T53–L–13B, T53–L–13BA, T53–L–13B S/SA, and T53–L–13B S/SB Turboshaft Engines

(i) For T53–L–13B, T53–L–13BA, T53–L–13B S/SA, and T53–L–13B S/SB turboshaft engines, within 100 operating hours after the effective date of this AD, compute the total operating hours and cycles and replace the rotating components before they exceed the service life limits. Use 2.A. through 2.J. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T53–L–13B–0020, Revision 3, dated October 25, 2001.

(j) For T53–L–13B, T53–L–13BA, T53–L–13B S/SA, and T53–L–13B S/SB turboshaft engines that have one or more rotating components that exceed the limits in Component Service Life Limits Table 1 of Honeywell SB No. T53–L–13B–0020, Revision 3, dated October 25, 2001, replace the components using the applicable drawdown schedule in Table 1 of Honeywell International Inc. SB No. T53–L–13B–0125, dated April 5, 2001.

T53–L–13B/D Turboshaft Engines

(k) For T53–L–13B/D turboshaft engines, within 100 operating hours after the effective date of this AD, compute the total operating hours and cycles and replace the rotating components before they exceed the service life limits. Use 2.A. through 2.J. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T53–L–13B/D–0020, Revision 2, dated November 25, 2002.

(l) For T53–L–13B/D turboshaft engines that have one or more rotating components that exceed the limits in Component Service Life Limits Table 1 of Honeywell International Inc. SB No. T53–L–13B/D–0020, Revision 2. dated November 25, 2002, replace the components using the applicable drawdown schedule in Table 1 of Honeywell International Inc. SB No. T53–L–13B/D–0125, dated April 5, 2001.

T53–L–703 Turboshaft Engines

(m) For T53–L–703 turboshaft engines, within 100 operating hours after the effective date of this AD, compute the total operating hours and cycles and replace the rotating components before they exceed the service life limits. Use 2.A. through 2.K. and Component Service Life Limits Table 1 of Accomplishment Instructions of Honeywell International Inc. SB No. T53–L–703–0020, Revision 2, dated November 25, 2002.

(n) For T53–L–703 turboshaft engines that have one or more rotating components that have exceeded the limits in Component Service Life Limits Table 1 of Honeywell International Inc. SB No. T53–L–703–0020, Revision 2, dated November 25, 2002, replace the components using the applicable drawdown schedule in Table 1 of Honeywell International Inc. SB No. T53–L–703–0125, dated April 5, 2001.

Computing Compliance Intervals

(o) For the purposes of this AD, use the effective date of this AD for computing compliance intervals whenever the SBs refer to the release date of the SB.

Prohibition of Removed Rotating Components

(p) Do not reinstall any rotating component that is replaced as specified in paragraphs (f) through (n) of this AD, into any engine.

Alternative Methods of Compliance

(q) The Manager, Los Angeles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(r) None.

Related Information

(s) None.

Issued in Burlington, Massachusetts, on June 3, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–13564 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 2003P–0029]

RIN 0910–AF18

Use of Ozone-Depleting Substances; Removal of Essential-Use Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove the essential-use designations for albuterol used in oral pressurized metered-dose inhalers (MDIs). Under the Clean Air Act, FDA, in consultation with the Environmental Protection Agency (EPA), is required to determine whether an FDA-regulated product that releases an ODS is an essential use of the ODS. Two albuterol MDIs that do not use an ODS are currently marketed. FDA has tentatively determined that the two non-ODS MDIs will be satisfactory alternatives to albuterol MDIs containing ODSs and are proposing to remove the essential-use designation for albuterol MDIs. If the essential-use designation is removed, albuterol MDIs containing an ODS could not be marketed after a suitable transition period.

DATES: Submit written or electronic comments by August 16, 2004.

ADDRESSES: You may submit comments, identified by [Docket No. 2003P–0029], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include [Docket No. 2003P–0029] in the subject line of your e-mail message.
- FAX: 301–827–6870.
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Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

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I. Albuterol

Albuterol is a relatively selective $beta_2$–adrenergic agonist used in the treatment of bronchospasm associated with asthma and chronic obstructive pulmonary disease (COPD). Albuterol has the molecular formula $C_{13}H_{21}NO_3$. Albuterol is the name established for the drug by the U.S. Pharmacopeia and the U.S. Adopted Names Council. FDA uses the name albuterol, and it is the name commonly used in the United States. In most of the rest of the world, the drug is called salbutamol, which is the international nonproprietary name for the drug (the name recommended by the World Health Organization). Albuterol is widely used in its sulfate salt form, which has the molecular formula $(C_{13}H_{21}NO_3)_2H_2SO_4$. We will use "albuterol" to refer to both albuterol base and albuterol sulfate, unless otherwise indicated.

Albuterol is available in many dosage forms for the treatment of asthma and COPD. Syrups and tablets may be taken by mouth to be absorbed into the blood through the digestive tract. Albuterol drug products are marketed in various forms for inhalational use. Albuterol is available in inhalation solutions for use in nebulizers and was previously marketed in the United States in a compact dry-powder inhaler. Most important for purposes of this document, albuterol is marketed in MDIs, which are small, pressurized aerosol devices that deliver a measured dose of an aerosol into a patient's mouth for inhalation into the lungs.

Albuterol MDIs were first approved for use in the United States in 1981, when the new drug applications (NDAs) for VENTOLIN (NDA 18–473) and PROVENTIL (NDA 17–559) albuterol

MDIs were approved by FDA. The first generic albuterol MDI was approved in 1995. Albuterol MDIs have historically used the chlorofluorocarbons (CFCs) trichlorofluoromethane (CFC–11) and dichlorodifluoromethane (CFC–12) as propellants.

Albuterol MDIs are among the most widely used drug products for the treatment of asthma and COPD. Because of albuterol's relatively rapid onset of action, albuterol MDIs are frequently used as "rescue" inhalers for treatment of bronchospasm during acute episodes. Albuterol MDIs can be considered lifesaving for some patients at certain times; they are very important for controlling symptoms in many more patients who suffer from asthma or COPD. We recognize and take very seriously our obligation to examine with particular care any action that may affect the availability of these important drugs.

II. CFCs

CFCs are organic compounds that contain carbon, chlorine, and fluorine atoms. CFCs were first used commercially in the early 1930s as a replacement for hazardous materials then used in refrigeration, such as sulfur dioxide and ammonia. Subsequently, CFCs were found to have a large number of uses, including as solvents and as propellants in self-pressurized aerosol products, such as MDIs.

CFCs are very stable in the troposphere, the lowest part of the atmosphere. They move to the stratosphere, a region that begins about 10 to 16 kilometers (km) (6 to 10 miles) above Earth's surface and extends up to about 50 km (31 miles) altitude. Within the stratosphere, there is a zone about 15 to 40 km (10 to 25 miles) above the Earth's surface in which ozone is relatively highly concentrated. This zone in the stratosphere is generally called the ozone layer. Once in the stratosphere, CFCs are gradually broken down by strong ultraviolet light, where they release chlorine atoms that then deplete stratospheric ozone. Depletion of stratospheric ozone by CFCs and other ODSs allows more ultraviolet-B (UV–B) radiation to reach the Earth's surface, where it increases skin cancers and cataracts, and damages some marine organisms, plants, and plastics.

III. Regulation of ODSs

The link between CFCs and the depletion of stratospheric ozone was discovered in the mid-1970s. Since 1978, the U.S. Government has pursued a vigorous and consistent policy through the enactment of laws and regulations, of limiting the production, use, and import of ODSs, including CFCs.

A. The 1978 Rules

In the **Federal Register** of March 17, 1978 (43 FR 11301 at 11318), FDA and EPA published rules banning, with a few exceptions, the use of CFCs as propellants in aerosol containers. These rules were issued under authority of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*) and the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*) respectively. FDA's rule (the 1978 rule) was codified as § 2.125 (21 CFR 2.125). The rules issued by FDA and EPA had been preceded by rules issued by FDA and the Consumer Product Safety Commission requiring products that contain CFC propellants to bear warning statements on their labeling (42 FR 22018, April 29, 1977; 42 FR 42780, August 24, 1977).

The 1978 rule prohibited the use of CFCs as propellants in self-pressurized containers in any food, drug, medical device, or cosmetic. As originally published, the rule listed five essential uses that were exempt from the ban. The third listed essential use was for "[m]etered-dose adrenergic bronchodilator human drugs for oral inhalation." This language describes albuterol MDIs, so the list of essential uses did not have to be amended in 1981 when VENTOLIN and PROVENTIL albuterol MDIs were approved by FDA.

The 1978 rule provided criteria for adding new essential uses, and several uses were added to the list, the last one in 1996. The 1978 rule did not provide any mechanism for removing essential uses from the list as alternative products were developed or CFC-containing products were removed from the market. The absence of a removal procedure came to be viewed as a deficiency in the 1978 rule, and was addressed in a later rulemaking, discussed in section III.E of this document.

B. The Montreal Protocol

On January 1, 1989, the United States became a party to the Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, 26 I.L.M. 1541 (1987), available at *http://www.unep.org/ozone/pdfs/Montreal-Protocol2000.pdf* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document has published in the **Federal Register**). The United Sates played a leading role in the negotiations of the Montreal Protocol, believing that internationally coordinated control of ozone-depleting substances would best protect both the U.S. and global public health and the environment from potential adverse effects of depletion of stratospheric ozone. Currently, there are 186 parties to this treaty.[1] When it joined the treaty, the United States committed to reducing production and consumption of certain CFCs to 50 percent of 1986 levels by 1998 (Article 2(4) of the Montreal Protocol). It also agreed to accept an "adjustment" procedure, whereby, following assessment of the existing control measures, the parties could adjust the scope, amount and timing of those control measures for substances already subject to the Montreal Protocol. As the evidence regarding the impact of ODSs on the ozone layer became stronger, the parties utilized this adjustment procedure to change the treaty's obligations and accelerate the phaseout of ODSs. At the fourth meeting of the parties to the Montreal Protocol, held at Copenhagen in November 1992, the parties adjusted Article 2 of the Montreal Protocol to eliminate the production and importation of CFCs in parties that are developed countries by January 1, 1996 (Decision IV/2).[2] The adjustment also indicated that it would apply "save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential" (Article 2A(4)). Under the treaty's rules of procedure, the parties may make such an essential use decision by a two-thirds majority vote, although, to date, all such decisions have been made by consensus.

To produce or import CFCs for an essential use under the Montreal Protocol, a party must request and obtain approval for an exemption at a meeting of the Parties. One of the most important essential uses of CFCs under the Montreal Protocol is their use in

[1] The summary descriptions of the Montreal Protocol and decisions of parties to the Montreal Protocol contained in this document are presented here to help you understand the background of the action we are proposing. These descriptions are not intended to be formal statements of policy regarding the Montreal Protocol. Decisions by the parties to the Montreal Protocol are cited in this document in the conventional format of "Decision IV/2," which refers to the second decision recorded in the Report of the Fourth Meeting of the parties to the Montreal Protocol on Substances That Deplete the Ozone Layer. Reports of meetings of the parties to the Montreal Protocol may be found on the United Nations Environment Programme's Web site at *http://www.unep.org/ozone/mop/mop-reports.shtml*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

[2] Production of CFCs in economically less-developed countries is being phased out and is scheduled to end by January 1, 2010. See Article 2a of the Montreal Protocol.

MDIs for the treatment of asthma and COPD. The decision on whether the use of CFCs in MDIs is "essential" for purposes of the Montreal Protocol turns on whether: "(1) It is necessary for the health, safety, or is critical for the functioning of society (encompassing cultural and intellectual aspects) and (2) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health" (Decision IV/25). Each request and any subsequent exemption is for only 1 year's duration (Decision V/18). Since 1994 the United States and some other parties to the Montreal Protocol have annually requested, and been granted, essential-use exemptions for the production or importation of CFCs for their use in MDIs for the treatment of asthma and COPD (see, among others, Decisions VI/9 and VII/28). The exemptions have been consistent with the criteria established by the Parties, which make the grant of an exemption contingent on a finding that the use for which the exemption is being requested is essential for health, safety, or the functioning of society, and that there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of health or the environment (Decision IV/25).

Phasing out the use of CFCs in MDIs for the treatment of asthma and COPD has been an issue of particular interest to the parties to the Montreal Protocol. Several decisions of the parties have dealt with the transition to CFC-free MDIs, including the following decisions:

- Decision VIII/10 required the parties that are developed to take various actions to promote industry's participation in a smooth and efficient transition away from CFC-based MDIs (San Jose, Costa Rica, 1996).
- Decision IX/19 required the parties that are developed countries to present an initial national or regional transition strategy by January 31, 1999 (Montreal, 1997).
- Decision XII/2 elaborated on the required content of national or regional transition strategies required under Decision IX/19 and indicated that any MDI for the treatment of asthma or COPD approved for marketing after 2000 would not be an "essential use" unless it met the criteria laid out by the Parties for essential uses. (Ouagadougou, Burkina Faso, 1999).
- Decision XIV/5 requested that each party report annually the quantities of CFC and non-CFC MDIs and dry-powder inhalers sold or distributed within the party and the approval and marketing status of non-CFC MDIs and dry-powder inhalers. Decision XIV/5 also noted "with concern the slow transition to CFC-free metered-dose inhalers in some Parties". (Rome, 2002).
- Decision XV/5 required parties that are developed countries to submit a plan of action that includes a specific date by which time the party will stop seeking essential-use exemptions for CFCs for albuterol MDIs (Nairobi, 2003). Decision XV/5 is discussed in more detail in section VI of this document.

On the basis of these decisions, many Parties have made substantial progress in phasing out CFCs from MDIs.

C. The 1990 Amendments to the Clean Air Act

In 1990, Congress amended the Clean Air Act to, among other things, better protect stratospheric ozone (Public Law 101–549, November 15, 1990) (the 1990 amendments). The 1990 amendments were drafted to complement and be consistent with our obligations under the Montreal Protocol (see section 614 of the Clean Air Act (42 U.S.C. 7671m)). Section 614(b) of the Clean Air Act provides that in the case of a conflict between any provision of the Clean Air Act and any provision of the Montreal Protocol, the more stringent provision will govern. Section 604 of the Clean Air Act requires the phaseout of the production of CFCs by 2000 (42 U.S.C. 7671c)[3], while section 610 of the Clean Air Act (42 U.S.C. 7671i) required EPA to issue regulations banning the sale or distribution in interstate commerce of nonessential products containing CFCs. Sections 604 and 610 provide exceptions for "medical devices." Section 601(8) (42 U.S.C. 7671(8)) of the Clean Air Act defines "medical device" as

> any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), or drug delivery system-
>
> (A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of Food and Drugs]; and
>
> (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of Food and Drugs] in consultation with the Administrator [of the U.S. EPA].

[3] In conformance with Decision IV/2, EPA issued regulations accelerating the complete phaseout of CFCs, with exceptions for essential uses, to January 1, 1996 (58 FR 65018, December 10, 1993).

D. EPA's Implementing Regulations

EPA regulations implementing the Montreal Protocol and the stratospheric ozone protection provisions of the 1990 amendments are codified in part 82 of title 40 of the Code of Federal Regulations (40 CFR part 82). (See 40 CFR 82.1 for a statement of intent.) Like the 1990 amendments, EPA's implementing regulations contain two separate prohibitions, one on the production and transfer of CFCs (subpart A of 40 CFR part 82) and the other on the sale or distribution of products containing CFCs (40 CFR 82.66).

The prohibition on production and transfer of CFCs contains an exception for essential uses and, more specifically, for essential MDIs. The definition of essential MDI at 40 CFR 82.3 requires that the MDI be intended for the treatment of asthma or COPD, be essential under the Montreal Protocol, and if the MDI is for sale in the United States, be approved by FDA and listed as essential in FDA's regulations at § 2.125.

The prohibition on the sale of products containing CFCs includes a specific prohibition on aerosol products or other pressurized dispensers. The aerosol product ban contains an exception for medical devices listed in § 2.125(e). The term "medical device" is used with the same meaning it was given in the 1990 amendments and includes drugs as well as medical devices.

E. FDA's 2002 Regulation

In the 1990s, we decided that § 2.125 required revision to better reflect our obligations under the Montreal Protocol, the 1990 amendments, and EPA's regulations, and to encourage the development of ozone-friendly alternatives to medical products containing CFCs. In particular, as acceptable alternatives that did not contain CFCs or other ODSs came on the market, there was a need to provide a mechanism to remove essential uses from the list in § 2.125(e). In the **Federal Register** of March 6, 1997 (62 FR 10242), we published an advance notice of proposed rulemaking (ANPRM) in which we outlined our then-current thinking on the content of an appropriate rule regarding ODSs in products FDA regulates. We received almost 10,000 comments on the ANPRM. In response to the comments, we revised our approach and drafted a proposed rule published in the **Federal Register** of September 1, 1999 (64 FR 47719) (the 1999 proposed rule). We received 22 comments on the proposed

rule. After minor revisions in response to these comments, we published a final rule in the **Federal Register** of July 24, 2002 (67 FR 48370) (the 2002 rule) (corrected in 67 FR 49396, July 30, 2002, and 67 FR 58678, September 17, 2002).

Among other changes, the 2002 rule, in revised § 2.125(g)(3), set standards that FDA would use for determining whether the use of an ODS in a medical product is no longer essential. The 2002 rule provided that to remove an essential-use designation, FDA must find that:

- At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;
- Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;
- Adequate U.S. postmarketing use data is available for the non-ODS product(s); and
- Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products.

To remove the essential-use designation of an active moiety marketed in an ODS product represented by one NDA, there must be at least one acceptable alternative, while for an active moiety marketed in ODS products and represented by two or more NDAs, there must be at least two acceptable alternatives.

Because there are multiple NDAs for albuterol MDIs containing an ODS, the rule requires that there must be at least two acceptable alternatives available for us to remove the essential-use designation for albuterol. We have tentatively concluded that there are two acceptable alternatives for albuterol MDIs containing an ODS.

FDA approved the NDA for PROVENTIL HFA, albuterol sulfate MDI, on August 15, 1996 (NDA 20–503), and the product was introduced into the U.S. market later that year. VENTOLIN HFA, albuterol sulfate MDI, was approved on April 19, 2001 (NDA 20–983), and it was introduced into the U.S. market in February 2002. Both of these products use the hydrofluoroalkane HFA–134a as a replacement for ODSs. HFA–134a does not affect stratospheric ozone. We will use the phrase HFA MDIs to refer to both of these products as we discuss in section IV of this document how these products meet the criteria for being alternatives to albuterol CFC MDIs.

There is a separate essential-use designation for metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use § 2.125(e)(2)(viii). This essential use was added to the list of essential uses (§ 2.125(e)) even though albuterol and ipratropium bromide were already separately included in the list of essential uses. (See 60 FR 53725, October 17, 1995, and 61 FR 15699, April 9, 1996.) The only drug product marketed under the essential use designation for metered-dose ipratropium bromide and albuterol sulfate, in combination, is Boehringer Ingelheim Phamaceuticals' product Combivent. Because Combivent has two active ingredients, it is not subject to Decision XV/5 (discussed in section VI of this document), which concerns MDIs with albuterol as the sole active ingredient. This rulemaking will not affect the essential use status of Combivent.

F. The Stakeholders Petition

Fran Du Melle, Executive Vice President of the American Lung Association, submitted a citizen petition on behalf of the U.S. Stakeholders Group on MDI Transition on January 29, 2003 (Docket No. 2003P–0029/CP1)(the Stakeholders' petition). The petition requested that we initiate rulemaking to remove the essential-use designation of albuterol MDIs. In addition to manyother issues discussed in the petition, the petitioners expressed concerns about the possibility that the parties to the Montreal Protocol could refuse to allocate CFCs for use in albuterol CFC MDIs adversely affecting a smooth transition that ensured adequate supplies of both albuterol CFC MDIs and albuterol HFA MDIs (Stakeholder's petition at 3-4). Another concern expressed in the petition was the possibility that supplies of pharmaceutical grade CFCs could be interrupted by actions of other countries. These issues are discussed in section IV.D of this document.

Many comments were submitted to the docket for this petition. Commenters included GlaxoSmithKline (GSK), Honeywell Chemicals (Honeywell), National Economic Research Associates, Inc., patient advocacy groups, a drug industry association, and a law firm. Comments on the Stakeholder's petition may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

While we found the citizen petition and comments on the petition informative and relied on some of the information provided by the petition and comments in preparing this document, this proposed rule is not being issued in response to the petition. Section 2.125(g) requires that a petition present "compelling evidence" demonstrating that the criteria for removing an essential use are met. We concluded that the petition, though informative, did not provide the level of evidence needed for us to initiate rulemaking. This proposed rule is being issued on our own initiative in accordance with the Clean Air Act and the Montreal Protocol.

IV. Application of the Criteria to Remove the Essential-Use Designation for Albuterol CFC MDIs

A. Non-ODS Products Have the Same Active Moiety With the Same Route of Administration, for the Same Indication, and With Approximately the Same Level of Convenience of Use

Section 2.125(g)(4)(i) provides that alternatives must "contain the same active moiety * * * with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS products." We will examine how each component of this criterion applies to the albuterol HFA MDIs.

1. The Same Active Moiety

Active moiety is defined in § 314.108(a) (21 CFR 314.108(a)) as

> the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.

The active ingredient in the albuterol CFC MDIs is the albuterol base, albuterol, while the active ingredient in albuterol HFA MDIs is the sulfate salt of albuterol, albuterol sulfate. The active moiety of both is albuterol; therefore, both the albuterol CFC MDIs and albuterol HFA MDIs have the same active moiety.

2. The Same Route of Administration

Both the albuterol CFC MDIs and albuterol HFA MDIs are MDIs used for oral inhalation. They both have the same route of administration.

3. The Same Indications

We have provided, for comparison, the labeled indications for albuterol CFC MDIs and albuterol HFA MDIs in table 1 of this document.

TABLE 1.—INDICATIONS FOR ALBUTEROL MDIS

Products	Indications
PROVENTIL (ODS)[1]	PROVENTIL Inhalation Aerosol is indicated in patients 12 years of age and older, for the prevention and relief of bronchospasm in patients with reversible obstructive airway disease, and for the prevention of exercise-induced bronchospasm.
PROVENTIL HFA	PROVENTIL HFA Inhalation Aerosol is indicated in adults and children 4 years of age and older for the treatment or prevention of bronchospasm with reversible obstructive airway disease and for the prevention of exercise-induced bronchospasm.
VENTOLIN (ODS)[2]	VENTOLIN Inhalation Aerosol is indicated for the prevention and relief of bronchospasm in patients 4 years of age and older with reversible obstructive airway disease and for the prevention of exercise-induced bronchospasm in patients 4 years of age and older.
VENTOLIN HFA	VENTOLIN HFA is indicated for the treatment or prevention of bronchospasm in adults and children 4 years of age and older with reversible obstructive airway disease and for the prevention of exercise-induced bronchospasm in patients 4 years of age and older.

[1] The labeled indications for Warrick brand albuterol metered-dose inhalers (MDIs) are identical to those of PROVENTIL ozone-depleting substance (ODS). Warrick MDIs contain ODSs.
[2] The labeled indications for generic albuterol MDIs manufactured by Armstrong Pharmaceuticals and PLIVA are identical to those of VENTOLIN (ODS). Generic albuterol MDIs contain ODSs.

The labeled indications for albuterol HFA MDIs are essentially identical to those for VENTOLIN(ODS) MDIs and somewhat broader than the indications for PROVENTIL (ODS) MDIs ("adults and children 4 years of age and older" for albuterol HFA MDIs as opposed to "patients 12 years of age and older" for PROVENTIL (ODS)).

We have also looked at significant uses of albuterol CFC MDIs that may not be included in the labeled uses. We are unaware of any off-label use of albuterol CFC MDIs for which albuterol HFA MDIs would not be a satisfactory alternative.

4. Approximately the Same Level of Convenience of Use

In the preamble to the 2002 rule, we stated that in evaluating whether an alternative has approximately the same level of convenience of use compared to the ODS product containing the same active moiety, FDA will consider whether:

- The product has approximately the same or better portability,
- The product requires approximately the same amount of or less preparation before use, and
- The product does not require significantly greater physical effort or dexterity (67 FR 48370 at 48377).

Albuterol HFA MDIs are approximately the same small size and light weight as the albuterol CFC MDIs and are, therefore, equally portable.

The only noteworthy difference in amount of preparation between the albuterol CFC MDIs and albuterol HFA MDIs is that patients using albuterol HFA MDIs may need to more closely follow the labeling instructions on cleaning the mouthpiece, even though cleaning instructions are included in the patient labeling for both albuterol CFC MDIs and albuterol HFA MDIs. We do not consider 30 seconds spent cleaning the mouthpiece once a week to prevent clogging (see approved labeling for PROVENTIL HFA and VENTOLIN HFA) to be a significant difference in amount of preparation.

The method of operation of the albuterol CFC MDIs and albuterol HFA MDIs is the same, and although the albuterol CFC MDIs and albuterol HFA MDIs use different valves, the MDIs do not differ significantly in the amount of strength needed to operate them. We have tentatively concluded that albuterol HFA MDIs have approximately the same level of convenience as albuterol CFC MDIs.

B. Supplies and Production Capacity for the Non-ODS Products Will Exist at Levels Sufficient to Meet Patient Need

In many ways, this is the most difficult criterion to apply. Industry is understandably reluctant to allocate the resources necessary to establish new manufacturing facilities to ensure adequate supplies and production of albuterol HFA MDIs without assurance that albuterol CFC MDIs will be phased out. At the same time, we cannot eliminate the essential use of ODSs for albuterol MDIs until we are assured of adequate supplies and production of alternative products. We have carefully considered GSK's comment on the Stakeholders' petition (Docket No. 2003P–0029/C2) (GSK comment). In their comment, GSK projected that they could have capacity to produce adequate supplies of VENTOLIN HFA within 12 to 18 months of the start of their production scale-up (GSK comment at 7). The production scale-up would presumably start when we publish the final rule eliminating the essential use of ODSs in albuterol MDIs. GSK did not describe the circumstances that were presumed for their projection. GSK did not explain what they meant by "adequate supplies and production capacity" (GSK comment at 7). The manufacturer of PROVENTIL HFA, 3M Co. (3M), has not submitted any comments on the Stakeholders' petition and we have no information about their plans regarding future supplies and production capacity. With the relatively minimal amount of information on production capacity that we currently have, we have tentatively concluded that capacity to produce adequate supplies of non-ODS albuterol MDIs could be in place no sooner than 12 months after date of publication in the **Federal Register** of any final rule based on this proposed rule. We welcome the submission of additional information on the production and supply of alternative products, and the time it may take to put in place any additional production capacity that may be needed to meet projected U.S. needs.

In the 2002 rule, we stated that we "generally will expect the non-ODS product to be manufactured at multiple manufacturing sites if the ODS product was manufactured at multiple manufacturing sites" (67 FR 48370 at 48374). We do not require that replacement products be manufactured at multiple sites; the only requirement is that supplies and production capacity for the non-ODS product exist at levels sufficient to meet patient need. However, we did note in the 2002 rule that multiple manufacturing sites increase the likelihood that a manufacturer will be able to supply the replacement drug in the event of an

unforeseen circumstance that shuts down one site. (See 67 FR 48370 at 48377.) We do not believe that this issue is a concern in this proposed rulemaking. GSK and 3M will be making albuterol HFA MDIs at separate facilities. As an additional assurance in this regard, GSK said that the three European supply sites that manufacture albuterol HFA MDIs for non-U.S. markets could be used as an alternative in an emergency (GSK comment at 8).

C. Adequate U.S. Postmarketing Use Data Are Available for the Non-ODS Products

PROVENTIL HFA has been on the market 7 years, and VENTOLIN HFA has been on the market for more than 2 years. As with all new drug products, we have periodically examined reports made to our MedWatch system[4] and reports made to FDA by and for the sponsors of the NDAs for PROVENTIL HFA and VENTOLIN HFA. These reports do not reveal any unexpected adverse events, nor do they reveal any unanticipated problems with the safety, effectiveness, tolerability, and patient acceptance of albuterol HFA MDIs when the products are properly used.

We have read with interest a report of a study conducted in the United Kingdom of patients using VENTOLIN EVOHALER, a product substantially similar to VENTOLIN HFA.[5] This report supports our conclusion that albuterol HFA MDIs are well tolerated and accepted by patients.

While additional information is always welcome, we have tentatively determined that we do not need the results of additional studies to make a valid scientific assessment of the safety, effectiveness, tolerability, and patient acceptance of albuterol HFA MDIs. As we stated in the 1999 proposed rule, we will not require a postmarketing study if available data, including more traditional postmarketing surveillance data, are sufficient to support a finding that the CFC product is no longer essential (64 FR 47719 at 47730).

D. Patients Are Adequately Served by the Non-ODS Products

PROVENTIL HFA and VENTOLIN HFA were demonstrated to be safe and effective during the review of their NDAs. Data submitted with the NDAs showed that PROVENTIL HFA and VENTOLIN HFA are similarly tolerated compared to albuterol CFC MDIs, and patient compliance rates in the studies were comparable. All of the information available to us currently indicates that PROVENTIL HFA and VENTOLIN HFA will adequately serve all patient populations currently using albuterol CFC MDIs.

Albuterol CFC MDIs are only available in one strength, 0.09 milligrams per inhalation. PROVENTIL HFA and VENTOLIN HFA are available in strengths equivalent to 0.09 milligrams of albuterol base per inhalation. Because albuterol CFC MDIs are only available in one strength, alternative products need not be available in more than one strength to adequately serve patients. (See the 2002 rule (67 FR 48370 at 48374).)

In the preamble to the 2002 rule, we said we will "consider whether a high-priced non-ODS product is effectively unavailable to a portion of the patient population because they cannot afford to buy the product" (67 FR 48370 at 48374). As explained in section VIII.C.5 of this document, current retail prices of PROVENTIL HFA and VENTOLIN HFA are in excess of $20 more than the prices of generic albuterol CFC MDIs. This price difference is undesirable in that some patients whose drug expenditures are not covered by third parties may choose not to buy these MDIs that may be important to their health. However, FDA lacks adequate evidence to estimate precisely the number of MDIs that might not be bought as the result of this price increase or what the public health consequences of such decisions would be. The best evidence available to us indicates that the demand for prescription drugs is generally quite inelastic with respect to price changes, so even this relatively large price increase is likely to cause changes in the consumption of MDIs that are quite small relative to the market. When generic albuterol CFC MDIs first came on the market in 1995 and 1996, we did not see any clear indication that underserved patients who had not been purchasing the more expensive VENTOLIN ODS or PROVENTIL ODS began to purchase the lower-priced generics. Increases in total sales of albuterol MDIs around that time have been attributed to the continuing rising incidence of asthma and COPD. Still, given the number of albuterol canisters sold yearly in the United States, even a minor change could amount to as many as a million MDI canisters not purchased each year. Section VIII of this document describes the analysis we used in reaching this tentative conclusion.

Private and public health insurance should ameliorate some of the anticipated adverse impacts of price increases, though differences in co-payments between generics and branded products may make these inhalers more expensive for even insured patients. Programs run, or supported, by the pharmaceutical industry to provide low-cost or free drugs to less-affluent patients should also reduce the effect of price increases. Information on such programs has been submitted to FDA by GSK describing their "Bridges to Access," "Orange Card," "Together Rx Card," and "Promise" Programs, as well as their commitment to provide 2 million free HFA canisters per year beginning at the time of the effective date of a final rule removing the essential-use designation of albuterol MDIs (see GSK comment at p. 15, and GSK's supplementary comment dated August 5, 2003 (Docket No. 2003P-0029/SUP 1).) At this time, FDA believes that the information provided by GSK is insufficient to fully evaluate the extent that these programs would assist low-income uninsured patients and seeks further details on how they would specifically address this issue. We seek comments from manufacturers and other interested persons on any similar efforts indicating how these programs might alleviate concerns over patient access for low-income, uninsured patients after the effective date.

We are particularly interested in receiving comments that provide more data on how the expected price increases for albuterol MDIs will affect the public health.

As described in section V of this document, the effects of any price increases on the availability of non-ODS products, and any potential resulting impacts on public health associated with such price increases, can, in theory, be reduced by adjusting the effective date of the rule to be closer to the time when low-cost generic copies of PROVENTIL HFA and VENTOLIN HFA will be available, which could be in either 2010 or 2015, depending on which patents control the availability of generic alternatives. We say "in theory" because such an outcome rests on the assumption that the United States can continue to successfully petition the Parties to the Montreal Protocol to grant the United States an essential use exemption for CFCs for use in albuterol MDIs for a time period up to 2010 or 2015. At present, the United States has received approval for an essential use exemption for 2005, and a request for an

[4] MedWatch is FDA's safety information and adverse event reporting program that allows health care professionals and consumers to report serious problems they suspect are associated with the drugs and medical devices they prescribe, dispense, or use.

[5] Craig-McFeely, P.M., L.V. Wilton, J.B. Soriano, et al., "Prospective Observational Cohort Safety Study to Monitor the Introduction of a Non-CFC Formulation of Salbutamol with HFA134a in England," *International Journal of Clinical Pharmacology and Therapeutics*, 41:67-76, 2003.

exemption for 2006 is pending for consideration by the Parties to the Montreal Protocol in November 2004. The Parties will not approve U.S. essential use exemption requests indefinitely. Therefore the projected impacts in tables 2 and 3 of this document, may overestimate actual impacts because the analysis assumes approval of essential use exemptions through 2015. In fact, the Montreal Protocol's technical review group and many parties already have informally discussed a target date of 2005 for discontinuing exemptions for albuterol CFC MDIs. They may believe this target date is warranted because, for some time now, there have been at least two alternatives to albuterol CFC MDIs in the United States and other developed countries that appear to meet the medical needs of patients. However, in many countries, the price differential between the albuterol CFC MDIs and albuterol HFA MDIs is less than that in the United States, and medication reimbursement is handled differently in these countries. By virtue of having albuterol HFA alternatives available, many other developed countries have achieved a phaseout of albuterol CFC MDIs already and virtually all will do so earlier than 2010 or 2015. Therefore, these Parties to the Montreal Protocol have already questioned, and are likely to continue to question, why the United States has not made similar progress. This questioning on the part of other developed countries could affect future U.S. nominations for essential-use CFCs.

Another issue that should be considered in determining an appropriate effective date is the availability of pharmaceutical grade CFCs for use in MDIs. We have received a comment on the Stakeholder's petition from Honeywell (Docket No. 2003P-0029/C9). The comment states that Honeywell has been informed by the government of the Netherlands that production of CFCs will not be permitted at Honeywell's Weert, Netherlands plant past the end of 2005. The Weert plant is currently the only source of pharmaceutical grade CFCs used in the United States. Honeywell also said that they planned to renew production of certain pharmaceutical-grade CFCs this year at a plant in Baton Rouge, Louisiana that previously produced these CFCs and that they would be able to ship the pharmaceutical grade CFCs to customers this year also. We have no reason to disbelieve Honeywell's statements that they will have the capacity to supply the domestic demand for pharmaceutical grade CFCs from their Baton Rouge plant. However it is worth noting that Honeywell has not produced pharmaceutical grade CFC-11 or CFC-12 at Baton Rouge since 1995, and we cannot be certain that Honeywell will meet their goals.

Accordingly, the decision on what timeframe to use for removing the domestic essential-use status of albuterol must take into account several factors. On the one hand, it must consider the potential but uncertain health benefit that may result from ensuring a stable price for albuterol MDIs for a long period of time. Conversely, it must take into account several significant possibilities: that the United States will not be able to procure a long-term exemption for albuterol; that a unilateral U.S. action permitting use of albuterol CFC MDIs for up to a decade longer than other developed nations is likely to lead the parties to the Montreal Protocol to impose a more abrupt reduction in the exemption granted the United States; and that, in the near term, it is possible there may be a disruption in supply of pharmaceutical-grade CFCs. Based on our preliminary analysis, we have tentatively concluded that patients will be adequately served by albuterol HFA MDIs within the timeframes discussed in this document; therefore we are initiating rulemaking at this time. We hope that comments received on this proposed rule will further establish the adequacy of the HFA products to meet patients' needs (including issues of cost and access), as well as the potential risks to patients of misjudging the degree to which CFCs may continue to be available for albuterol MDIs, to help us establish an optimal effective date for albuterol CFCs no longer to be designated essential.

V. Potential Effective Dates

Setting an appropriate effective date for the elimination of the essential use designation for albuterol MDIs is one of the key aspects of this proposed rulemaking. No albuterol CFC MDIs can be legally marketed in the United States after the effective date of the final rule based on this proposal. We are particularly interested in receiving comments on what would be an appropriate effective date for this rulemaking.

As we discussed in section IV.B of this document, we have tentatively concluded that capacity to produce adequate supplies of non-ODS albuterol MDIs could be in place no sooner than 12 months after date of publication in the **Federal Register** of any final rule based on this proposed rule. An effective date that does not allow the creation of adequate production capacity would not be appropriate, and persons submitting comments on an effective date should keep this consideration in mind.

Section 505(b)(1) of the act (21 U.S.C. 355(b)(1)) requires that persons submitting NDAs to FDA include information about all patents that claim the drug for which the NDA is submitted. We publish that information in *Approved Drug Products With Therapeutic Equivalence Evaluations* (the Orange Book). We note that the last listed patent for an albuterol HFA MDI expires in 2015. Another listed patent expires in 2010. Thus, lower priced generic versions of albuterol HFA MDIs can be expected to be marketed as early as 2010, or as late as 2015 depending on the validity of the patents involved. While we do not have the expertise to evaluate the validity of the patents, it seems at least possible that key patents could be successfully challenged well before 2015 or perhaps even 2010, allowing generic drugs to enter the market much earlier than anticipated. We welcome comments from interested parties on when patents may cease to bar the marketing of generic albuterol HFA MDIs. In addition we seek comments on the feasibility of generic manufacturers obtaining rights to use patented technology before the expiration of the patents. While the availability of lower-priced generic albuterol HFA MDIs should remove any concerns that patients might not be adequately served by alternatives to albuterol CFC MDIs due to the higher prices of albuterol HFA MDIs, the future availability of generics may not be relevant to the ability of the United States to continue to receive exemptions for albuterol CFC MDIs (see section IV.D of this document).

The year 2010, in addition to its potential significance for patents on albuterol HFA MDIs, will be a major milestone in the regulation of ODSs under the Montreal Protocol. Beginning January 1, 2010, production and importation of new CFCs would be generally banned in all parties that are countries that are parties to the Montreal Protocol, both economically developed and less-developed countries (See paragraphs 4 and 8 of Article 2A of the Montreal Protocol (as amended)). There is an exception to this general ban for essential uses, but as we discussed in section IV.D of this document, the parties to the Montreal Protocol will be more reluctant to allocate CFCs for essential uses as time passes. We believe that the United States should take all appropriate action to support the global phaseout of CFCs, and eliminating the essential use for albuterol CFC MDIs,

before January 1, 2010, may be such an appropriate action.

Having weighed the public health, economic, and environmental impacts associated with this determination, we have tentatively concluded that currently no date after December 31, 2009, appears to be a practical effective date for this rulemaking, just as no date earlier than 12 months after publication of a final rule would appear to be a practical effective date. In any case, our current intention is to establish the earliest effective date that will adequately protect the public health of the United States. We invite comments on an appropriate effective date for the final rulemaking. Persons submitting comments on an appropriate effective date may wish to discuss how suggested effective dates would affect supplies and production capacity of non-ODS albuterol products and how different dates would affect the degree to which patients are adequately served by the non-ODS products. Interested persons may wish to comment on effective dates that are later than 2009 or earlier than 12 months after publication of the final rule.

VI. Decision XV/5

The parties to the Montreal Protocol held their 15th meeting at Nairobi, Kenya on November 10 through 14, 2003. The parties agreed to Decision XV/5, which states that no essential uses of CFCs will be authorized for parties that are developed countries at the 17th meeting of the parties (Autumn 2005), or thereafter, unless the party requesting the essential-use allocation has submitted an action plan. Among other items, the action plan is required to include a specific date by which the party will cease requesting essential-use allocations of CFCs for albuterol MDIs to be sold or distributed in developed countries. The action plan must be submitted before the 25th meeting of the Open-Ended Working Group [6] (Summer 2005).

In addition to fulfilling our obligations under the Clean Air Act and other provisions of the Montreal Protocol, this proposed rulemaking is intended to provide the specific date after which the United States will not request essential-use allocations of CFCs for albuterol MDIs. We realize that some comments received in response to this notice of proposed rulemaking may state that it is impractical to set a specific date for this purpose. However, based on the information we currently have, we believe that it will be both practical and desirable to establish a specific phaseout date for albuterol CFC MDIs.

[6] The Open-Ended Working Group (OEWG) was established in 1989 at the first meeting of the parties to the Montreal Protocol held in Helsinki. The OEWG, among other duties, considers proposals for amendments and adjustments to the Montreal Protocol and prepares consolidated reports based on the reports of various scientific, technical, and economic panels. These proposals and reports may then be subsequently acted on by a meeting of the parties to the Montreal Protocol.

VII. Environmental Impact

We have carefully considered the potential environmental effects of this action. We have tentatively concluded that the action will not have a significant adverse impact on the human environment, and that an environmental impact statement is not required. Our initial finding of no significant impact and the evidence supporting that finding, contained in a draft environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. We invite comments on the draft environmental assessment. Comments on the draft environmental assessment may be submitted in the same way as comments on this document (see **DATES**).

VIII. Analysis of Impacts

A. Introduction

We have examined the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) (UMRA), and the Congressional Review Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This proposed regulation is considered an economically significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." Currently, such a statement is required if costs exceed about $110 million for any one year. The Congressional Review Act requires that regulations determined to be major must be submitted to Congress before taking effect.

The removal of the essential-use designation for ODS propellants used in albuterol MDIs will result in the elimination of low-priced generic versions of these products until protective patents for the HFA product expire. Assuming that the generics have otherwise received FDA approval, low-priced generic albuterol HFA MDIs can be expected to be marketed as soon as legally permissible, i.e., when the relevant patents for albuterol HFA MDIs expire or are successfully challenged. Currently, two versions of albuterol MDIs are available using an ozone-safe propellant, but at a price close to the higher prices of branded products using ODSs. Thus, we project that removal of the essential-use designation for albuterol MDIs before the albuterol HFA MDIs patents expire will result in higher consumer prices for this important medication for asthma and COPD unless and until generic versions of albuterol HFA MDIs become available. During this period, despite the relatively inelastic demand for medicines generally, the higher prices will discourage some patients from buying albuterol. Nonetheless, early removal of the essential-use designation for ODSs used in albuterol MDIs provide some marginal environmental and health gains related to reduced risk of skin cancers and cataracts and increase expected returns to research and development of new environmentally preferable technologies.

We note that the parties to the Montreal Protocol may decide to cease providing the United States and all other countries with exemptions for CFCs for albuterol prior to the time when the U.S. patents will expire (see discussion in section IV.D of this document). This decision may occur based on the simple availability of alternatives. In addition, a decision by the United States not to phase out promptly the use of CFCs in albuterol MDIs may be seen as discouraging greater efforts by other countries to comply with the Montreal Protocol.

Any economic analysis of prospective government actions needs to begin with a baseline from which to assess those actions. Standard practice is to use as a baseline the state of the world absent the rulemaking in question, or, where this implements a legislative requirement, the world absent the statute. In this world, generic albuterol MDIs containing CFCs might remain on the market indefinitely. To the extent

that consumers perceive generic albuterol HFA MDIs after they are introduced to be perfect substitutes to generic albuterol CFC MDIs, and generic producers also see the choice of propellant as immaterial, we can take a world with generic HFA MDIs as equivalent to the world where albuterol CFC MDIs are marketed indefinitely. Because the specific date by which generic albuterol HFA MDIs will be approved and marketed is uncertain, we have conducted our analyses using the dates of expiration of both the first (2010) and the last (2015) patents currently listed in the Orange Book for albuterol HFA MDIs as the likely dates for the reintroduction of generic competition. The choice of baseline for this analysis is in large part academic. The baseline does not affect the incremental costs and benefits of one phaseout date relative to another. Instead it affects only the characterization of the total benefits and costs associated with the choice of phaseout date.

Tables 2 and 3 of this document illustrate major quantifiable effects of alternative dates for removing the essential-use designation for the use of ODSs in albuterol MDIs. Table 2 of this document presents the effects assuming that generics do not enter the market until 2015, while table 3 of this document presents the same effects with an assumption that generics enter the market in 2010. In the second column of both tables 2 and 3 of this document, we present our estimates of the cumulative number of generic albuterol MDIs that would be marketed between the year the essential use is eliminated and 2015 or 2010. For example, in the 2015 scenario, elimination of the essential-use designation in the year beginning July 2006 would affect a total of 388 million generic MDIs of albuterol that would otherwise be sold between 2007 and 2015. Similarly in that scenario, elimination of the essential-use designation in July 2010 would affect 218.6 million generic MDIs of albuterol sales. In comparison, table 3 of this document shows that an estimated 169.4 million MDIs of generic albuterol would be affected by elimination of essential-use designation in 2006 and only 42.8 million in 2009. These estimates are adjusted for increases in current uses derived from projections of increased asthma prevalence based on age-adjusted population projections and stable incidence rates for the period. The estimates apply age-specific asthma incidence rates published by the Centers for Disease Control and Prevention (CDC) (Ref. 1) to mid-range population projections from the Bureau of Census. The resulting estimates of future increases in asthma prevalence were applied to the current quantity and market share of MDIs to result in projected increases in demand. The third and fourth columns in tables 2 and 3 of this document show the increased consumer expenditures associated with the purchase of branded, albuterol HFA MDIs rather than generic albuterol CFC MDIs for each year. We note that these expenditures represent primarily transfers from consumers and third-party payers to branded pharmaceutical manufacturers and are not societal costs. Since these estimates are based on average retail prices they include additional spending on parties other than the innovative drug manufacturers, including pharmaceutical distributors and the retail sector. These estimates are based on a current retail price difference of approximately $23 between branded and generic albuterol CFC MDIs derived below using data from the IMS National Prescription Audit *Plus*™; 1st Quarter 2004 (extracted April 2004). As we do not have a single "best" estimate of U.S. retail prices we discuss different data suggesting larger and smaller price differences. Future expenditures are discounted to 2006 using both 7 percent and 3 percent annual discount rates in accordance with Office of Management and Budget Circular A–4. For example, the present value of increased consumer expenditures in table 2 of this document is expected to be about $6.9 billion if essential-use designations are removed in 2006 (at 7 percent), but are $5.9 billion if 2007 is the date at which the essential use is ended. The present value of these expenditures (transfers) in table 3 of this document for a 2006 removal is $3.5 billion (at 7 percent), and $2.6 billion if 2007 is the decision year. As discussed in the following paragraphs, we expect that between 10 and 15 percent of these expenditures are out-of-pocket payments from patients, between 65 and 70 percent represent payments from private third-party payers, and the remainder (15 to 20 percent) represent increased government spending.

The fifth column in tables 2 and 3 of this document illustrates a potential reduction in therapies that may occur due to the price increase associated with the loss of cheaper generic competition. We estimate in the following paragraphs that the price increase could potentially reduce purchases and use of MDIs by several hundreds of thousands or more MDIs though there is substantial uncertainty about these estimates. We focus on a range from 400,000 to 1 million MDIs per year. The potential effect of the loss of medication on health outcomes is even more uncertain, and we have not attempted to quantify it. A recent article in the *Journal of the American Medical Association* has found, however, that increases in copayments for insured consumers can reduce utilization, and may thereby adversely attect health (Ref. 2). If it is assumed that generics cannot enter into the market until 2015, removal of essential-use designations in 2006 may result in between 3.9 and 9.7 million fewer MDIs sold over the entire period. This estimate assumes no price increase to branded HFA products for the entire period. If lower priced generic products are reintroduced in 2010, removal of essential-use designations in 2006 may result in between 1.6 and 4.0 million fewer MDIs being sold. Our estimates of reductions in canisters are based primarily on a response among the uninsured, although insured consumers may also reduce utilization in response to higher co-pays on the branded HFA albuterol MDIs (see Goldman et al., 2004 (Ref. 2)).

These estimates are based on very uncertain market responses to price changes and do not account for potential actions that may ameliorate this effect. For example, private programs such as GSK's "Bridges to Access" as well as its commitment to provide 2 million MDIs of HFA albuterol each year to physicians for distribution to patients are not explicitly accounted for in these estimates. We are unable to include the commitment to distribute free MDIs into our quantitative analysis because of uncertainty about the recipients. If the MDIs went exclusively to low income uninsured patients these estimates would likely be a large overstatement of expected effects. If the free MDIs went primarily to insured patients, the preceding estimates would remain valid.

The sixth column in tables 2 and 3 of this document illustrates the cumulative reduction in CFC emissions expected between each decision year and 2010. The cumulative reductions in CFC emissions are based on the 2004 allocation of approximately 1,400 metric tons of CFCs for albuterol MDIs that would no longer be available. If emissions were to be reduced by this amount, the levels of ozone in the stratosphere would be marginally higher, providing more protection from harmful UV–B radiation and resulting in reduced risks of skin cancers and cataracts because ozone reduces human exposure to UV–B radiation.

The final two columns of the tables present a measure of how the decision to remove essential-use designations would affect returns to the innovators of non-ODS albuterol MDI technology. We present the ratio of the value of U.S. sales discounted to 2006, relative to the value of U.S. sales if the phaseout were in 2006. This ratio also measures how returns to research and development (R&D) would be affected, as the R&D costs are independent of the phaseout date, so that their value is immaterial when the returns to R&D for one possible phaseout year are expressed relative to the returns if the phaseout were in a different year. This measure is expressed as a percent of the total returns in net gains investors would make given phaseout at the fastest possible rate, i.e., by March 2006. The numbers show the percent of that total return that investors would receive for each year's decision on essential uses.

To estimate the returns to innovative technology, we started our calculations using two manufacturers' total stated costs to research and develop non-ODS MDI technology worldwide and for all products. These expenditures were divided into the two manufacturers' share of the increased U.S. consumer expenditures for their branded products. (The National Association of Chain Drug Stores has estimated that manufacturers receive approximately 75 percent of branded prescription drug prices.) Thus, the innovating firms are expected to capture approximately 75 percent of the total annual expenditures for albuterol after the removal of the essential-use designation. The difference between this amount and their current estimated return was estimated for each year until generic competition is expected to return (2015 in table 2 of this document or 2010 in table 3 of this document). The present values of the increased streams of revenue are discounted (using both a 7-percent and a 3-percent annual discount rate) to 2006, then normalized to the present value of the increased revenues expected if 2006 is the decision year. For example, if generic competition is not expected until 2015 (table 2 of this document), a phaseout in 2007 would reduce the expected return on investment in this technology by 13 percent (using 7-percent discount rate) or 11 percent (using 3-percent discount rate). If generic competition returns in 2010, a phaseout in 2007 would reduce the expected return on investment by 27 percent (using 7-percent discount rate) or 26 percent (using 3-percent).

Returns on investment are very sensitive to the current market prices in the United States. The pharmaceutical markets of other parties to the Montreal Protocol operate with implicit or explicit price controls. These pricing agreements have depressed the potential returns to technological innovation. For example, we examined the relative prices of generic albuterol CFC MDIs and branded albuterol HFA MDIs in three European markets (United Kingdom, France, and Germany). The price difference ranged between $0.30 and $0.85 per MDI. These differences are much less than the U.S. price difference. The U.S. decision to eliminate albuterol CFC products is complicated, not only because the U.S. price difference is so large that the phaseout may limit some consumers' access to albuterol, but also because the U.S. decision has a disproportionately large effect on the returns to R&D.

TABLE 2.—MAJOR QUANTIFIABLE EFFECTS OF ALTERNATIVE DATES FOR ENDING THE ESSENTIAL-USE DESIGNATION FOR CFCs[1] FOR ALBUTEROL MDIs WITH GENERIC COMPETITION IN 2015

Year of Removal of Essential-Use Designation	Number of Affected Canisters of Albuterol (millions)	Increased Expenditures on albuterol. Present Value in 2006; (billions)		Possible Reduction in MDIs (millions)	Reduced Aggregate CFC Emissions Relative to a Phaseout in 2015 (metric tons)	Discounted Innovators' Revenue from U.S. Sales, Relative to Discounted Revenue With 2006 Phaseout	
		7-percent discount rate	3-percent discount rate			7-percent discount rate	3-percent discount rate
2006	388.0	$6.9	$7.9	3.9 to 9.7	12,600	100	100
2007	346.1	$5.9	$7.0	3.5 to 8.7	11,200	87	89
2008	303.9	$5.0	$6.0	3.0 to 7.6	9,800	75	78
2009	261.4	$4.2	$5.1	2.6 to 6.5	8,400	63	68
2010	218.6	$3.4	$4.2	2.0 to 5.5	7,000	53	57
2011	175.5	$2.6	$3.3	1.8 to 4.4	5,600	42	47
2012	132.1	$1.9	$2.5	1.3 to 3.3	4,200	33	37
2013	88.4	$1.2	$1.6	0.9 to 2.2	2,800	24	28
2014	44.4	$0.6	$0.8	0.4 to 1.1	1,400	15	18
2015	None	None	None	None	None	None	None

[1] CFC means chlorofluorocarbons.

TABLE 3.—MAJOR QUANTIFIABLE EFFECTS OF ALTERNATIVE DATES FOR ENDING THE ESSENTIAL USE DESIGNATION FOR CFCS FOR ALBUTEROL MDIS WITH GENERIC COMPETITION IN 2010

Year of Removal of Essential-Use Designation	Number of Affected MDIs of Albuterol (millions)	Increased Expenditures on albuterol. Present Value in 2006; (billions)		Possible Reduction in MDIs (millions)	Reduced Aggregate CFC Emissions Relative to a Phaseout in 2015 (metric tons)	Discounted Innovators' Revenue from U.S. Sales, Relative to Discounted Revenue With 2006 Phaseout	
		7-percent discount rate	3-percent discount rate			7-percent discount rate	3-percent discount rate
2006	169.4	$3.5	$3.7	1.6 to 4	5,600	100	100
2007	127.5	$2.6	$2.8	1.2 to 3	4,200	73	74
2008	85.3	$1.7	$1.8	0.8 to 2	2,800	47	49
2009	42.8	$0.8	$0.9	0.4 to 1	1,400	23	24
2010	None	None	None	None	None	None	None

B. Objective of the Proposed Rule

The objective of the proposed rule is to reduce emissions of ODSs, specifically CFCs. CFCs and other ODSs deplete the stratospheric ozone that protects the Earth from ultraviolet solar radiation. FDA is proposing to end the essential-use designation for ODSs to be used in albuterol MDIs, given that two ODS-free albuterol MDIs have been successfully marketed in the United States for more than 2 years, and these MDIs may provide patients with adequate access to these medications. Under this proposal, albuterol CFC MDIs would no longer qualify for an essential use, so the essential use designation will cease when the rule goes into effect.

C. Current Conditions

1. CFCs and Stratospheric Ozone

During the 1970s, scientists became aware of a relationship between the level of stratospheric ozone and industrial use of CFCs. Ozone (O_3), which causes respiratory problems when it occurs in elevated concentrations near the ground, shields the Earth from potentially harmful solar radiation when in the stratosphere. Excessive exposure to solar radiation is associated with adverse health effects such as skin cancer and cataracts, as well as adverse environmental effects. Emissions of CFCs and other ODSs reduce stratospheric ozone concentrations through a catalytic reaction, thereby allowing more solar radiation to reach the Earth. As a result, environmental scientists advocated ending the use of these chemicals. An effort to craft a coordinated international response to this global environmental problem culminated in the historic 1987 Montreal Protocol. This Protocol now has been ratified by 186 parties. The current procedures to nominate essential uses and allocation of CFCs under the Montreal Protocol are described in section III.B of this document. At the November 2003 meeting, the parties to the Protocol decided that all parties must announce prior to the Open-Ended Working Group meeting in summer 2005, a date by which they would no longer seek an essential-use designation for CFCs for albuterol MDIs.

2. Effects of the Montreal Protocol

Since the Montreal Protocol has been in place, overall usage of CFCs has been dramatically reduced. In 1986, global consumption of CFCs totaled 1,078,634 metric tons. By 2000, global consumption had fallen to 96,058 metric tons (Ref. 3). This decline amounts to about a 90-percent drop and is a key measure of the success of the Protocol. Within the United States, emissions of CFCs have also fallen sharply—about 80 percent from 1990 to 2000 when measured as the sum of CFC-11 and CFC-12.[7]

EPA has generated a series of estimates of the public health benefits of the Montreal Protocol (see The Benefits and Costs of the Clean Air Act: 1990–2010, *http://www.epa.gov/air/sect812/1990-2010/fullrept.pdf* (Benefits and Costs) (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document has published in the **Federal Register**)). These include hundreds of millions of nonfatal avoided skin cancers, 6 million fatal avoided skin cancers, and 27.5 million avoided cataracts, all between the years 1990 and 2165 (see Benefits and Costs, Table G–4). In dollar terms EPA estimated these and related benefits to sum to $4.3 trillion in present value when discounted at 2 percent over the period of 175 years (see Benefits and Costs, Table G–7). This amount is equivalent to $6 trillion after adjusting for inflation between 1990 and 2003. These estimates include all the benefits of total worldwide emission reductions expected from the Montreal Protocol, and are based on reductions from a baseline that assumes future increases in emissions of CFC and all other ozone depleting substances in the absence of the protocol (see Benefits and Costs, page G–13). EPA does not report, however, any information about the magnitude of the emissions reductions associated with its benefits estimates. Thus, these estimates are of little help in evaluating the economic impacts of this rulemaking.

We believe that a reduction in emissions of CFCs from MDIs would result in public health gains in the United States, and that these gains could be magnified if other countries follow suit and further reduce emissions.

3. Asthma

Asthma is a chronic respiratory disease characterized by episodes or attacks of bronchospasm on top of chronic airway inflammation. These attacks can vary from mild to life-threatening and involve shortness of breath, wheezing, cough, or a combination of symptoms. Many factors, including allergens, exercise, viral infections, and others, may trigger an asthma attack.

[7] This sum is valid, as their ozone depleting potentials are equal. See *http://www.epa.gov/ozone/ods.html.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document has published in the **Federal Register**.)

According to the National Health Interview Survey (NHIS), 31.3 million people in the United States have been diagnosed with asthma during their lifetime, and 20.3 million of them are currently being treated for asthma (National Center for Health Statistics, 2003). The prevalence of current asthma decreases with age, with the prevalence being 87 per 1,000 children ages 0-17 years (6.3 million children) compared to 69 per 1,000 adults 18 years and over (14 million adults).

Asthma attack prevalence, or the number of people who had at least one asthma attack during the previous year, is considered by CDC to be a crude indicator of how many people have uncontrolled asthma and are at risk for a poor outcome from asthma, such as hospitalization. In 2001, 12 million people (about 60 percent of the people who had asthma) reported experiencing an asthma attack in the previous year. Asthma attack prevalence tends to decrease with age; 57 per 1,000 children ages 0-17 years (4.2 million children) had an asthma attack during the previous year compared to 38 per 1,000 adults (7.8 million adults).

NHIS reported there were 10.4 million outpatient asthma visits to physician offices and hospital clinics during 2000. In addition, there were 1.8 million emergency room visits; 465,000 hospital admissions; and 4,487 mortalities associated with asthma. The estimated direct medical cost of asthma (hospital services, physician care, and medications) was $10.4 billion (Ref. 4).

While the prevalence of asthma, or the proportion of the U.S. population with asthma, has been increasing, the incidence of asthma, the rate of new diagnoses of asthma, has remained fairly constant since 1997, according to CDC (Ref. 1). Non-Hispanic blacks, children under 17 years, and females have higher incidence rates than the general population and also have higher asthma attack prevalence. CDC notes that although a numeric increase has occurred in the numbers and rates of physician office visits, hospital outpatient, and emergency room visits, these increases are accounted for by the increase in prevalence. This phenomenon might indicate early successes by asthma intervention programs that include access to medications.

4. COPD

COPD has been defined as the physiologic finding of non-reversible impairment of lung function. While there is some overlap between asthma patients and COPD patients, COPD encompasses a group of diseases characterized by relatively fixed airway obstruction associated with breathing-related symptoms (e.g., chronic coughing, expectoration, and wheezing). COPD is generally associated with cigarette smoking and is extremely rare in persons younger than 25 years of age.

According to CDC, an estimated 10 million adults were diagnosed with COPD during 2000 (Ref. 5). Because such diagnoses have usually been based on patient-reported symptoms, the NHIS suggests that as many as 24 million Americans are actually affected by the disease. Between 1980 and 2000, the rate of COPD in females increased relative to males. However, the proportion of the U.S. population with mild or moderate COPD has declined over the last quarter century, suggesting increases seen in recent decades may not continue indefinitely. The most effective intervention in modifying the course of COPD is smoking cessation. However, symptoms, such as coughing, wheezing, and sputum production are treated with medications.

5. Current U.S. MDI Market

Patients in the United States currently use MDIs with 12 approved medications—active ingredients—for treatment of asthma and COPD. According to updated data originally presented in 64 FR 47719, approximately 120 million prescription MDIs are sold per year. Albuterol is the only ingredient available in both CFC and HFA MDIs and is also the only prescription MDI available from generic manufacturers, although patents have expired for 9 of the 12 medications (Ref. 6).

Branded, private-label branded, and generic versions of albuterol MDIs account for about 40 percent of all MDI prescriptions, or about 50 million per year. During 2002, about 40 million prescriptions were for private label branded and generic versions of the product.

Two versions of albuterol MDIs are now available with HFA as a propellant. The first patent for albuterol HFA MDI technology will expire on July 6, 2010. Additional patents expire through June 16, 2015. We are not currently aware of any other marketing exclusivities.

We use price data from several sources because we lack comprehensive detailed data that are representative of prices faced by consumers whose behavior is most likely to be affected by this rule—uninsured and underinsured asthma and COPD patients of low to modest incomes. A key source is a private company, IMS Health, which provides marketing data on drug products. A recent FDA analysis of the average national retail price of drugs in "brick-and-mortar" pharmacies (i.e., chain, independent, and foodstore pharmacies, excluding Internet, mail order and long-term care pharmacies) found that median prices for generic albuterol MDIs are about 48 percent of the brand price for VENTOLIN (ODS), when prices are measured using the average pharmacies' revenues from uninsured customers, insured customers, and Medicaid beneficiaries alike. See *http://www.fda.gov/cder/consumerinfo/savingsfromgenericdrugs.htm*. We have analyzed the same IMS data set, National Prescription Audit *Plus*™; 1st Quarter 2004 (extracted April 2004), and find that the median price per MDI for generic albuterol MDIs is $19.70, and that the price per MDI for albuterol HFA MDIS is $43.00.[8] These prices imply a price difference of $23.00 and should be seen as approximate in part, because they change over time. Over the preceding year HFA MDI prices rose by almost 8 percent. Therefore, these prices are not necessarily comparable to prices for cash-paying customers because they reflect the average price for all payer types.

Manufacturers also report price data in the form of average wholesale prices (AWP) per prescription as noted in the Red Book (Ref. 7). For generic albuterol MDIs, the AWP reported from this reference was about $25 in 2002. However, according to utilization data from the Medicaid drug rebate program, the average Medicaid reimbursement for generic albuterol MDIs during 2002 was $27.29.[9] The AWP for branded albuterol CFC MDIs was approximately $35 per MDI during 2003. The reported AWP for albuterol HFA MDIs is also approximately $35. These prices have remained fairly constant since 2000.

The federal supply schedule (FSS) established by the Department of Veterans Affairs (*http://www.vapbm.org/PBM/prices.htm*) provides yet another source of information on prices (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document has published in the **Federal Register**). It indicates that the HFA MDI with the larger market share is priced

[8] We calculate the HFA price as follows: Retail revenues for PROVENTIL HFA and for VENTOLIN HFA for the quarter ending in March 2004, divided by total canisters dispensed. We calculate the number of canisters dispensed as the number of grams of active ingredient times the grams per canister (6.7 grams for PROVENTIL HFA, and 18 for VENTOLIN HFA).

[9] Utilization Data from the Medicaid Drug Rebate Program, Centers for Medicare and Medicaid Services. July 28, 2003.

significantly lower than the other HFA MDI: $14.30 versus $26.50 per MDI. The other FSS prices are all lower than the IMS prices by various amounts. Ten products, however, have no FSS price, so that broader generalizations about these prices are very problematic.

Alternative medications for the treatment of asthma and COPD available in MDIs have reported average wholesale prices between $30 and $50 per prescription (Ref. 7).

Finally, we have conducted an informal assessment of retail MDI prices that offers evidence of price differences at the retail level for uninsured customers. A March 24, 2004, examination of *http://www.drugstore.com*'s (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document has published in the **Federal Register**) prices revealed that a generic albuterol MDI was 60 percent less expensive than branded PROVENTIL (ODS) or VENTOLIN (ODS) MDIs ($13.99 versus $38.10 and $35.99, respectively). PROVENTIL HFA and VENTOLIN HFA were priced at a small premium of 4 to 8 percent over the branded CFC equivalents (e.g., one MDI of PROVENTIL HFA was $39.60 and one MDI of VENTOLIN HFA was $38.99).

For our analysis we use a range of price differences for the ratio of the branded HFA MDI price to the generic MDI price. As a lower bound we use 1.2, reflecting the price difference based on IMS data and as an upper bound we use 1.8, reflecting the price differences reported using Internet price data. Note that the first estimate reflects all retail prices in all brick and mortar pharmacies, including uninsured and insured patients. The second estimate reflects only prices for cash-paying customers on the Internet.

D. Benefits of Earlier Phaseout Dates

There are four categories of benefits of earlier dates to eliminate the essential-use designation for ODSs in albuterol MDIs: controlled transition from CFC MDIs to HFA MDIs that avoids any ambiguity in the authorization of the parties to produce and market CFCs and MDIs containing CFCs, the environmental and human health benefits of ODS emissions reductions by the United States, the environmental and human health benefits of continued compliance by other countries with the phaseout targets of the Montreal Protocol, and perceived improvements in incentives to research and develop new and better technologies to solve environmental problems. We address these items in turn.

1. Controlled Transition to Non-CFC MDIs

Under the Montreal Protocol, manufacture of CFCs is allowed only for export to economically less-developed countries and for purposes designated as "essential," including MDIs. As discussed in section IV. D of this document, one manufacturer of pharmaceutical grade CFCs has announced plans to cease production at the current site in the Netherlands in 2005. We do not have information that conclusively shows that the Baton Rouge facility can produce adequate quantities of pharmaceutical grade CFC-11 and CFC-12. Consequently, a benefit of a 2006 phaseout date is that it would avoid a possibility of a shortfall in MDI production due to the unavailability of CFCs after the plant in the Netherlands ceases production in 2005.

2. Value of Reduced ODS Emissions

In an evaluation of its program to administer the Clean Air Act, EPA has estimated that the benefits of controlling ODSs under the Montreal Protocol are $6.0 trillion.[10] However, EPA's report provides no information about the tons of emissions reduced or the value of reducing CFC emissions by one more ton. Moreover, EPA's reports provide no information about the total emissions reductions associated with its benefits estimates. Therefore we cannot use those reports as a basis for estimating benefits of reducing ODS emissions from MDIs. As a share of total global emissions, a few years' of CFC emissions from MDIs in the United States would represent only a small fraction of a percent. In fact, the current U.S. allocation of CFCs for albuterol MDIs accounts for about 0.1 percent of the total 1986 global consumption of CFCs.[11] Furthermore, current U.S. CFC emissions from MDIs represent a much smaller but unknown share of the total emissions reduction associated with EPA's estimate of $6 trillion in benefits from the Montreal Protocol, because that estimate reflects avoided growth in emissions over many decades. FDA solicits comment on how to analyze further the benefits of CFC and other ODS emission reductions. We believe that the direct benefits of this proposed regulation are small relative to the overall benefits of the Montreal Protocol. More importantly, however, we have been unable to assess how these reduced UV–B radiation related health effects would compare to the possible negative public health impacts associated with more years of reduced access to inexpensive generic albuterol.

3. International Cooperation

The Montreal Protocol, like most international environmental treaties, relies primarily on a system of national self-enforcement. However, it does include significant trade sanctions for noncompliance. Moreover, execution of its directives is in many respects subject to differences in national implementation procedures. Economically less-developed nations, which have a more protracted phaseout schedule, have emphasized in previous meetings of the parties the importance to their own national programs of continued progress by developed nations (such as the United States) in eliminating CFC production. As noted previously, if the United States adopts a relatively later phaseout date, other parties to the Montreal Protocol may decide to alter their own adoption of control measures. Conversely, parties that have already achieved an early phaseout of albuterol CFC MDIs by conversion to the same alternatives currently available in the United States may promote a decision to phase out albuterol CFC MDIs in all developed countries by a specified date in the near future, which could prevent an orderly transition away from CFC MDIs and could also raise compliance issues for the United States under the Montreal Protocol. Thus, the advantages of selecting a date that maintains international cooperation in implementing the remaining measures required by the Montreal Protocol are potentially substantial. Selection of a date seen to be unsuitable could have adverse environmental and human health consequences (e.g., if all countries interpret U.S. action as a license to consume 1,400 additional tons of CFCs per year).

4. Encouraging Innovation

Earlier phaseout dates not only reward the developers of the HFA technology, but also would serve as a signal to potential developers of other environmentally benign technologies. In particular, earlier phaseout dates would promote the perception that the incentives to research and develop such technologies are relatively high.

Newly developed technologies to reduce ODS emissions have resulted in more environmentally "friendly" air conditioners, refrigerants, solvents, and propellants. Several manufacturers have

[10] See *http://www.epa.gov/air/sect812/1990-2010/ch_apg.pdf*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document has published in the **Federal Register**.)

[11] See United Nations Environmental Programme; "Production and Consumption of Ozone Depleting Substances: 1986–2000"; 2003 (Ref. 1).

claimed development costs that total between $250 and $400 million to develop HFA MDIs and new propellant free devices for the global market (Ref. 8).

These investments have resulted in several innovative products in addition to albuterol HFA MDIs. For example, breath-activated delivery systems, dose counters, dry-product inhalers, and mini-nebulizers have also been successfully marketed. This technology could also affect other medications used for the treatment of asthma and COPD because of the likelihood that all CFC allocations may be revoked at some future date. However, currently only two albuterol HFA MDIs are marketed in the United States, accounting for less than 5 percent of albuterol MDI prescriptions.

Earlier removal of the essential-use designation for albuterol MDIs will increase the overall returns on these investments, thereby serving to encourage future research in related areas.

The expected revenue increases for HFA MDIs that would follow the removal of the essential-use designation for ODSs in albuterol MDIs in the United States would be large. With an estimated $43 per MDI cost for albuterol HFA MDIs, manufacturers of branded HFA MDIs would increase revenues by about $850 million per year, based on historical returns to manufacturers of branded products. These revenue gains are based on innovating firms capturing the current generic market for albuterol and receiving 75 percent of the retail price of the HFA product with the remainder kept by distributors and retailers. Innovating firms have claimed total costs of R&D for non-ODS MDIs globally and for all products to be between $250 and $400 million per firm. No other market provides the potential for such significant returns on investment because of the low difference between generic and branded prices. European prices have typically shown differences of less than $1.00, which limit the potential gains on investment from these markets.

E. Costs of Earlier Phaseout Dates

The key cost of earlier dates to discontinue use of albuterol CFC MDIs is the potential decline in consumption of such MDIs that may result from the price increase that would accompany loss of generic products. Patients respond to price increases of medicines for chronic conditions in a way that may adversely affect their health. A recent paper by Goldman et al. reported that:

* * *copayment increases led to increased use of emergency department visits and hospital days for the sentinel conditions of diabetes, asthma and gastric acid disorder: predicted annual emergency department visits increased by 17 percent and hospital days by 10 percent when copayments doubled* * *,

though they characterize these results as "not definitive" (Ref. 2). These data suggest that increased prices for albuterol medication may lead to some adverse public health effects in the United States among populations who would pay increased prices. This evidence is insufficient, however, to permit us to quantify the adverse effects of an albuterol price increase on public health. We adopt two complementary approaches to estimate the potential change in MDI use that may result from the expected increase in market price of albuterol MDIs when albuterol CFC MDIs are taken off the market. In both instances, we focus on aggregate MDI use because it provides an overall measure of whether patients are adequately served, that is, whether high-priced non-ODS products may be effectively unavailable to a portion of the patient population because the high price discourages them from buying MDIs.

Our first approach simply assumes that the only effect of an elimination of albuterol CFC MDIs from the market would be an increase in the average price of albuterol MDIs. We ignore any changes in the price of albuterol HFA MDIs that removal of the essential use designation for albuterol may cause. Given the projected price increase and existing estimates of the market response to the price increase, we project how the quantity of albuterol MDIs consumed may decline.

Our second approach assumes that the effects of removing albuterol CFC MDIs from the market can be inferred from the effects of the introduction of generic products. We describe these two approaches in turn.

To apply the first approach, we need to start with estimates of market price. As previously discussed, the Internet prices and the IMS retail prices suggest that delisting albuterol as an essential use would imply price increases of 180 and 120 percent, respectively.

We have no information about how consumers react to increases in the price of MDIs per se, and the price of "rescue" type MDIs such as albuterol bronchodilators in particular, which are used in more emergency cases. Economists have written many articles about the response of consumers to higher insurance copayments for drugs generally, however, and these appear to be concentrated in the range of -.1 to -.2, meaning that a 10 percent increase in insurance copayments appears to lead to a reduction in the number of prescriptions of between 1 and 2 percent (Ref. 9). One recent paper suggests a somewhat larger estimate for antiasthmatic medications. Based on an analysis of nearly 530,000 people enrolled in 52 health plans over 4 years, Goldman et al., 2004, report that as the average copayment for antiasthmatics doubles, the average number of days of treatment supplied fell by more than 30 percent. Albuterol was one of the most common antiasthmatic drugs in their sample (Ref. 10). Given that a doubling of the copayment amounts to a 100 percent increase in the effective (out of pocket) price, this results suggests an elasticity for antiasthmatics of -.3. The authors also report, however, that the effect of price of consumption falls as fewer substitutes are available. For drugs with no over the counter substitutes—a set that presumably includes albuterol—the effect is only 0.15, while for drugs with close substitutes available over the counter the effect rises to 0.32. A doubling of the average copayment of $12.85 is a slightly smaller price increase in both absolute and relative terms than might be expected from the delisting of albuterol, as explained in the following paragraphs.

We assume that elasticity estimates derived from increases in copayments are applicable to forecasting the demand response among uninsured patients. Assuming that 15 percent of the 40 million generic albuterol MDIs now marketed annually are sold to uninsured patients, and a price elasticity of demand of 0.05, a 120 increase in price would lead to a reduction in demand in this population of about 360,000 MDIs per year (40 million x 15 percent x .05 price elasticity x 120 percent price increase). Given the obvious uncertainty we round this estimate to 400,000 MDIs per year. A similar calculation using the price difference observed on the Internet and assuming that demand is more sensitive to price would yield a higher estimate. In particular the sale of albuterol MDIs would drop by slightly more than a million MDIs annually given a price difference of 1.8 and a price elasticity of demand of 0.1. The elasticity consistent with the Goldman paper for products without substitutes available OTC—0.15-would imply a market effect of 1.6 million MDIs not sold.

These forecasts require several caveats. First, they apply estimates of consumer behavior developed from very small price changes to a large price change. This application may not be warranted. Second, these forecasts

assume that the elimination of albuterol CFC MDIs from the market would not affect other factors, such as advertising. Finally, and most importantly, these estimates ignore the GSK plan to distribute 2 million free MDIs per year. Clearly, GSK's plan could substantially reduce the projected loss in consumption of MDIs if its 2 million free MDIs were distributed to the patients whose consumption of MDIs is most sensitive to price. Given the limitations in the data, we cannot develop an estimate free from these caveats.

In an effort to corroborate this estimate, we tried to develop a completely independent approach borrowing from the experience of markets when generics are first introduced. Estimates of the market response to the introduction of a generic product should provide information about how markets respond when a generic product is eliminated. One study (Ref. 10) examined the effects of generic competition on pharmaceutical markets, and offers suggestive, but not definitive, evidence. It estimates how the prices and quantity of drugs sold vary with the number of generic competitors. The authors note that the total quantity of drugs sold after generic competition began initially increased and then decreased. The authors note that the variable response reflects both the impact of lower prices and the decline in advertising by the manufacturer of the branded product. The largest identified response, a 3-percent increase in the quantity of drugs sold, occurs after four to five generic products have been introduced. With further entry, consumption falls relative to the level it had with no generics because the effect of greater competition on increasing consumption is more than offset by the effect of diminished advertising.

This research suggests that any effect on consumption by the removal of generic albuterol MDIs may be quite small. However, there are several limitations. First, the peak response in terms of the increase in the number of prescriptions (3 percent) is dependent on a statistically insignificant response. Second, the number of generic albuterol CFC MDIs currently marketed exceeds the four to five entries associated with the peak quantity response relative to the no-generics scenario.

These analyses suggest that a reasonable range of estimates for the potential reduction in the quantity of albuterol MDIs sold could range from about 400,000 per year to more than 1 million per year. We derive the estimate of 400,000 fewer MDIs as a reduction of 1 percent of the 40 million generic albuterol MDIs currently sold each year. We present 1 million as a reasonable upper bound but note that the research allows the possibility that the true response will be greater.

We also note that the assumption that prices of HFA MDIs would remain constant may be inappropriate. Many economic models suggest that reducing the number of products that compete in a market will tend to raise prices, other things remaining equal. However, since one manufacturer (GSK) has announced a voluntary price freeze on its albuterol HFA MDIs (i.e., it voluntarily agreed to not change its price), we have assumed stable prices for this analysis.

The withdrawal of ODSs as propellants for albuterol MDIs may affect pricing of the 15 active moieties available for treatment of asthma and COPD, including albuterol HFA MDIs. However, generic albuterol HFA MDIs will not be available until current patents no longer bar generic competition. We believe the albuterol market is attractive to potential generic marketers and competition will reenter this market as soon as possible. Until generic albuterol HFA MDIs enter the market, however, the average price for albuterol MDIs in the event that albuterol CFC MDIs are discontinued will be significantly higher than the current price. The availability of other therapies for the treatment of asthma and COPD (such as dry powder inhalers) may provide sufficient competition to avoid any additional price effects.

GSK has stated that sufficient supplies of albuterol HFA MDIs would be available within 12 to 18 months of notification of removal of the essential-use designation. Therefore, we do not believe inadequate supplies of these products would occur after the removal of essential-use designations through notice-and-comment rulemaking.

F. Insurance and Third Party Payers

According to the Department of Census, about 85 percent of the population has some health insurance coverage (Ref. 11), while according to the National Council of Prescription Drug Plans (NCPDP), about 80 percent of all health plans offer drug coverage (Ref. 12). Together, these imply that about 35 percent of the population has no prescription drug coverage and must pay for medications out of pocket. However, the recent Medicare Prescription Drug Improvement and Modernization Act increased the proportion of the population covered by a prescription drug insurance plan. Overall, based on discussions with NCPDP, we expect that the patient population will consist of approximately 15 percent uninsured, 20 percent insured by public sources (Medicare, Medicaid, Department of Veterans Affairs, etc.), and 65 percent insured privately. (These estimates are for analysis purposes and are rounded for ease of estimation. They are not meant to be precise estimates of coverage.) The uninsured sector of the population may be particularly affected by the expected increase in price with the loss of generic competition.

This effect has been noted by the innovating manufacturers. GSK has pledged to supply up to 2 million albuterol HFA MDIs to physicians for free distribution to low income patients. They also have long provided private programs, such as "Bridges to Access" and others to provide access to needed medications. We believe that any potential access problems may be ameliorated by programs such as these and specifically request comment on them in order to better analyze their potential impact on maximizing patient access to therapies.

Patients who use more MDIs than average may incur greater than average costs as a result of the expected price increase. Extrapolating data from one long-term Canadian study that tracked asthma patients over many years, and included information on the number of MDIs used by asthmatics who had received at least 3 prescriptions for asthma during any one period from 1975 to 1991 (Ref. 13), about 1 million patients may use 6 or more MDIs of medication a year. Assuming that 15 percent of these are uninsured, and face a conservative out-of-pocket price increase of $23 per MDI, then about 150,000 patients would pay $138 or more per year for their medications. Higher differences in prices, such as the $25 difference in Internet prices reported above would lead to proportionately much greater increases in spending.

The loss of generic products may also affect co-payment rates in that most carriers require a higher per prescription copayment for branded rather than generic products. For example, a patient may pay $22 per prescription for a branded drug, but only $10 for a generic substitute. However, if there is no generic substitute, most plans provide the lower copayment (Ref. 12). Patients in plans that offer co-insurance rates for prescription coverage would face higher out-of-pocket costs because of the loss of generic products.

To assess the population of users of albuterol we asked the Agency for Healthcare Research and Quality

(AHRQ) to use the Medical Expenditure Panel Survey (MEPS) for 2000 and 2001 to estimate how many low- or moderate-income people without health insurance or with inadequate used albuterol MDIs. The results of that assessment suggest the following.

- There are about 620,000 low and moderate income users of albuterol MDIs that have no health insurance or that have no group health insurance. The 95 percent confidence interval for this estimate is approximately 470,000 to 770,000 users. Low and moderate income in this context means belonging to a family whose income is less than 400 percent of the Federal poverty line.
- The prescriptions per user per year among low- and moderate-income users who have no insurance or no group insurance are about 3.8, somewhat greater than the 2.9 prescriptions among all users irrespective of income or insurance status.
- The average price per prescription for users of albuterol MDIs who were low or moderate income and either uninsured or without group health insurance, was $25.40, but only $22 if they bought generic. AHRQ did not report the price of branded products, or the price of the HFA MDIs, however, so no comparison between generic and branded prices is possible.
- Of all users of albuterol MDIs, approximately 88 percent use generics, while for the low and moderate income patients with non-group insurance or no insurance, only 80 percent use generics.

The average expenditures on albuterol MDIs for the low or moderate income user without group health insurance or any insurance were $97 per year. An increase in price of $23 per MDI would mean additional out of pocket health care costs of about $43 million per year for this group.

G. Small Business Impact

We believe the proposed rule is likely to have a significant impact on a substantial number of small entities. Current HHS guidance suggests that 3 to 5 percent impact of small entity's revenues could constitute a significant regulatory impact (Guidance on Proper Consideration of Small Entities in Rulemakings of the U.S. Department of Health and Human Services; May 2003). Because of this, we have prepared an initial Regulatory Flexibility Analysis (IRFA) and invite comment from any affected entities. In addition, the proposed rule is considered a significant rule under UMRA, and alternatives are examined and briefly discussed here.

1. Affected Sector and Nature of Impacts

The affected industry sector includes manufacturers of pharmaceutical products (NAICS 32514). We obtained data on this industry from the 1997 Economic Census and estimated revenues per establishment. Although other economic measures, such as profitability, may provide preferable alternatives to revenues as a basis for estimating the significance of regulatory impacts, we do not believe it would change the results of this analysis.

The impact of this proposed rule on generic manufacturers is the lost revenues generated by sales of generic albuterol CFC MDIs. While "lost revenues" are an imperfect measure, because production resources could be shifted to alternative markets, they provide a measure that suggests the magnitude of the impact.

SBA has defined as small any entity in this industry with fewer than 750 employees. According to Census data, 84 percent of the industry is considered small. The average annual revenue for a small entity is $26.6 million per entity. Of the 40 million generic or relabeled prescriptions for albuterol, about 30 million were dispensed by a large innovative firm under a different label (Warrick). According to IMS, the remaining 10 million dispensed generic or relabeled prescriptions were marketed by eight different companies. Each company sold an average of about 1.25 million MDIs. According to data collected by the Congressional Budget Office (Ref. 14), the value of shipments from manufacturers of generic drug products accounts for approximately 35 percent of the retail price of the product. If so, revenues from 1.25 million MDIs would approximate $10 million per year, or about 40 percent of annual revenues for a small entity. We believe this constitutes a significant impact on a substantial number of small entities.

2. Alternatives

We are considering the effect of removing the essential-use designation for ODSs in albuterol MDIs for each year between 12 months after issuance of a final rule on this subject and December 31, 2009. There is no difference in the expected annual effect on small entities in any of the examined years. However, if generic competition with HFA albuterol was available prior to the removal of the essential-use designation any impact on small entities would be eliminated. But this alternative is not being considered at this time because it would not meet the objective of meeting the requirements of the Montreal Protocol.

3. Outreach

The Montreal Protocol and Clean Air Act have been in place for more than a decade. Manufacturers of albuterol CFC MDIs have long known that CFCs would eventually lose their essential-use designations for this purpose. However, we will specifically solicit comments from small entities on ways the proposed rule may affect their businesses.

H. Conclusion

The proposed rule could result in increased health care expenditures of about a billion dollars for each year between the reintroduction of generic competition in this market and the selected year for removing the essential-use designation.

We project that higher prices may reduce the MDIs sold by between 400,000 and 1 million per year for each year without generic competition, though this estimate ignores GSK's offer to distribute free MDIs because we are unable to quantify how many of these MDIs would go the people who would otherwise reduce MDI purchases because of the higher prices. In addition, each earlier year after removing the essential-use designation will avoid about 1,400 metric tons of CFC emissions and provide increased investment returns for innovators of ODS-free technology. Removing the essential-use designation will also meet requirements of international agreements and avoid the potential disruption of complete withdrawal of CFC allocation. Finally, we believe the removal of the essential-use designation for this purpose will result in a significant impact on a substantial number of small entities, but this impact can be ameliorated by adjusting the effective date of the rule.

IX. References

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

1. Mannino, D.M. et al., "Surveillance for Asthma—United States, 1980–1999," *Morbidity and Mortality Weekly Report*, 51(SS01):1–13, March 29, 2002.

2. Goldman, J. et al., "Pharmacy Benefits and the Use of Drugs by the Chronically Ill," *The Journal of the American Medical Association*, May 19, 2004; 291:2344–2350, 2349.

3. United Nations Environmental Programme, "Production and Consumption of Ozone-Depleting Substances 1986–2000," 2003.

4. Weiss, K.B. et al., "Trends in the Costs of Illness for Asthma in the United States,

1985–1994," *Journal of Allergy and Clinical Immunology*, 106(3):493–499, September 2000.

5. Mannino, D.M. et al., "Chronic Obstructive Pulmonary Disease Surveillance—United States, 1971–2000," *Morbidity and Mortality Weekly Report*, 51(SS06):1–16, August 2, 2002.

6. Food and Drug Administration, Center for Drug Evaluation and Research, *Approved Drug Products with Therapeutic Equivalent Evaluations*, 23rd Edition, 2003.

7. Drug Topics, *Red Book*, Thomson Medical Economics, 2002.

8. Rozek, R.P., and E.R. Bishko, "The Impact on Patients and Payers of Designating Albuterol a Non-Essential Use of an Ozone-Depleting Substance," National Economic Research Associates, September 8, 2003.

9. Ringel J.S. et al., "The Elasticity of Demand for Health Care," National Defense Research Institute, Rand Health, 2002.

10. Goldman, Dana, private communication, May 29, 2004.

11. Caves, R.E. et al., "Patent Expiration, Entry, and Competition in the U.S. Pharmaceutical Industry," *Brookings Papers on Economic Activity, Microeconomics*, 1991.

12. Bureau of Census, "Health Insurance Coverage: 2001," Current Population Reports, U.S. Department of Commerce, September 2002.

13. Communication between Mr. Thomas Bizzaro, Vice-President of the National Council of Prescription Drug Plans, and Mr. Steven A. Tucker, Food and Drug Administration, June 23, 2003.

14. Suissa, S. et al., "Low-Dose Inhaled Corticosteroids and the Prevention of Death from Asthma," *New England Journal of Medicine*, 343(5):332–336, 2000.

15. Congressional Budget Office, "How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry," July 1998.

X. The Paperwork Reduction Act of 1995

We have tentatively concluded that this proposed rule contains no collection of information. Therefore clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have tentatively determined that the rule does not contain policies 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. Consequently, we do not currently plan to prepare a federalism summary impact statement for this rulemaking procedure. We invite comments on the federalism implications of this proposed rule.

XII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this proposal. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Clean Air Act and under authority delegated to the Commissioner of Food and Drugs, after consultation with the Administrator of the Environmental Protection Agency, it is proposed that 21 CFR part 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

§ 2.125 [Amended]

2. Section 2.125 is amended by removing and reserving paragraph (e)(2)(i).

Dated: June 8, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–13507 Filed 6–9–04; 4:09 pm]

BILLING CODE 4160–01–S

Notices

Federal Register
Vol. 69, No. 115
Wednesday, June 16, 2004

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

Forest Service

Grand Mesa-Uncompahgre-Gunnison National Forests; Dry Fork Federal Coal Lease-by-Application (COC–67232)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service (FS) will prepare an Environmental Impact Statement (EIS) to disclose the environmental and human effects of underground coal mining within the Dry Fork Lease-by-Application area, and to identify terms and conditions needed to protect non-mineral resources consistent with the Grand Mesa, Uncompahgre and Gunnison (GMUG) National Forests Land and Resource Management Plan (Forest Plan). ArkLand Company of St. Louis, MO submitted a competitive coal lease-by-application (LBA) to the BLM—Colorado State office for about 1,517 acres of federal coal reserves. Named the Dry Fork LBA tract (Dry Fork tract), the application is for lands generally located in Sections 35 and 36, T 13 S, R 90 W; and Sections 1, 2, 11 and 12, T 14 S, R 90W, 6th PM, in Gunnison County, about 4 miles southeast of Somerset, Colorado. The land surface is National Forest System lands administered by the GMUG, and the mineral estate is administered by the BLM.

The FS and cooperating agencies will conduct the environmental analysis considering the most likely mining scenarios and reasonably foreseeable alternatives. Under the requirements of the Mineral Leasing Act, as amended by the Federal Coal Leasing Amendments Act, the FS will identify terms and conditions for the protection of non-mineral resources. This would allow identification of the measures required for minimizing effects to non-mineral resources consistent with the Forest Plan, and provide a basis for a reasonable estimate of the tract's recoverable coal reserves. The proposed action is to consider the lands in the tract for leasing by competitive bid and subsequent mining by underground methods; identify terms and conditions necessary for the protection of non-mineral resources; and to concur to any subsequent mining and reclamation plan(s).

The EIS process for this project will include preparation of a reasonably foreseeable mining scenario for the Dry Fork tract that will be used as the basis for determining effects. The most likely access to the coal reserves would be through the existing West Elk Mine. Mining would be entirely underground, using predominantly longwall methods. Surface disturbance during the life of the lease will likely include several exploration drill holes and methane drainage wells, with associated road construction. The disturbed areas would be reclaimed when no longer needed. Land subsidence similar to that experienced over other areas mined with underground methods in the adjacent and surrounding areas is expected.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The agency invites written comments and suggestions on the issues related to the proposed action and the area being analyzed. Information received will be used to prepare the Draft and Final EIS and to make the agency decision.

DATES: Comments concerning the scope of the analysis must be received within 30 days from the date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected January 2005 and the final environmental impact statement is expected June 2005.

ADDRESSES: Send written comments to Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, CO 81416, ATTN: Liane Mattson, Leaseable Minerals Program Leader. Fax may be sent to (970) 874–6698. Telephone (970) 874–6697.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Liane Mattson, Grand Mesa, Uncompahgre and Gunnison National Forests, phone (970) 874–6697, or *lmattson@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the action is to lease additional Federal coal reserves in the Dry Fork LBA tract for economic development and production of the coal, consistent with applicable laws and regulations.

Proposed Action

The proposed action is to consent to leasing National Forest System lands in the Dry Fork LBA tract for development and production of federal coal reserves, consistent with applicable laws and regulations, including terms and conditions for protecting non-coal resources.

Lead and Cooperating Agencies

The USDA, Forest Service will be the lead agency. The USDI, Bureau of Land Management and the USDI-Office of Surface Mining Reclamation and Enforcement will participate as cooperating agencies.

Responsible Official

The Responsible Forest Service Official is the Grand Mesa, Uncompahgre and Gunnison National Forest Supervisor (now vacant), 2250 Highway 50, Delta, CO 81416.

Nature of Decision To Be Made

The decision to be made is whether or not to consent to the BLM offering for lease of federal coal reserves in the Dry Fork LBA tract, and to prescribe conditions for the protection of non-coal resources.

Scoping Process

Scoping will include mailing letters to known interested parties on the GMUG mailing list, publishing a legal notice in the *Grand Junction Sentinel*, and presenting the proposal to local coal activity interest groups.

Preliminary Issues

Issues and alternatives to be evaluated in the analysis will be determined through scoping. The primary issues are expected to include: The socioeconomic

benefits of mining, effects of transporting the coal, and the potential impacts of underground mining and mining-induced subsidence on surface and ground water resources (including perennial streams); wildlife (including threatened, endangered, sensitive and management indicator species); topographic surface, land stability, soils and geologic hazards; vegetation (including impacts to riparian vegetation and associated habitat); cultural resources; existing land uses, including recreation, roadless character, existing roads/facilities, visual resources and livestock management, and cumulative impacts. Direct, indirect and cumulative impacts (when considered together with past, present and reasonable foreseeable cumulative actions in the area) effects, will be disclosed.

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. Agency representatives and other interested people are invited to visit with Forest Service at any time during the EIS process. Two specific time periods are identified for the receipt of comments on the proposal. The two comment periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45-days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Also, comment during this 45-day comment period is required to establish eligibility to appeal the final decision under 36 CFR part 215.

Dated: June 3, 2004.

Larry M. Hill,

Acting Forest Supervisor.

[FR Doc. 04–13503 Filed 6–15–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Mesa, Uncompahgre and Gunnison National Forests; Robin Redbreast Unpatented Lode Claim Mining Plan of Operations; Hinsdale County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: A proposed Plan of Operations has been submitted for approval. The Forest Service will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of access and mine development the Robin Redbreast unpatented lode mining claim. The Robin Redbreast Lode mining claim is located in the NE 1/4, Section 34, Township 45 North, Range 6 West, New Mexico Principle Meridian, Hinsdale County, Colorado. The Robin Redbreast mine, an unpatented lode mining claim, was located in 1938 in Porphry Basin on the Uncompahgre National Forest. It is recorded in the Hinsdale County Courthouse, Lake City, Colorado. The most recent approved operating plan is dated August 1983.

The Robin Redbreast Lode mining claim is located at an elevation of 11,400 feet in the Uncompahgre Wilderness Area, established first as the Big Blue Wilderness in 1980, and changed to the Uncompahgre Wilderness in the 1993 Colorado Wilderness Act. The If the Plan Of Operations is approved as proposed, mining operations at the Robin Redbreast site, and travel to and from the mine would occur within designated Wilderness. The Forest Service will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of access and mine development of the Robin Redbreast Lode mining claim.

The EIS will comply with the requirements of the National Environmental Policy Act (42 U.S.C. 4321–4370a), the National Forest Management Act (16 U.S.C. 1600–1614), and the U.S. mining laws (30 U.S.C. 21–54), and their implementing regulations.

DATES: Comments concerning the proposal and the scope of the analysis will be accepted and considered at any time after publication of this notice in the **Federal Register** and prior to a decision being made. To be most helpful in the design of the analysis, comments should be received within 45 days of publication of this NOI in the **Federal Register.**

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during December 2004. When a draft EIS is available the EPA will publish a Notice of Availability (NOA) in the **Federal Register.** The comment period on the draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register**. The final EIS is expected to be available in June 2005.

ADDRESSES: Send written comments to Jeff Burch, Grand Mesa, Uncompahgre and Gunnison National Forest, Supervisor's Office, 2250 Highway 50, Delta, CO 81416. Electronic mail (e-mail) may be sent to *jburch@fs.fed.us* and FAX may be sent to (970) 874–6698. Telephone: (970) 874–6649.

FOR FURTHER INFORMATION CONTACT: Jeff Burch, Environmental Coordinator, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416. Telephone: (970) 874–6649.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The project would serve to meet the goal of the developent and production of precious metals, gold and silver, from the Robin Redbreast unpatented mining claim.

Proposed Action

Proposed Mine Operations

An open field area adjacent to the Middle Fork trailhead #227 is proposed for the project staging area to be used during construction and development of the operation. This trailhead is outside of the Wilderness.

Proposed ground access to the mine site is by foot, horseback, or mule-train via an existing single track Wilderness trail, Forest Service Trail #227. Helicopter access is proposed for approximately two days per month to ferry equipment and supplies. Surface facilities necessary to support mining would involve clearing and terracing of two separate sub-alpine sites: One approximately 70 by 90 feet in size, and another approximately 200 by 170 feet in size. Facilities to be placed at each of these sites would include a shop, fuel containment area, a powder and primer magazine, a generator shed, an ore storage and sorting pad, and a waste rock storage area. A small support cabin was constructed during past mining activity and is located approximately 75 feet from the proposed mining area. A rubber tired Bobcat sized loader and slusher would be used at the mine site for surface preparation and underground mining and hauling.

Two portals and associated mine tunnels totaling approximately 650 feet in length would be constructed to reach the ore body. Once the ore body is reached, ore removed from the mine would be sorted by hand on site. Higher grade ore would be loaded onto pack mules, packed out to the trail head in the Middle Fork of the Cimarron via Forest Service Trails #227 and #243, and then trucked daily off the Forest in a one-ton pickup truck. It is anticipated at this time that over the course of mine development a total of 2550 tons of waste rock will be generated. However, the true extent of the ore body, which can not be known at this time, will how much waste rock will will eventually be produced. The submitted plan of operations proposes that during mining operations, a mule-train, including eight mules and two horses with riders, would make two trips a day, originating at the trail head and going to and from the mine site. Also proposed are daily pickup truck trips on existing state highways and improved Forest Development roads, from Montrose to the trailhead and back, and twice monthly helicopter trips to and from the mine site.

Timber needed to support mining operations would be cut from the surrounding forest, on the mining claim, using standing dead trees first, but green timber if necessary. Living quarters for four to five workers would be the existing cabin. Drinking water would come from Porphyry Creek, which flows through the claim. Chemex self-contained toilets are proposed for use near the cabin and at the mine sites. Fuel storage pads would be constructed to hold up to 1375 gallons at any one time. The extent of the ore body, if one does exist, is not known. It is impossible at this time to anticipate the precise duration of mining activities at this site. The expected duration is five to ten years, dependent again upon actual extent of the ore body. Operations are proposed to take place between May and November because of heavy winter snows at this elevation. Reclamation of the site would be required at the end of mining operations. Sufficient bond to ensure compliance will be required.

Possible Alternatives

At this time a possible alternative staging area for helicopter loading further down the valley of the middle fork of the Cimarron has been identified. It is located near the point at which the Middle Fork road (FDR #861) departs from the main road accessing the Silverjack area. Also, an alternative livestock staging area and trail head for this operation will be considered. Additionally, an alternative of removing ore by helicopter rather than by mule train may be explored.

Lead and Cooperating Agencies

The Forest Service is the lead agency. There are no cooperating agencies.

Responsible Official

The Forest Supervisor, (now vacant), Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416 is the official responsible for making the decision on this action. He/she will document his/her decision and rationale in a Record of Decision.

Nature of Decision To Be Made

It is the purpose of the analysis, and of the decision that follows it, to allow Robert and Marjorie Miller to exercise their right to mine within their unpatented lode mining claim while protecting National Forest resources and values, consistent with the General Mining Law of 1872 as amended, with other applicable law regulation and policy, and with the standards and guidelines in the Grand Mesa, Uncompahgre, and Gunnison National Forest Land Management Plan. The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The nature of the Forest Service decision to be made in response to the Plan Of Operations submitted by Robert W. and Margorie Miller is: (1) Approve the project as proposed, or (2) Notify the operator of changes or additions to the Plan Of Operations necessary to minimize or eliminate adverse environmental impacts from mineral activities on National Forest System (NFS) lands, as required by Forest Service Regulations (36 CFR part 228A).

The Grand Mesa, Uncompahgre, and Gunnison National Forest Supervisor (Responsible Official) has determined that preparation of the EIS is required for approval of the Plan Of Operations under Forest Service regulations governing locatable mineral activities on National Forest System Lands (36 CFR 228A) and CEQ regulations implementing the National Environmental Policy Act (40 CFR 1501–1508). It is not the purpose of the analysis to determine management of mineral resources. The responsibility for that determination lies with the Secretary of the Interior.

Scoping Process

Scoping for this project will consist of this notice in the **Federal Register**, mailing of this notice to parties known to be interested, a news release for publication in local newspapers, and notification of local elected representatives. At this time no public meetings are planned.

Preliminary Issues

Preliminary issues identified so far include: Effects of helicopter noise on recreation experience in Wilderness and there surrounding National Forest, including the Silverjack Reservior area; effects of livestock staging and use at the Middle Fork (#243) trail head, and on trails to Porphyry Basin (trails #243 and 227); effects of mining and access on Wilderness; effects of access and

hauling on Forest roads and trails; effects of mining operations on surface and sub-surface waters; effects of mining operations on cultural or historic properties; effects of mining operations on wildlife, plant life and ecosystems; effects of mining operations on recreation experience, and on opportunities for users of the area during and after mining operations; and effects on the long term condition of the site.

Permits or Licenses Required

Additional permits or licenses which may be required in addition to Forest Service authorizations include, but are not limited to the following: Department of the Army (Section 404 of the Federal Clean Water Act) Permit for dredge and fill of wetlands or waters of the United States; Permit from Colorado Department of Public Safety (Section 402 of the Federal Clean Water Act) addressing storm-water run-off; Environmental Protection Agency approval of Spill Prevention, Control, and Countermeasures Plan; Colorado Division of Minerals 110 Limited Impact Permit. In addition water rights for use of water from Porphyry Creek will need to be obtained.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Public scoping describing the Plan of Operations associated with the Robin Redbreast Lode mining claim is being initiated with this Notice of Intent. Comments from this scoping effort will be reviewed to identify potential issues for this analysis. While comments are welcome at any time, comments received within 45 days of the publication of this notice in the **Federal Register** will be most useful for the identification of issues and the analysis of alternatives. The name and mailing address of commenters should be provided with their comments so that future documents pertaining to this environmental analysis and the decision can be provided to interested parties.

In the final EIS, the Forest Service will respond to any comments, received during the public comment period, that pertain to the environmental analysis. Those comments and the Forest Service responses will be disclosed and discussed in the final EIS and will be considered when the final decision about this proposal is made.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Also, comment during this 45-day comment period is required to establish eligibility to appeal the final decision under 36 CFR part 215.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 3, 2004.

Larry M. Hill,

Acting Forest Supervisor.

[FR Doc. 04–13504 Filed 6–15–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest Noxious Weed Management EIS; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to manage noxious weeds (invasive plant species) on the Kootenai National Forest. The project includes the entire Kootenai National Forest. Counties included in the analysis area are Lincoln, Sanders, and Flathead in Montana, and Boundary and Bonner in Idaho.

DATES: *Scoping comment date:* Written comments or suggestions concerning the scope of the analysis should be postmarked by July 19, 2004.

ADDRESSES: The Responsible Official is Bob Castaneda, Forest Supervisor, Kootenai National Forest, 1101 Hwy 2 West, Libby, MT 59923. Written comments and suggestions concerning the scope of the analysis may be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: Contact Lou Kuennen, Team Leader, Kootenai National Forest Supervisor's Office, 1101 Hwy 2 W, Libby, MT 59923, phone (406) 293–6211.

SUPPLEMENTARY INFORMATION: The analysis area is the entire Kootenai National Forest, approximately 2.2 million acres. The purpose and need of this project is to: (1) Prevent or discourage introduction and establishment of newly invading weed species on Forest land; (2) prevent or limit spread of established weeds into areas with few or no infestations on Forest land; (3) restore native plant communities and improve forage on specific big game summer and winter ranges; (4) treat weeds near the Forest boundary where adjacent landowners are interested in or are currently managing weeds; (5) limit spread of weeds into and within wilderness areas. Both ground and aerial application of herbicides is proposed to control noxious weeds. This application of herbicides will be part of Integrated Pest Management (IPM). The other areas of IPM are cultural, biological (bioagents),

and mechanical control as well as prevention and education. Noxious weeds generally possess one or more of the following characteristics: aggressive and difficult to manage, poisonous, toxic, parasitic, a carries or host of serious insects or disease, and generally non-native. They also have a probability of causing economic or environmental damage. Specific areas of ground application will vary depending on weed locations. Potential areas of aerial applications have been identified and involve approximately 29,000 acres.

Range of Alternatives: The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives will examine ground and aerial herbicide application as well as respond to the issues and other resource values.

Public Involvement and Scoping: Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues;
2. Identifying issues to be analyzed in depth;
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis;
4. Exploring additional alternatives;
5. Identifying potential environmental effects of the proposed action and alternatives (*i.e.*, direct, indirect, and cumulative effects and connected actions); and
6. Determining potential cooperating agencies and task assignments.

Estimated Dates for Filing: The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 2005. At that time EPA will publish a notice of availability (NOA) of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA's NOA appears in the **Federal Register**. It is very important that those interested in the management of invasive plants on the Kootenai National Forest participate at the time.

Reviewer's Obligations: Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so it is meaningful and alerts the agency to the reviewer's position and contentions, (*Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 U.S. 519, 553 (1978)). Also environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (*see* the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). It is also helpful if comments refer to specific pages or chapters of the draft document.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing FEIS. The FEIS completion date is scheduled for August 2005. The Forest Service is required to respond, in the FEIS, to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in a Record of Decision. That decision will be subject to appeal under 36 CFR 215.

Responsible Official: Bob Castaneda, Forest Supervisor of the Kootenai National Forest, is the Responsible Official (Decision Maker). As the Decision Maker he will decide if the proposed project will be implemented and will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: June 7, 2004.

Frank Votapka,

Acting Forest Supervisor, Kootenai National Forest.

[FR Doc. 04–13530 Filed 6–15–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 0405426162–4162–01]

Trade Adjustment Assistance for Firms Program

AGENCY: Economic Development Administration (EDA); Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: The mission of EDA is to lead the Federal economic development agenda by promoting innovation and competitiveness, which will prepare American regions for growth and success in the worldwide economy. EDA administers the Trade Adjustment Assistance (TAA) for Firms Program (the "Program") to assist manufacturing and production firms, which have lost domestic sales and employment due to increased imports of similar or competitive goods (a "trade-impacted firm"), become more competitive in the global economy. EDA administers the Program through a national network of Trade Adjustment Assistance Centers (TAACs).

With funding from EDA, TAACs assist trade-impacted firms by (i) preparing and submitting petitions to EDA for certification of eligibility necessary to apply for assistance under the Program (a "certified firm"), (ii) assisting certified firms in developing and submitting for EDA approval adjustment proposals and (iii) sharing in the cost of implementing (primarily through private sector consultants) the technical assistance tasks as set forth in approved adjustment proposals. 13 CFR 315(8)(c). The Program also benefits certain organizations assisting or representing trade-impacted manufacturing or production firms. Firms (or organizations representing firms) other than manufacturing or production firms (*e.g.*, service industries) are not eligible for benefits under the Program.

Through this competitive solicitation, EDA is seeking proposals from organizations to administer the Program for the State of New Jersey. The applicant selected will operate a TAAC to serve the State of New Jersey for a twelve-month period encompassing the remainder of FY 2004 and a portion of FY 2005.

DATES: Proposals must be received by the EDA Office of Strategic Initiatives at the below address by July 15, 2004 at 4 p.m. (EDT). Proposals received after 4 p.m. (EDT) on July 15, 2004 will not be considered for funding. By August 15, 2004, EDA will notify applicants as to

whether they will receive funding under this competition solicitation. It is anticipated that the successful applicant will be funded no later than September 30, 2004; however, there is no guarantee that the successful applicant will receive funding. Proposals that were not recommended for funding will be retained by EDA for one year, at which time such proposals will be destroyed.

ADDRESSES: Applications submitted under this competition solicitation may be mailed to the address below or hand-delivered to Room 1874 at the address below:

Anthony Meyer, U.S. Department of Commerce, Economic Development Administration, Office of Strategic Initiatives, Room 7812, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 482–2127 (not a toll free call).

Facsimile or electronic submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: The full Federal Funding Opportunity announcement for this competitive solicitation is available through EDA's Web site, *http://www.eda.gov*, and at *http://www.grants.gov* or you may contact the EDA Program Officer listed above. Note that EDA intends to transfer administrative responsibility for the Program to its regional offices during FY 2004. When the transfers occur, administrative responsibility for the New Jersey TAAC will be transferred to EDA's Philadelphia regional office.

SUPPLEMENTARY INFORMATION:

Electronic Access: EDA is not currently able to accept electronic submissions of proposal packages. The full FFO announcement for the FY 2004 Trade Adjustment for Firms Program competition is available through EDA's Web site, *http://www.eda.gov*, and at *http://www.grants.gov*.

Funding Availability: For FY 2004, EDA has a total of $11,874,000 in appropriations available for the Program. EDA expects to allocate $738,395 to the TAAC serving the State of New Jersey. EDA typically awards funding to a TAAC for a twelve-month period, although EDA may extend such awards. *See* 13 CFR 315.5, .7(a)(i). Due to the close relationship between EDA and the New Jersey TAAC, EDA will fund the New Jersey TAAC under a cooperative agreement.

Statutory Authority: Chapters 3 and 5 of Title II of the Trade Act of 1974, as amended (Pub. L. 93–618, 19 U.S.C. 2341 *et seq.*), and as further amended by 97–35, 98–120, 98–369, 99–272, 99–514, 100–418, 103–66, 105–277 and 107–210.

CFDA: 11.313, Economic Development—Trade Adjustment Assistance.

Eligibility: A university affiliate, State or local government affiliate, or a nonprofit organization is an eligible TAAC applicant and may submit a proposal pursuant to this competitive solicitation. 13 CFR 315.4(a).

Cost Sharing Requirements: Under the Program, a matching share is not required for certification assistance provided by TAACs to certified firms or for administrative expenses of the TAAC. Note that certain income will likely be generated by the TAAC as a certified firm must, to the extent practicable, pay the TAAC at least 25 percent of the costs of preparing the certified firm's adjustment proposal. 13 CFR 315.7(b)(1), (2). The TAAC will retain such funds and use them to support its Program activities.

It is EDA's policy that certified firms pay part of the costs of consultants hired to assist in implementing the technical assistance tasks set forth in the certified firm's approved adjustment proposals. If the total amount of technical assistance requested is $30,000 or less, the certified firm is generally required to pay at least 25 percent of the consultant costs. If the total amount of technical assistance requested is above $30,000, the certified form is generally required pay at least 50 percent of the consultant costs. The TAAC's total share of consultant costs for technical assistance is generally limited to $75,000 for any one certified firm.

Intergovernmental Review: Applications submitted under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Evaluation and Selection Procedures: The Office of Strategic Initiatives will conduct an initial administrative review of each proposal package to determine its completeness and compliance with the requirements set forth in this competition solicitation. Incomplete proposals or proposals received after July 15, 2004 filing deadline will not be considered. The Office of Strategic Initiatives will then conduct a technical review of each proposal meeting the requirements of this competition solicitation. The technical review will be conducted by a minimum of three full-time EDA staff members using the criteria provided under the section entitled Evaluation Criteria. The review panel will evaluate each proposal and make its recommendation to the Selecting Official. The Chief of Staff, Economic Development Administration, Department of Commerce, is the Selecting Official. Upon receiving the review panel's recommendation, the Selecting Official may (i) choose not to make any selection, (ii) follow the recommendation of the review panel, or (iii) substitute one of the lower ranking proposals. The Selecting Official may select a lower ranking proposal for several reasons, including the priorities set forth in the "Program Priorities" section below, the investment policy guidelines set forth in the "Evaluation Criteria" section below and the applicant's performance under previous awards.

Evaluation Criteria: Applications for the proposed TAAC will be competitively evaluated on their ability to meet or exceed the following investment policy guidelines (each criterion will be given roughly equivalent weight):

(1) *Be market-based and results driven.* A successful TAAC proposal will capitalize on the organization's strengths and will bolster the competitiveness of trade-impacted firms, resulting in tangible and quantifiable improvements in the firm's economic health, such as retained or increased numbers of jobs, increased sales, or increased private sector investment.

(2) *Have strong organizational leadership.* A successful TAAC proposal will demonstrate strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a high-performing TAAC. EDA will specifically evaluate (a) the extent to which the proposed TAAC will maximize coordination with other relevant organizations (*e.g.*, the Manufacturing Extension Partnerships and private industry groups) to foster collaboration and to avoid duplication of services offered by other organizations, and (b) the sponsoring organization's degree of support and commitment to the proposed TAAC's mission.

(3) *Advance productivity, innovation and entrepreneurship.* A successful TAAC proposal will embrace the principles of entrepreneurship and focus on improving the stability of trade-impacted firms through productivity improvements and innovative solutions to the challenges facing their industries.

(4) *Look beyond the immediate economic horizon and anticipate economic changes.* A successful TAAC proposal will describe and set forth a comprehensive strategy for assisting trade-impacted firms in identifying and addressing both current and probable future problems.

Program Priorities: EDA encourages the submission of proposals that will significantly benefit trade-impacted manufacturing and production firms. EDA expects to proposals to demonstrate familiarity or an ability to quickly become familiar with the core TAAC objectives and activities outlined in the **SUMMARY** section above and in the FFO for this competitive solicitation.

Announcement and Award Dates: By August 15, 2004, EDA will notify applicants as to whether they will receive funding under this competition solicitation. It is anticipated that the successful applicant will be funded no later than September 30, 2004; however, there is no guarantee that the successful applicant will receive funding. Proposals that were not recommended for funding will be retained by EDA for one year, at which time such proposals will be destroyed.

The Department of Commerce Award Notification Requirements for Grants and Cooperative Agreements

Administrative and national policy requirements for all Department of Commerce awards are contained in the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, published in the **Federal Register** on October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109). These notices may be accessed by entering the **Federal Register** volumes and page numbers noted in the previous sentence at the following GPO Web site *http://www.gpoaccess.gov/fr/retrieve.html.*

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Forms ED–900P, SF–424A, SF–424–B and CD–346 have been approved by OMB under the control numbers 0610–0094, 0348–0044, 0348–0040 and 0605–0001, respectively. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: June 9, 2004.

Mary Pleffner,

Acting Assistant Secretary for Economic Development.

[FR Doc. 04–13547 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061004A]

Proposed Information Collection; Comment Request; Application for Commercial Fisheries Authorization Under Section 118 of the Marine Mammal Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 16, 2004.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Lawson, 301–713–2322, or at *Patricia.Lawson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act requires any commercial fisher operating in Category I and II fisheries to register for a certificate of authorization that will allow the fisher to take marine mammals incidental to commercial fishing operations. Category I and II fisheries are those identified by NOAA as having either frequent or occasional takings of marine mammals.

Some states have integrated the National Marine Fisheries Service (NMFS) registration process into the existing state fishery registration process and fishers in those fisheries do not need to file a separate federal registration. If applicable, vessel owners will be notified of this simplified registration process when they apply for their state or Federal permit or license.

II. Method of Collection

Fishers mail in an application for exemption made available to them in the NMFS regions and through fishery organizations. at fishing docks, on NMFS web page, etc. Renewal notifications are mailed to registered fishers and must be returned through the mail with the required registration fee.

III. Data

OMB Number: 0648–0293.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, Individuals or households.

Estimated Number of Respondents: 12,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,800 hours.

Estimated Total Annual Cost to Public: $304,550.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: June 8, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–13591 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1337]

Approval for Expanded Manufacturing Authority (Flavors and Fragrances) Within Foreign-Trade Subzones 44B, 44C and 44D, International Flavors & Fragrances, Inc.; Hazlet, Union Beach and Dayton, NJ

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 (the Board) adopts the follow Order:

Whereas, the NJ Commerce & Economic Growth Commission, grantee of FTZ 44, has applied to expand the scope of manufacturing authority under FTZ procedures for FTZ Subzones 44B, 44C and 44D (International Flavors & Fragrances, Inc. Facilities in Hazlet, Union Beach and Dayton, New Jersey); to remove the special conditions of Board Order 366 (52 FR 47437, 12/14/87); to re-designate Subzones 44B, 44C and 44D as Subzone 44B; and, to reduce the acreage of Subzone 44C (FTZ Doc. 59–2003; filed 11/4/03);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 65244, 11/19/03); 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 approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 3rd day of June 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–13493 Filed 6–15–04; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1336]

Grant of Authority for Subzone Status, American Eurocopter LLC (Helicopter and Helicopter Spare Parts); Grand Prairie, TX

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 (the 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 Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, has made application to the Board for authority to establish special-purpose subzone status at the helicopter warehousing/distribution facility of American Eurocopter LLC, located in Grand Prairie, Texas (FTZ Docket 38–2003, filed 8/4/03, and amended 1/20/04);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 47536, 8/11/03); 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 authority for subzone status at the helicopter warehousing and distribution facilities of American Eurocopter LLC, located in Grand Prairie, Texas (Subzone 39H), at the location described in the application, as amended, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 3rd day of June 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–13492 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews

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

SUMMARY: On December 10, 2003, the Department of Commerce published the preliminary results of the administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2001, through October 31, 2002. The reviews cover six manufacturers/exporters.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for these reviews are listed in the "Final Results of the Reviews" section below.

EFFECTIVE DATE: June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2003, the Department published the preliminary results of the administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews,* 68 FR 68868 (December 10, 2003) (*Preliminary Results*). We invited parties to comment on our preliminary results.

With respect to the preliminary results of the administrative review, we received comments from the petitioners and one respondent, Jinan Yipin Corporation, Ltd. (Jinan Yipin), and rebuttal comments from the petitioners, Jinan Yipin, and Shandong Heze International Trade and Developing Company (Shangdong Heze). With respect to the preliminary results of the new shipper reviews, we received comments from the petitioners and the respondent Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), and rebuttal comments from the petitioners, Harmoni, and Jining Trans-High Trading Co., Ltd. (Trans-High).

On February 3, 2004, we published a notice extending the time limit for the final results to May 17, 2004. See *Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative and New Shipper Reviews*, 69 FR 5132 (February 3, 2004). On April 23, 2004, the petitioners submitted new factual information concerning one of the respondents. While normally we would not consider accepting new factual information at such a late stage in the review, in this situation, given the nature of the allegations within the submission, we considered it appropriate to accept the information. See April 30, 2004, memorandum from Mark Ross, Program Manager, to Laurie Parkhill, Office Director. Because we required additional time to evaluate this new information and a number of other complex factual and legal questions that related directly to the assignment of antidumping duty margins in this case, on May 13, 2004, we published a notice extending the time limit for the final results to June 7, 2004. See *Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative and New Shipper Reviews*, 69 FR 26548 (May 13, 2004).

We have conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213 and 19 CFR 351.214 (2001).

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) Mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the U.S. Customs and Border Protection (CBP) to that effect.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these reviews are addressed in the Issues and Decision Memorandum, dated June 7, 2004, which is hereby adopted by this notice (*Decision Memo*). A list of the issues which parties raised and to which we respond in the *Decision Memo* is attached to this notice as an Appendix. The *Decision Memo* is a public document and is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099, and is accessible on the Web at *www.ia.ita.doc.gov*. The paper copy and electronic version of the memorandum are identical in content.

Separate Rates

In our preliminary results, we determined that Jinan Yipin, Shandong Heze, Trans-High, and Harmoni met the criteria for the application of a separate rate. We determined that Top Pearl Ltd. (Top Pearl) and Wo Hing (H.K.) Trading Co. (Wo Hing) did not qualify for a separate rate and, therefore, are deemed to be covered by the PRC-entity rate. *See Preliminary Results*, 68 FR at 68869. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations.

The PRC-Wide Rate and Use of Adverse Facts Available

Top Pearl and Wo Hing

In the *Preliminary Results*, we determined that the PRC entity (including Top Pearl and Wo Hing) did not respond to the questionnaire and, therefore, failed to cooperate to the best of its ability in the administrative review. Accordingly, we determined that the use of an adverse inference is appropriate pursuant to sections 776(a)(2)(A) and (B) and 776(b) of the Act. In accordance with the Department's practice, as adverse facts available, we assigned to the PRC entity (including Top Pearl and Wo Hing) the PRC-wide rate of 376.67 percent. For detailed information on the Department's corroboration of this rate see the *Preliminary Results* at 68870.

Jinan Yipin

With respect to Jinan Yipin, in the *Preliminary Results*, we determined that the use of partial adverse facts available was warranted in accordance with sections 776(a)(2)(A) and (C) and 776(b) of the Act to calculate the dumping margin because the respondent did not provide information critical to the calculation of an antidumping duty margin and impeded the conduct of the administrative review by not providing correct and thorough responses to our questions, before, during, and following verification. See *Preliminary Results*, 68 FR at 68871. These inadequacies related to two issues: (1) Whether Jinan Yipin reported some sales to an affiliated party as unaffiliated-party sales and (2) whether Jinan Yipin captured all of its indirect selling expenses on U.S. sales in its response. Jinan Yipin and its U.S. affiliate, American Yipin, did not act to the best of their abilities in providing the information necessary to conduct this administrative review with respect to these issues. To address the first inadequacy, we selected a rate of 376.67 percent to apply as adverse facts available to Jinan Yipin's sales to an affiliated customer that it reported as unaffiliated-party sales transactions. With respect to Jinan Yipin's failure to provide critical information for the calculation of U.S. indirect selling expenses, as partial adverse facts available we relied on a primary source of information. For a detailed discussion of the application of partial adverse facts available, please see the memorandum from Laurie Parkhill, Office Director, AD/CVD Enforcement 3, to Jeffrey May, Deputy Assistant

Secretary, Import Administration, dated December 1, 2003 (*Jinan Yipin Facts-Available Memorandum*).

We have considered the argument raised by Jinan Yipin and the petitioners in response to our preliminary determination and have addressed them in the *Decision Memo*. Based on our analysis of the parties' comments and for the reasons outlined in the *Preliminary Results*, we have not changed our determination with respect to the use of partial adverse facts available. In summary, the Department has applied adverse facts available to the sales to Jinan Yipin's affiliated customer and to the indirect selling expenses because Jinan Yipin failed to identify affiliated parties and, in particular, its affiliations to Houston Seafood and Bayou Dock in its questionnaire responses. Pursuant to sections 776(a)(2)(A) and (C) and 776(b) of the Act, the decision to apply partial adverse fact available is in response to all of Jinan Yipin's failures to cooperate to the best of its ability in providing accurate, responsive information on the record with respect to the issue of affiliated parties. For detailed information about the Department's corroboration of the information used as adverse facts available see the *Preliminary Results* at 68871–2.

Changes Since the Preliminary Results

Based on our analysis of information on the record, we have made certain changes to the margin calculations for all respondents. In addition, based on the comments received from the interested parties and changes due to verification, we have made additional revisions to the margin calculations for Harmoni, Shandong Heze, and Jinan Yipin for the final results. Company-specific changes are discussed below.

Valuation of Garlic Seed

As we discuss in response to Comment 1 of the Decision Memorandum, for the final results of these reviews we have narrowed the pricing information upon which we have relied for valuation of garlic seed to the National Horticultural Research and Development Foundation prices for the Agrifound Parvati and Yamuna Safed-3 varieties. We selected the pricing information for these varieties because, of all the varieties for which information was submitted, these two varieties match most closely the subject merchandise in terms of bulb diameter and number of cloves per bulb. This narrowing of price selection did not change the surrogate value of seed for the final results, since all of the selected prices for the *Preliminary Results* were identical.

Valuation of Insecticide

For insecticide, we were able to calculate a surrogate value more specific to Phoxim, the type of insecticide used by the respondents. For a detailed discussion *see Decision Memorandum* at Comment 4 and the memorandum from Katja Kravetsky to The File titled "Factors Valuations for the Final Results of the Administrative Review and New Shipper Reviews" dated June 7, 2004 (*Final Results FOP Memorandum*).

Valuation of Labor

For the final results, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate for 2001 that appears on the Import Administration Web site (*http://www.ia.ita.doc.gov/wages/01wages/01wages.html*). The source of the wage-rate data is the International Labor Organization's *Yearbook of Labour Statistics 2002* (Geneva, 2002), chapter 5B: Wages in Manufacturing. For the *Preliminary Results* the source of the wage-rate data was the International Labor Organization's *Yearbook of Labour Statistics 2001* (Geneva, 2001), chapter 5B: Wages in Manufacturing. The revised rate is slightly higher that the rate used for the *Preliminary Results*.

Ocean Freight

For ocean freight, we used a ranged public rate reported by a respondent in the 11/01/02–04/30/03 new shipper review and used in *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping New Shipper Reviews*, 69 FR 24123 (May 3, 2004). Because this is a rate actually incurred and paid for in a market-economy currency by a respondent in a review of fresh garlic from the PRC, we have determined that it is the most accurate rate available and we selected the public ranged figure as the surrogate value for shipments to the west coast. We adjusted this rate to arrive at a surrogate value for shipments to the east coast. For a detailed discussion, see *Decision Memo* at Comment 5 and *Final Results*.

FOP Memorandum

Application of Surrogate Financial Ratios

Based on comments received from respondents, we re-examined the annual report of Parry Agro Industries, Ltd. (Parry Agro) (the Indian tea producer we selected for surrogate financial information), and the costs that we obtained from this company's income statement and included in the numerator and denominator of the surrogate financial ratio calculations. We were not able to determine whether Parry Agro performed packing activities associated with the tea it produced as its financial information does not indicate that it incurred any packing expenses. Furthermore, in the event Parry Agro did incur packing expenses, we do not know the extent to which such expenses are included in the values we obtained from its income statement for purposes of calculating the surrogate financial ratios because packing expenses are not included as a line item or distinguished or described in the income statement in any way. Accordingly, for the final results of these reviews, in calculating the amount of overhead, selling, general and administrative expenses (SG&A), and profit included in the cost of production, we have determined not to apply the surrogate financial ratios to production costs that include packing expenses. As in the *Preliminary Results*, however, we have calculated separate surrogate values for materials and labor associated directly with packing fresh garlic from the PRC and added these packing expenses to the calculation of normal value. For a more detailed discussion of this issue see *Decision Memo* at Comment 6.

Valuation of Electricity

For the final results of these reviews, we valued electricity consumption based on the respondents' reported use of electricity unrelated to obtaining water (*e.g.*, for cold storage located at the production/processing facility). We applied the usage figures reported by the respondents to a surrogate value for electricity that we obtained from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We used this same methodology in the most recently completed preliminary results of the antidumping duty new shipper reviews covering the period November 1, 2002, through April 30, 2003. See memorandum from Katja Kravetsky to The File titled "Factors Valuations for the Preliminary Results of the New Shipper Reviews," dated April 26, 2004 at pages 5, 6, and 9.

We decided that this approach to the valuation of electricity is appropriate because it helps ensure that we capture the significant electricity costs incurred by placing the subject merchandise in cold storage and other activities that consume electricity that are specific to the production of subject merchandise (*e.g.*, fans used for drying and the strapping machine used for packing). Specifically, based on our experience in analyzing producers and exporters of

fresh garlic from the PRC, we know that placing the subject merchandise in cold storage for long periods of time is not uncommon. Moreover, this activity consumes a significant amount of electricity.

Because we are valuing electricity consumption in this manner, to avoid double-counting electricity costs, we removed the line item for "Power and Fuel" costs from the numerator of the surrogate financial ratio for SG&A. Further, because we removed the electricity costs from the calculation of the surrogate financial ratios, in calculating the amount of overhead, SG&A, and profit included in the cost of production, we have determined not to apply the surrogate financial ratios to production costs that include electricity costs. Our revised calculation of the surrogate financial ratio for SG&A appears in attachment 5 of the *Final Results FOP Memorandum*.

Cold Storage

As discussed above, significant electricity costs can be attributed to the placement of the subject merchandise in cold storage. We examined the respondents' cold-storage activities during the verifications we conducted for these reviews. See, *e.g.*, page 18 of the January 5, 2004, memorandum to the file titled "Verification of the Response of Shandong Heze International Trade and Developing Company in the Antidumping Duty Administrative Review of Fresh Garlic From the People's Republic of China". For the final results of these reviews, we valued cold storage at the production facility using an electricity surrogate value and added it to the normal value. When the subject merchandise was put in cold storage before it was processed (or when it was semi-processed) at a facility away from the production/processing facility prior to shipment, we valued cold storage using a surrogate value for cold storage, which includes electricity expenses and added it to the normal value. When the garlic was fully processed and packed, and placed into a cold-storage facility not located at the production/processing facility prior to the date of shipment from PRC, we valued it using a cold-storage surrogate value and treated it as a movement expense which we deducted from the U.S. price.

Harmoni

As a result of clerical-error comments submitted by the petitioners regarding the preliminary margin calculation for Harmoni, we made certain changes to our final margin calculation. For a detailed discussion, see the final analysis memorandum for Harmoni dated June 7, 2004.

Shandong Heze

We made changes to our margin calculations for Shandong Heze to account for pre-verification corrections and verification findings. For a detailed discussion, see the final analysis memorandum for Shandong Heze dated June 7, 2004.

Jinan Yipin

We made changes to our margin calculations for Jinan Yipin to account for pre-verification corrections and verification findings. For a detailed discussion, see the final analysis memorandum for Jinan Yipin dated June 7, 2004.

Final Results of the Reviews

For the administrative review, we determine that the following dumping margins exist for the period November 1, 2001, through October 31, 2002:

Exporter	Weighted-average percentage margin
Jinan Yipin Corporation, Ltd	115.81
Shandong Heze International Trade and Developing Company	43.30
PRC-wide rate (including Top Pearl and Wo Hing)	376.67

For the new shipper reviews we determine that the following dumping margins exist for the period November 1, 2001, through October 31, 2002:

Producer and exporter combinations	Weighted-average percentage margin
Grown By Jining Yun Feng Agriculture Products Co., Ltd. and Exported By Jining Trans-High Trading Co., Ltd	0.00
Grown and Exported By Zhengzhou Harmoni Spice Co., Ltd	0.00

Duty Assessment and Cash-Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of these reviews. Further, the following cash-deposit requirements will be effective upon publication of the final results of the administrative and new shipper reviews for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Jinan Yipin or Shangdong Heze, grown by Jining Yun Feng Agriculture Products Co., Ltd., and exported by Trans-High, or grown and exported by Zhengzhou Harmoni Spice Co., Ltd., the cash-deposit rate will be that established in these final results of reviews; (2) for all other subject merchandise exported by Trans-High or Harmoni but not grown by Jining Yun Feng Agriculture Products Co., Ltd., or Zhengzhou Harmoni Spice Co., Ltd., respectively, the cash-deposit rate will be the PRC-countrywide rate, which is 376.67 percent; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3) failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative and new shipper reviews and notice are issued and published in accordance with sections 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act.

Dated: June 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

Decision Memorandum

1. Valuation of Garlic Seed
2. Valuation of Water
3. Valuation of Cartons
4. Valuation of Insecticide
5. Valuation of Ocean Freight
6. Application of Surrogate Financial Ratios
7. Selection of Surrogate Financial Information
8. Factor Usage Rates for Production of Subject Merchandise
9. Comments With Respect to Shandong Heze
10. Comments With Respect to Harmoni
11. Comments With Respect to Jinan Yipin

[FR Doc. 04–13494 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review of certain hot-rolled carbon steel flat products from the Netherlands.

SUMMARY: On December 8, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 68341 (December 8, 2003) (*Preliminary Results*). This review covers imports of subject merchandise from Corus Staal BV (Corus Staal) to the United States during the period May 3, 2001 to October 31, 2002. Based on our analysis of the comments received, we have made changes to the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

DATES: *Effective Date:* July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2003, the Department published in the **Federal Register** the *Preliminary Results* of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands for the period May 3, 2001 to October 31, 2002. In response to the Department's invitation to comment on the preliminary results of this review, Corus (respondent) and United States Steel Corporation (USSC) and Nucor Corporation (Nucor) (collectively, petitioners) filed their case briefs on January 14, 2004. Corus, USSC, and Nucor submitted rebuttal briefs on January 23, 2004. On February 12, 2004, we published in the **Federal Register** our notice of the extension of time limits for this review. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit,* 69 FR 6939 (February 12, 2004). This extension established the deadline for this final as June 5, 2004. Since this date falls on a Saturday, *i.e.*, a non-business day, the signature date for this final is June 7, 2004.

Period of Review

The period of review (POR) is May 3, 2001 to October 31, 2002.

Scope of the Review

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM

specification (sample specifications: ASTM A506, A507).

• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated June 7, 2004, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly via the Internet at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made the following changes to the margin calculation:

• We have modified the weighting factor for the quality field in our model match hierarchy so that it consists of two digits rather than one.

• We have excluded entries which occurred between October 30, 2001 and November 28, 2001, inclusive ("gap period"), from the calculation of the dumping margin. We have also revised the calculation of the assessment rate to exclude the gap period entries from the numerator.[1]

• We have amended our margin calculation program so that for sales which occurred prior to importation, the entry date was used to define the transactions used in our analysis.

• We have revised the adjustment made to the cost of manufacturing for the unexplained difference found in Corus' cost reconciliation. The difference in the reconciliation was due to both a change in finished goods inventory and a small unexplained difference in the cost reconciliation. We have continued to adjust the cost of manufacture for the change in finished goods inventory but have no longer adjusted for the minor unexplained difference in the cost reconciliation.

• We have amended our calculation of variable costs of manufacture (VCOMH/U) to reflect the revised start-up costs (RSTARTUP).

These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period May 3, 2001 to October 31, 2002:

Manufacturer/exporter	Weighted average percentage margin
Corus	4.94

Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. As a result of the Court of International Trade's decision in *Corus Staal BV et al.* v. *United States*, Consol. Court No. 02–00003, Slip Op. 03–127 (CIT September 29, 2003), we will not assess duties on merchandise that entered between October 30, 2001 and November 28, 2001, inclusive. For more information, *see Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands: Notice of Final Court Decision and Suspension of Liquidation*, 68 FR 60912 (October 24, 2003). Thus, in accordance with 19 CFR 351.212(b)(1), we will calculate an importer-specific *ad valorem* assessment rate for merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR[2] to the total customs value of the sales used to calculate those duties. Where the importer-specific assessment rate is above *de minimis*, we will instruct CBP to assess duties on all appropriate entries of subject merchandise by that importer. This rate will be assessed uniformly on all entries of that particular importer made during the periods May 3, 2001 through October 29, 2001 and November 29, 2001 through October 31, 2002. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered

[1] We note that gap period entries had already been excluded from the denominator of the assessment rate for the preliminary results, and continue to be excluded from the denominator of the assessment rate for the final results.

[2] Since we have not included entries which occurred between October 30, 2001 and November 28, 2001 in the calculation of the dumping margin (*see* "Changes Since the Preliminary Results"), the "total amount of antidumping duties calculated for the examined sales made during the POR" does not include sales of merchandise which entered during that same period.

in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 2.59 percent, which is the "All Others" rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 55637 (November 2, 2001). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: June 7, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1. Conventional Hot-Rolled Material vs. Direct Sheet Product
Comment 2. Quality Code
Comment 3. Treatment of Section 201 Tariffs
Comment 4. Treatment of Non-dumped Sales
Comment 5. Gap Period Entries
Comment 6. Cost of Manufacturing
Comment 7. General Expense Ratio
Comment 8. Variable Cost of Manufacturing
Comment 9. CEP Profit Rate
Comment 10. Use of Sale Date vs. Entry Date to Identify EP Sales
Comment 11. Reporting Period for U.S. Sales

[FR Doc. 04–13495 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1328]

Approval of Request for Manufacturing Authority Within Foreign-Trade Zone 82; Mobile, AL (Agricultural Chemicals)

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 (the Board) adopts the following Order:

Whereas, the City of Mobile (Alabama), grantee of Foreign-Trade Zone 82, submitted an application to the Board for manufacturing authority (crop protection products and related chemicals) within FTZ 82 for E.I. DuPont de Nemours and Company (FTZ Docket 39–2003; filed 8/7/2003);

Whereas, notice inviting public comment was given in **Federal Register** (68 FR 49433, 8/18/2003) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority within FTZ 82 for E.I. DuPont de Nemours and Company, is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 3rd day of June 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board..

[FR Doc. 04–13491 Filed 6–15–04; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review: Notice of Intent To Renew Collection 3038–0023, Registration Under the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before July 16, 2004.

FOR FURTHER INFORMATION OR A COPY CONTACT: Lawrence B. Patent, Division of Clearing and Intermediary Oversight, CFTC, (202) 418–5439; fax: (202) 418–5547; e-mail: *lpatent@cftc.gov* and refer to OMB Control No. 3038–0023.

SUPPLEMENTARY INFORMATION:

Title: Notice of Registration as a Futures Commission Merchant or Introducing Broker for Certain Securities Brokers and Dealers, (OMB Control No. 3038–0023). This is a request for revision and extension of a currently approved information collection.

Abstract: The Commodity Exchange Act (Act) authorizes the Commission to deny, revoke or condition registration under the Act if an applicant or registrant is subject to various statutory disqualifications from registration, such as a prior registration revocation or conviction of a felony or certain misdemeanors. The registration application, which must be updated as necessary, requires information about an applicant's or registrant's disciplinary history so that the person's fitness for registration may be evaluated. In addition, basic identifying information is required so that a database will be available to current and prospective customers, the public and the news media.

The information on registration applications is used to develop a database known as BASIC (Background Affiliation Status Information Center), which is Internet-accessible and consulted frequently by customers, prospective customers, the general public and the news media to review data provided by applicants and registrants and to compare it to

information provided by entities making solicitations.

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 the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 30, 2004 (69 FR 23732).

Burden statement: The respondent burden for this collection is estimated to average .09 hours per response. These estimates include 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; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Associated Persons of each of the foregoing, and Floor Brokers and Floor Traders.

Estimated number of respondents: 78,215.

Estimated total annual burden on respondents: .09 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0023 in any correspondence.

Lawrence B. Patent, Division of Clearing and intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 9, 2004.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 04–13545 Filed 6–15–04; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled Volunteer and Service Recipient Survey Components of the Senior Corps Performance Surveys to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Nathan Dietz, at (202) 606–5000, extension 287, (*Ndietz@cns.gov*). Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

DATES: Comments must be received within 30 days from publication in this **Federal Register**.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, by any of the following two methods:

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation'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 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.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Volunteer and Service Recipient Survey Components of the Senior Corps Performance Surveys.

OMB Number: None.

Agency Number: None.

Affected Public: Foster Grandparent Program, Senior Companion Program, and RSVP (Retired and Senior Volunteer Program) volunteers and service recipients.

Type of Respondents: Senior Corps volunteers and service recipients.

Total Respondents: 3,100.

Frequency: One time.

Estimated Total Burden Hours: 1,166.7 hours total for all respondents.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: Volunteer and Service Recipient Survey Components of the Senior Corps Performance Surveys:

The Corporation for National and Community Service (CNCS) is requesting comments on plans to conduct the Volunteer and Service Recipient Survey Components of the Senior Corps Performance Surveys for the three major programs, Foster Grandparent Program, Senior Companion Program, and RSVP (Retired and Senior Volunteer Program). This study is being conducted under contract with Westat, Inc. (#CNCSHQC03003, Task Order #WES03T001) to collect information about local project volunteer outputs and outcomes. This information is to be used by Senior Corps grantees and CNCS by helping program managers to improve the quality of services provided. The information will also be used by the Corporation in preparing its Annual Performance Reports as well as for responding to ad hoc requests from Congress and other interested parties.

The Volunteer Survey Component of the Senior Corps Performance Surveys will be distributed to a sample of volunteers for each program. The Service Recipient Component of the Senior Corps Performance Surveys will be distributed to a sample of service recipients for each program.

Comments: A 60-day public comment notice, regarding all the component surveys of the Senior Corps Performance Surveys was published in the **Federal Register** on December 15, 2003. This comment period ended on February 14, 2004; no comments were received.

Dated: June 9, 2004.

Robert T. Grimm, Jr.,

Acting Director, Office of Research and Policy Development.

[FR Doc. 04–13508 Filed 6–15–04; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, June 22, 2004, 9 a.m.–11 a.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW., 8th Floor, Room 8410, Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks
II. Consideration of Prior Meeting's Minutes
III. Committee Reports
IV. CEO Report
V. Public Comment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Thursday, June 17, 2004.

FOR FURTHER INFORMATION CONTACT: David Premo, Public Affairs Associate, Public Affairs, Corporation for National and Community Service, 8th Floor, Room 8612C, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–5000 ext. 278. Fax (202) 565–2784. TDD: (202) 565–2799. E-mail: *dpremo@cns.gov.*

Dated: June 10, 2004.

Frank R. Trinity,

General Counsel.

[FR Doc. 04–13677 Filed 6–14–04; 11:47 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency Senior Executive Service Performance Review Board

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2004 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards, and other actions related to management of the SES cadre.

EFFECTIVE DATE: July 1, 2004.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, STE 2533, Fort Belvoir, Virginia 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Karon Webb, SES Program Manager, Human Resources (J–1), Defense Logistics Agency, Department of Defense, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 1-year term, which begins on July 1, 2004.

PRB Chair: Maj Gen Mary Saunders, USAF.

Members: Ms. Claudia Knott, Deputy Director, Logistics Operations; Mr. Larry Glasco, Director, Customer Operations and Readiness; MR. Richard Connelly, Director, Defense Energy Support Center.

VADM Keith W. Lippert,

Director, Defense Logistics Agency.

[FR Doc. 04–13552 Filed 6–15–04; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 10/414,570: Silica Mesoporous Aerogels Having Three-Dimensional Nanoarchitecture with Colloidal Gold-Protein Superstructures, Navy Case 84,500.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: June 9, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–13548 Filed 6–15–04; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7773–4]

EPA Board of Scientific Counselors; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's (EPA) Board of Scientific Counselors (BOSC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 section 9(c). The purpose of the BOSC is to counsel the Assistant Administrator for Research and Development (AA/ORD) on the operation of ORD's research program. EPA has determined that the functioning of the BOSC is in the public interest in connection with the performance of duties imposed on the Agency by law. Inquiries may be directed to Ms. Lorelei Kowalski, Designated Federal Officer, BOSC, U.S. EPA, Office of Research and Development (mail code 8104–R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Telephone (202) 564–3408 or *kowalski.lorelei@epa.gov.*

Dated: June 2, 2004.

J. Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 04–13567 Filed 6–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0087; FRL–7350–6]

Clothianidin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments identified by docket identification (ID) number OPP–2004–0087, must be received on or before July 16, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Stephanie Nguyen, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0702; e-mail address: *nguyen.stephanie@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 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0087. 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, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that areavailable 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.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPAidentifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0087. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0087. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0087.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0087. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide 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. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

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.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains 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 petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 27, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 3F6792

EPA has received a pesticide petition (3F6792) from Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of clothianidin in or on the raw agricultural commodities sorghum, grain at 0.01 part per million (ppm); sorghum, forage at 0.01 ppm; and sorghum, stover at 0.01 ppm, respectively. EPA has determined that the petition contains data or information regarding the elements set forth in

section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* In plants, the metabolism of clothianidin is adequately understood for the purposes of establishing these proposed tolerances. Unchanged parent clothianidin was the predominant residue in all crop matrices (14.4% to 64.5% in corn, 66.1% to 96.6% in tomatoes, 4.3% to 24.4% in sugar beets, and 24.3% to 63.3% in apples), with the exception of sugar beet leaves. In sugar beet leaves, the main components were the methylguanidine and thiazolylmethylguanidine metabolites, accounting for 28.6% and 27.7%, respectively. All metabolites found in plants were also found in the animal metabolism studies. In animals, parent clothianidin was the major component in liver, muscle, and fat. Based on the available metabolism data, parent clothianidin, thiazolyl-guanidine (TZG), thiazolyl-urea (TZU), and (ATMG-Pyr) aminothiazolyl methylguanidine-pyridine are proposed to be considered as the residues of concern in livestock matrices.

2. *Analytical method.* In plants and plant products, the residue of concern, parent clothianidin, can be determined using high performance liquid chromotography (HPLC) with electrospray mass spectroscopy/mass molecular size (MS/MS) detection. In an extraction efficiency testing, the plant residues method has also demonstrated the ability to extract aged clothianidin residue.

Although the plant residues lethal dose (LC)-MS/MS method is highly suitable for enforcement method, an LC-ultraviolet (UV) method has also been developed which is suitable for enforcement (monitoring) purposes in all relevant matrices.

3. *Magnitude of residues in sorghum.* A total of 12 field trials was conducted to evaluate the quantity of clothianidin in sorghum forage, stover, and grain. Sorghum seed was treated with TI–435 600 fecal streptococci (FS) at a rate of 250 grams active ingredient/100 kilograms (kg) seed. The highest average field trial was less than 0.01 ppm in sorghum forage, stover, and grain when collected at normal harvest of 97 to 167 days after planting of treated seed. In a sorghum processing study sorghum seed was treated at a 2X rate of 500 grams active ingredient/100 kg seed. No residues at or above the limit of quantitation (LOQ) of 0.01 ppm were found in the sorghum grain. Therefore, a sorghum processing study was not conducted.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral lethal dose (LD_{50}) was >5,000 milligrams/kilogram/body weight (mg/kg/bwt) for both male and female rats. The acute dermal LD_{50} was greater than 2,000 mg/kg/bwt in rats. The 4–hour inhalation LC_{50} was 5.538 miligrams/Liters (mg/L) for male and female rats. Clothianidin was not irritating to rabbit skin and only slightly irritating to the eyes and did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Extensive mutagenicity studies were conducted with clothianidin. Based on the weight of evidence clothianidin was considered negative for genotoxicity.

3. *Reproductive and developmental toxicity.* In a 2–generation reproduction study, rats were administered dietary levels of 0, 150, 500, and 2,500 ppm. The no observed effect level (NOAEL) for reproductive parameters was 500 ppm (31.2/36.8 mg/kg/day; for male and female), while the NOAEL for developmental effects was 150 ppm (9.8/11.5 mg/kg/day; for male and female. The parental systemic NOAEL was 500 ppm (31.2/36.8 mg/kg/day; for male and female).

A developmental toxicity study was conducted in rats with clothianidin using dose levels of 0, 10, 50, and 125 mg/kg/bwt by gavage. The NOAEL for maternal toxicity was established at 10 mg/kg/bwt and for developmental effects it was >125 mg/kg bwt. Additionally, a developmental toxicity study was conducted with rabbits treated orally by gavage at 0, 10, 25, 75, and 100 mg/kg/bwt. The NOAEL for maternal toxicity was 25 mg/kg/bwt and for developmental toxicity it was 75 mg/kg/bwt. Developmental toxicity studies showed no primary developmental toxicity and no teratogenic potential was evident.

4. *Subchronic toxicity.* A 90–day feeding study was conducted in rats and dogs. The rat study was conducted at dietary levels of 0, 150, 500, and 3,000 ppm and the dog study was conducted at 0, 325, 650, and 1,500 ppm. The NOAELs were established at 500 ppm (27.9/34.0 mg/kg/day; for the male and female rat, and 650 ppm (19.3 mg/kg/day) for the male dog, and 1,500 ppm (42.1 mg/kg/day) for the female dog.

5. *Chronic toxicity.* A 2–year combined rat chronic/oncogenicity study conducted at dietary levels of 0, 150, 500, 1,500, and 3,000 ppm demonstrated a NOAEL of 500 ppm (27.9/34.0 mg/kg/day) based on reduced weight gains and non-neoplastic histomorphological changes. A 78–week mouse oncogenicity study conducted at dose levels of 0, 100, 350, 1,250, and 2,000, and 1,800 ppm for males and females, respectively, revealed a NOAEL of 350 ppm (47.2/65.1 mg/kg/day; for males and females based on reduced body weight gains and increased incidence of hypercellular hypertrophy. No evidence of oncogenicity was seen in the rat or the mice. A 52–week chronic toxicity study in dogs conducted at dietary levels of 0, 325, 650, 1,500, and 2,000 ppm revealed a NOAEL of 2,000 ppm (46.4 mg/kg/day) for the male dog and 1,500 ppm (40.1 mg/kg/day) for the female dog.

6. *Animal metabolism.* The nature of the clothianidin residue in livestock is adequately understood. In animals, parent clothianidin was the major component in liver, muscle, and fat. Based on the available metabolism data, parent clothianidin, TZG, TZU, and ATMG-Pyr are proposed to be considered as the residues of concern in livestock matrices.

7. *Metabolite toxicology.* Eight *in vivo* metabolites of clothianidin identified in the rat were investigated for acute oral endpoint mutagenic activity. None of the metabolites were mutagenic either with or without activation and the LD_{50} values range from <500 to >2,000 mg/kg, showing low to moderate toxicity.

8. *Endocrine disruption.* All guideline studies conducted to characterize toxicological profile showed no endocrine related toxicity or tumorgenicity. No effects on triiodothyronine (T3), throxine (T4), or thyroid stimulating hormone (TSH) were observed in the subchronic rat study. In a 2–generation reproduction study in rat; and rat and rabbit teratology studies, clothianidin did not show reproductive or teratogenic effects. The extensive data base shows that clothianidin has no endocrine properties.

C. Aggregate Exposure

1. *Dietary exposure.* There are no residential uses for clothianidin, therefore aggregate exposure consists of dietary (food and drinking water) exposures. The acute population adjusted dose (PAD) of 0.025 mg/kg bwt/day based on an acute NOAEL of 25 with an uncertainty factor (UF) of 1,000 was used to assess acute dietary exposure. The chronic (PAD) of 0.0098 mg/kg/bwt/day based on a chronic NOAEL of 9.8 with an UF of 1,000 was used to assess chronic exposure.

i. *Food.* In the clothianidin pesticide tolerance action for corn and canola, the

Federal Register notice of May 30, 2003 (68 FR 32390) (FRL–7306–8), EPA conducted Tier I acute and chronic dietary assessments for clothianidin. These assessments included residues of clothianidin that arise from the uses of thiamethoxam which has clothianidin as a common metabolite. Based on these assessments, a tolerance of 0.01 ppm for sorghum use for clothianidin was added to the analysis. No significant contribution was seen from this use. The U.S. population utilized 8.4% (0.00211 mg/kg/bwt/day, 95th percentile) of the acute PAD and 6.5% (0.000635 mg/kg/bwt/day) of the chronic PAD. The most highly exposed subpopulation is children 1 to 2 at 19.1% (0.004772 mg/kg/bwt/day, 95th percentile) of the acute PAD and 19.1% (0.001874 mg/kg/bwt/day) of the chronic PAD.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for drinking water exposure and risk assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessment. These tools include water models such as Screening Concentration in Groundwater (SCI-GROW), FQPA Index Reservoir Screening Tool (FIRST), EPA's Pesticide Root Zone Model/ Exposure Analysis Modeling System (PRZM/EXAMS), and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface water and ground water and the highest is assumed to be the drinking water residue. In the case of clothianidin, monitoring data do not exist therefore SCI-GROW and FIRST were used to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for acute chronic exposure for all adults and children exceed the drinking water estimated concentrations (DWEC) from the models. The chronic DWLOC for adults is 321 parts per billion (ppb) and the acute DWLOC is 801 ppb. The chronic DWLOC for children 1 to 2 is 79 ppb and the acute DWLOC is 202 ppb. The DWEC for the worst case chronic scenario is 2.14 ppb FIRST and the acute DWEC FIRST is 3.97 ppb. The DWLOC are based on conservative dietary (food) exposures and are expected to be much higher in real world situations.

2. *Non-dietary exposure.* Clothianidin products are not labeled for residential uses (food or non-food), thereby eliminating the potential for residential exposure or non-occupational exposure.

D. Cumulative Effects

Clothianidin is a metabolite of thiamethoxam. Therefore, residues of clothianidin resulting from use of thiamethoxam were included in the above risk assessment. There are no data available to indicate that toxic effects produced by clothianidin are cumulative with those of any other compound.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness of the toxicity data, it can be concluded that aggregate exposure to residues of clothianidin present a reasonable certainty of no harm. Exposure from residues in crops utilize 8.4% of the acute PAD and 6.5% of the chronic PAD. EPA generally has no concerns for exposures below 100% of the PAD. DWLOC are well above the estimated drinking water concentrations as calculated by conservative models. There are no residential uses so aggregate exposure consists of food and drinking water exposures. The conservative Tier I assessments demonstrate a reasonable certainty of no harm will result from uses of clothianidin for the U.S. population.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of clothianidin, the data from developmental toxicity studies in both the rat and rabbit, a 2–generation reproduction study in rats and a developmental neurotoxicity study in rats have been considered.

The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through 2–generations, as well as any observed systemic toxicity.

The developmental neurotoxicity studies evaluate the neurobehavioral and neurotoxic effects on the developing animal resulting from the exposure of the mother. FFDCA section 408 provides that EPA may apply an additional UF for infants and children based on the threshold effects to account for prenatal and postnatal effects and the completeness of the toxicity data base. Based on the current toxicological data requirements the toxicology data base for clothianidin relative to prenatal and postnatal development is complete, including the developmental neurotoxicity study. None of the studies indicated the offsprings to be more sensitive. All effects were secondary to severe maternal toxicity. Therefore, no additional safety or UF is justified.

F. International Tolerances

No CODEX maximum residue levels have been established for residues of clothianidin on any crops at this time.

[FR Doc. 04–13411 Filed 6–15–04; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Meeting Cancellation

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 1999, notice is hereby given of the cancellation of the meeting of the Federal Accounting Standards Advisory Board (FASAB), scheduled for Friday, June 25, 2004, at the GAO Building in room 7C13.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: June 10, 2004.

Wendy M. Comes,

Executive Director.

[FR Doc. 04–13538 Filed 6–15–04; 8:45 am]
BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 8, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 16, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0609.

Title: Section 76.934(e), Petitions for Extension of Time.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; and State, local, or tribal governments.

Number of Respondents: 20.

Estimated Time per Response: 4 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 80 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No.

Needs and Uses: Small cable systems may obtain an extension of time to establish compliance regulations provided that they can demonstrate that timely compliance would result in economic hardship. Requests for an extension of time are addressed to local franchising authorities concerning rates for basic service tiers.

OMB Control Number: 3060–0633.

Title: Station Licenses—Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965, 74.1265.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,875.

Estimated Time per Response: 0.083 hours (5 minutes).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 488 hours.

Total Annual Cost: $80,420.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licenses of broadcast stations are required to post, file or have available a copy of the instrument of authorization at the station and/or transmitter site. The FCC and the public use the information posted at the transmitter site to know to whom the transmitter is licensed, which ensures that the station is licensed and operating in the manner specified by the license.

OMB Control Number: 3060–0685.

Title: Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC 1240.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal government.

Number of Respondents: 3,000.

Estimated Time per Response: 10 hour (avg.).

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 30,000 hours.

Total Annual Cost: $562,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC Form 1240 is filed with the local franchising authorities ("LFAs") by cable operators seeking to adjust maximum permitted rates to reflect changes in external costs. The Commission authored the Form 1240 to enable local franchising authorities to adjudicate permitted rates for regulated cable rates, services, and equipment; for the additional and/or deletion of channels; and for allowance for pass through of external costs due to inflation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–13488 Filed 6–15–04; 8:45 am]

BILLING CODE 6712–10–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 04–1599]

Consumer & Governmental Affairs Bureau Reminds States and Telecommunications Relay Services (TRS) Providers That the Annual Summary of Consumer Complaints Concerning TRS is Due Thursday, July 1, 2004

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission notifies the public, state Telecommunications Relay Services (TRS) programs, and interstate TRS providers that the annual consumer complaint log summaries are due on Thursday, July 1, 2004. Complaint log summaries should include information pertaining to complaints received between June 1, 2003 and May 31, 2004. To assist the Commission in monitoring the service quality of TRS providers, the Commission requires state TRS programs and interstate TRS providers to maintain a log of consumer complaints that allege violations of the federal TRS mandatory minimum standards. Complaint log summaries shall include the number of complaints received that allege a violation of the federal TRS mandatory minimum standards, the date of the complaint, the nature of the complaint, the date of its resolution, and an explanation of the resolution.

DATES: State TRS programs and interstate TRS providers must file the annual consumer complaint log summary no later than July 1, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *Erica.Myers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 04–1599 released June 2, 2004. This document notifies state TRS programs and TRS providers that the annual complaint log summary for complaints received between June 1, 2003, and May 31, 2004, is due on Thursday, July 1, 2004. States and TRS providers who choose to submit by paper must submit an original and four copies of each filing on or before Thursday, July 1, 2004. To expedite the processing of complaint log summaries, states and TRS providers are encouraged

to submit an additional copy to Attn: Erica Myers, Federal Communications Commission, Consumer & Governmental Affairs Bureau, 445 12th Street, SW., Room 6–A432, Washington, DC 20554 or by email at *Erica.Myers@fcc.gov*. States and interstate TRS providers should also submit electronic disk copies of their complaint log summaries on a standard 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be submitted in "read-only" mode and must be clearly labeled with the state or interstate TRS provider name, the filing date and captioned "Complaint Log Summary."

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. 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.

The filings and comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *http://www.bcpiweb.com*. Filings and comments may also be viewed on the Consumer & Governmental Affairs Bureau, Disability Rights Office homepage at *http://www.fcc.gov/cgb/dro*. 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) 418–7365 (TTY). This *Public Notice* can also be downloaded in text and ASCII formats at *http://www.fcc.gov/cgb/dro*.

Synopsis: State TRS programs should report all complaints made to the state agency, as well as those made to the state's TRS provider. TRS providers that provide interstate TRS, interstate STS, interstate Spanish relay, interstate captioned telephone relay, VRS, and IP Relay are required to submit complaint log summaries. These logs are intended to provide an early warning system to the Commission of possible service quality problems. Additionally, this information allows the Commission to determine whether a state or interstate TRS provider has appropriately addressed consumer complaints and to spot national trends that may lend themselves to coordinated solutions. This information further enables states to learn how other states are resolving complaints. *Id.* at ¶ 122.

We note that according to the data presented in the state complaint log summary submissions for 2003, more than thirty million outgoing calls were placed by individuals through state relay facilities. Approximately thirty-five hundred complaints were reported that alleged a violation of one or more of the Commission's mandatory minimum standards for TRS. *See* 47 CFR 64.604. This number represents that less than one hundredth of a percent (.01%) of TRS calls, a statistically negligible number, resulted in an alleged violation of required service standards. This is good news for TRS users. At the same time, the complaint log summaries identified some areas where there is room for improvement. Over seventy-five percent of all complaints stemmed from the interaction between the calling party and the communications assistant. We therefore remind TRS providers and state administrators that their CAs must, among other things, be knowledgeable of TRS procedures, follow customer's instructions, and continue to keep callers informed about the progress of their call.

The complaint log summaries that have been submitted to the Commission by state TRS programs for 2002 and 2003 are currently available on the FCC Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. All 2004 complaint log summary submissions by state TRS programs and interstate TRS providers will also be available on this Web site.

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–13490 Filed 6–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 04–1630]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 9, 2004, the Commission released a public notice announcing the July 13, 2004 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Tuesday, July 13, 2004, 9:30 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: June 9, 2004.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, July 13, 2004, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be

received two business days before the meeting.

Proposed Agenda—Tuesday, July 13, 2004, 9:30 a.m.*

1. Announcements and Recent News
2. Approval of Minutes—Meeting of May 18, 2004
3. Report from NBANC
4. Report of NAPM, LLC
5. Report of the North American Numbering Plan Administrator (NANPA)
6. Report of National Thousands Block Pooling Administrator
7. Status of Industry Numbering Committee (INC) activities
8. Reports from Issues Management Groups (IMGs)
9. Report of Local Number Portability Administration (LNPA) Working Group—Wireless Number Portability Operations (WNPO) Subcommittee
10. Report of Numbering Oversight Working Group (NOWG)
11. Report of Cost Recovery Working Group
12. Special Presentations—ENUM
13. Update List of NANC Accomplishments
14. Summary of Action Items
15. Public Comments and Participation (5 minutes per speaker)
16. Other Business

Adjourn no later than 5 p.m.

Next Meeting: Tuesday, September 14, 2004

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 04–13489 Filed 6–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Clarita Kassin, Miami, Florida; Leon Papu, Barraquilla, Colombia; Samuel Papu, Miami, Florida; Dorita Ojalvo; Miami, Florida; and Salomon Kassin, Miami, Florida; to retain voting shares of Pointe Financial Corporation, and thereby indirectly retain voting shares of Pointe Bank, both of Boca Raton, Florida.

Board of Governors of the Federal Reserve System, June 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13515 Filed 6–15–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York; to acquire twenty additional shares of 473 Broadway Holding Corporation, and thereby indirectly acquire two thousand additional shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

Board of Governors of the Federal Reserve System, June 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13514 Filed 6–15–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, June 21, 2004.

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, June 14, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–13671 Filed 6–14–04; 11:00 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting and request for information:

Name: Peer Review Meeting on the NIOSH Research Study Entitled "Fall Prevention for Aerial Lifts in the Construction Industry."

Time and Date: 9 a.m.–12 p.m., August 10, 2004.

Place: National Institute for Occupational Safety and Health, 1095 Willowdale Rd., Conference Room L–1BCD, Morgantown, West Virginia 26505–2888.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: To provide individual comments on the technical and scientific aspects of the research protocol for a study on the prevention of fall/collapse/tip-over injuries that are associated with scissor lifts among construction workers.

Summary: The agenda will include a presentation/overview of the study that will be followed by comments on the technical and scientific aspects of the planned research. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments also will be considered.

Contact Person for Technical Information: Christopher S. Pan, Ph.D., Project Officer, Division of Safety Research, NIOSH, CDC, M/S G800, 1095 Willowdale Road, Morgantown, West Virginia, 26505–2888. Telephone (304) 285–5978, E-mail *cpan@cdc.gov*. Copies of the draft protocol may be obtained by contacting Dr. Pan.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 9, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13555 Filed 6–15–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Safety and Occupational Health Study Section; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates:

8 a.m.–5 p.m., June 22, 2004.

8 a.m.–5 p.m., June 23, 2004.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia 22314, telephone 703/684–5900, fax 703/684–1403.

Status:

Open 8 a.m.–8:30 a.m., June 22, 2004.

Closed 8:30 a.m.–5 p.m., June 22, 2004.

Closed 8 a.m.–5 p.m., June 23, 2004.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8–8:30 a.m. on June 22, 2004, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the study section to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone 404/498–2511, fax 404/498–2569.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 27, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–13556 Filed 6–15–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10111 and CMS–R–263]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), 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.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Notice of Exclusions from Medicare Benefits-Home Health Agency and Supporting Regulations in 42 CFR 484.10; *Form No.:* CMS–10111 (OMB# 0938–NEW); *Use:* Whenever a Home Health Agency reduces or terminates home health services, the home health agency must give notice; *Affected Public:* Business or other for-profit, Individuals or

Households, and Not-for-profit institutions; *Number of Respondents:* 6,813; *Total Annual Responses:* 534,295; *Total Annual Hours:* 534,429.5.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* On-site Inspection for Durable Medicare Equipment (DME) Supplier Location and Supporting Regulations in 42 CFR, Section 424.57; *Form No.:* CMS–R–263 (OMB# 0938–0749); *Use:* CMS collects information on any supplier who submits bills to Medicare or who applies for a Medicare Billing Number before allowing the supplier to enroll. This information must minimally clearly identify the provider and its place of business as required in Pub. L. 99–272 Section 9202(g) and provide all necessary documentation to prove that they are qualified to perform the services for which they are billing. The on-site inspection for Durable Medical Equipment (DME) Supplier Location verifies this information; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local, or Tribal Gov.; *Number of Respondents:* 20,000; *Total Annual Responses:* 20,000; *Total Annual Hours:* 10,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 8, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–13505 Filed 6–15–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–235, CMS–724 and CMS–R–297]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), 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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data Use Agreement Information Collection Requirements, model language, and supporting regulations in 45 CFR Section 5b.; *Form No.:* CMS–R–235 (OMB# 0938–0734); *Use:* Binding agreement stating conditions under which CMS will disclose and user will maintain CMS data that are protected by the Privacy Act.; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 750.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The Medicare/Medicaid Psychiatric Hospital Survey Data Contained in 42 CFR and supporting regulations in 42 CFR 482.60, 482.61, and 482.62.; *Form No.:* CMS–724 (OMB# 0938–0378); *Use:* The collection of this data will assure an accurate data base for program planning and evaluation, and survey team composition for surveys of psychiatric hospitals. All freestanding psychiatric hospitals surveyed will be required to respond. *Frequency:* Annually; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions, and State, local and tribal government; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 100.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Employment Information; *Form No.:* CMS–R–297 (OMB# 0938–0787); *Use:* This information is needed to determine whether a beneficiary can enroll in Part B under Section 1837(i) of the Act and/or qualify for a reduction in the premium amount under Section 1839(b) of the Act.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 5000; *Total Annual Responses:* 5000; *Total Annual Hours:* 1250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 8, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–13506 Filed 6–15–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Child Care and Development Fund Annual Report (ACF–700).

OMB No.: 0980–0241.

Description: The Child Care and Development Fund (CCDF) report requests annual tribal aggregate information on services provided through the CCDF, which is required by the Child Care and Development Fund Block Grant (CCDBG) Final Rule (45 CFR parts 98 and 99). Tribes are required to submit annual aggregate data appropriate to tribal programs on children and families receiving CCDF funds or CCDBG-funded child care services. The CCDBG statute and regulations also require Tribal Lead Agencies to submit a supplemental narrative as part of the ACF–700 report. This narrative describes general child care activities and actions in the Tribal Lead Agency's service area and is not restricted to CCDF-funded child care activities. Instead, this description is intended to address all child care available in the Tribal Lead Agency's service area. The ACF–700 and supplemental narrative report will be included in the Secretary's report to Congress, as appropriate, and will be shared with all Tribal Lead Agencies to inform them of CCDF or CCDBG-funded activities in other tribal programs.

Respondents: Tribal CCDF Programs (263 in total).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–700 form (CCDF Annual Tribal Report)	263	1	35	9,205
Estimated Total Annual Burden Hours:				9,205

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: *grjohnson@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: June 9, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–13574 Filed 6–15–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Amended System of Records Notice

AGENCY: Office of Family Assistance, Administration for Children and Families, HHS.

ACTION: Notice of amended system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Family Assistance is publishing notice of amendments to the system of records entitled "TANF Data System", last published on July 26, 2002 (No. 09–90–0151).

DATES: We invite interested parties to submit comments on these amendments on or before July 16, 2004. As required by 5 U.S.C. 552(a), we have sent copies of this amendment notice to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Information and Regulatory Affairs of the Office of Management and Budget.

The amendments described in this notice will be effective upon publication, unless ACF receives comments that would result in a contrary determination.

ADDRESSES: Please send comments to: Sean D. Hurley, Director, Division of Data Collection and Analysis, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade SW., 5th Floor East, Washington DC 20447; phone: 202–401–9297; fax: 202–205–5887; E-mail: *shurley@acf.hhs.gov*.

Comments received will be available for public inspection at the address specified above between 9 a.m. to 5 p.m. Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean D Hurley, Director, Division of Data Collection and Analysis, at the above address.

SUPPLEMENTARY INFORMATION: The Temporary Assistance for Needy Families (TANF) program under title IV–A of the Social Security Act (the Act) became effective on August 22, 1996. In order to monitor the progress of States (*i.e.*, the 50 States, District of Columbia, Puerto Rico, U.S. Virgin Islands and Guam) implementing the TANF program, Congress specified mandatory data collection and reporting requirements in section 411 of the Act. This section also requires the Department to transmit to Congress an annual report on the Department's findings as to whether States are:

- Meeting the work participation rates; and,
- Increasing the employment and earnings of needy families, increasing child support collections, and decreasing out-of-wedlock pregnancies and child poverty.

The annual report must also describe:

- The demographic and financial characteristics of families applying for, receiving, and becoming ineligible for TANF;
- The characteristics of State TANF programs; and,
- The trends in employment and earnings of needy families with minor children living at home.

In addition to the foregoing requirements, the statute also allows

(but does not require) States to compete for an award of High-Performance Bonus (HPB) funds. These funds are awarded to applicant States which successfully assist TANF recipients in obtaining and retaining employment.

Until the regulations for the TANF program and the HPB system were finalized, including the data collection requirements, States were required to meet minimal reporting requirements under the Emergency TANF Data Report, which did not include any individual identifiers.

Final rules published on April 12, 1999 expanded TANF data collection and reporting requirements. These requirements, published at 45 CFR Part 265, require States to report specific individual identifiers, including the Social Security Numbers (SSNs) of TANF recipients collected pursuant to section 1137 of the Act. States are required to collect the prescribed data elements monthly and report the data quarterly to ACF. States may report these data elements on the entire universe of families that receive assistance in a reporting month or for a representative sample of recipients. Approximately 30 States currently report universe data.

Final rules regarding the award of TANF HPB funds were published on August 30, 2000, and amended on December 4, 2000 and May 10, 2001. These rules, which are found at 45 CFR Part 270, specify the data and other information which States must report in order to compete for bonus awards.

Consistent with these requirements, the Office of Family Assistance (OFA) and the Office of Planning, Research, and Evaluation, ACF, established a system of records called the TANF Data System (TDS) (67 FR 48914, July 26, 2002). In addition, since States that wish to compete on the four work measures in the HPB system in FY 2002 or later are required to provide the SSNs of all adult recipients in each fiscal quarter, such SSNs will also be included in the TDS. These SSNs are used to obtain information on the employment and earnings of TANF recipients by matching them with the National Directory of New Hires (NDNH) data set maintained by the Office of Child Support Enforcement (OCSE), ACF.

Notice is hereby given that OFA is amending the System of Records published on July 26, 2002 at 67 FR 48914 as described below.

1. In the SUMMARY, the sentence "The TANF Data System includes the data elements on individual TANF recipients that States report under sections 403 and 411 of the Act." is amended to "The TANF Data System includes the data elements on individual TANF recipients that States report under program regulations at section 45 CFR Part 265". The purpose of this amendment is to specifically include all data collected on individuals under the TANF program. This is consistent with the later section CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM.

2. The contents of the ROUTINE USES section are amended to read:

"Records containing data collected pursuant to program regulations at 45 CFR Part 265 may be disclosed for statistical purposes, and only for such purposes, as described below:

1. In response to specific requests from public or private entities, supply untabulated and/or tabulated data without personal identifiers in a form that is not individually identifiable to a recipient who has provided the agency with advance adequate written assurance that the records will be used solely as statistical research or reporting records;

2. In response to specific requests from public or private entities, where the requester's proposed use of data from the TANF Data System is found compatible with the purposes for which this data was collected, supply untabulated data which may include personal identifiers for individuals whose information is included in the data. No data which may include personal identifiers will be disclosed until the requester has agreed in writing not to use such data to identify any individuals, and has provided advance adequate written assurance that the records will be used solely as statistical research or reporting records.

Note: Data produced by matching State-provided data with data from OCSE's National Directory of New Hires will only be disclosed in accordance with applicable routine use disclosures set forth in OCSE's Locate and Collection System No. 09–90–0074.

The preceding amendment will more clearly and accurately reflect the circumstances under which information maintained in the TANF Data System may be disclosed consistent with our legal obligations to protect the privacy of the individuals whose information is included in the data.

3. In the last paragraph of the RETENTION AND DISPOSAL section, the sentence, "The erasing of these SSN data file will be done within a year after the award year, which immediately follows the performance year." is amended to, "The erasing of these SSN data files will be done within two years after the awards are actually made for a performance year (which precedes the award year)." The reason for this amendment is that the awards may not always be made in the year immediately following the performance year, and the data may be used for statistical purposes (as defined above) within the extended, two-year period (as opposed to the one-year period), or to check the accuracy of the computations for the award in response to specific requests for the same from the participating States.

We are also making conforming amendments.

Dated: June 10, 2004.

Joan E. Ohl,

Acting Director, Office of Family Assistance, ACF.

09–90–0151

SYSTEM NAME:

Temporary Assistance for Needy Families (TANF) Data System, ACF, HHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The TANF data are reported by the individual States for each (Federal) fiscal quarter. (The term State is used in this notice to refer to the 50 States, the District of Columbia, and the jurisdictions of Puerto Rico, the U.S. Virgin Islands, and Guam). States transmit the data electronically to the computer system of the Center for Information Technology (CIT) of the National Institutes of Health (NIH) located at Building 12A, Bethesda, MD 20892. The State data are pooled to create a national database for each quarter, which is also kept in the computer system of CIT. The whole system is maintained under the technical and management control of: (1) The Office of Information Systems, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447; and (2) the Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The TANF Data System contains information on: (1) Members of families (as defined at 45 CFR 265.2) who received assistance under the TANF program in any month, and (2) members of families (as defined at 45 CFR 265.2) in which an individual was assisted by a Separate State Program (SSP) which is not subject to Federal work or time limit requirements but for which

expenditures are or will be claimed by the State to satisfy TANF Maintenance of Effort (MOE) requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are three distinct groups of data in the TDS: family-level data; adult-level or minor-child-head-of-household data; and child data.

Family level data maintained in the TDS may include the following items of information on every family that received assistance during one or more months: State Federal Information Processing Standard (FIPS) code; Federal Region code; county FIPS code; report year and month; stratum code; case identification number (assigned by the State); Zip code; funding stream; disposition status; new applicant status; number of family members; type of family for work participation; receipt of subsidized housing; receipt of medical assistance; receipt of food stamp assistance; amount of food stamp assistance; receipt of subsidized child care; amount of subsidized child care; amount of child support; amount of family's cash resources; cash, or cash equivalent, amount of assistance and number of months of that assistance; TANF child care (amount, number of children covered, and number of months of assistance); transportation assistance (amount and number of months of assistance); transitional services (amount and number of months of assistance); other assistance (amount and number of months of assistance); amount of reductions in assistance; reason for assistance reductions (sanctions, recoupment of prior overpayment, and other); waiver evaluation experimental and control group status; exemption status from the federal time-limit provisions; and new child-only-family status.

Adult-level or minor child-head-of-household data maintained in the TDS may include: case identification number (same as the family's case identification number); report year and month; State FIPS code; family affiliation; non-custodial parent indicator; date of birth; SSN; race and ethnicity; gender; receipt of disability benefits; marital status; relationship to head of household; parent-with-minor-child-in-the-family status; needs of a pregnant woman; education level; citizenship; cooperation with child support; number of months countable towards Federal time-limit; number of countable months remaining under State's time-limit; exemption status of the reporting month from the State's time-limit; employment status; work participation status; unsubsidized employment hours; subsidized private and public sector employment hours; work experience hours; on-the-job training hours; job search and job readiness assistance hours; community service program hours; vocational educational training hours; hours of job skills training directly related to employment; hours of education directly related to employment for individuals with no high school diploma or certificate of high school equivalency; hours of satisfactory school attendance for individuals with no high school diploma or certificate of high school equivalency; hours of providing child care services to an individual who is participating in a community service program; hours of additional work activities permitted under a Waiver demonstration; hours of other work activities; required hours of work under a Waiver demonstration; amount of earned income; and amount of unearned income (earned income tax credit, Social Security benefit, Supplemental Security Income (SSI), worker's compensation, and other unearned income).

Child data (*i.e.*, data pertaining to every child in a recipient TANF family) may include: Case identification number (same as the family's case identification number); State FIPS code; report year and month; family affiliation; date of birth; SSN; race and ethnicity; gender; receipt of disability benefits; relationship to head of household; parent-with-minor-child-in-the-family status; education level; citizenship; amount of unearned income (SSI and other).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for the collection and maintenance of the system is contained in Title IV-A of the Social Security Act, 42 U.S.C. 601–619. TANF data collection and reporting regulations are found in 45 CFR Part 265. Legal authority for the collection of information for the High Performance Bonus award program is found in section 403 of the Social Security Act and in 45 CFR Part 270.

PURPOSE(S):

The purposes of the TANF Data System are: (1) To determine whether states are meeting certain requirements prescribed by the Act, including prescribed work and time-limit requirements; (2) to compile information used to report to Congress on the TANF program; and, (3) to compute state scores on work measures and rank states on their performance in assisting TANF recipients to obtain and retain employment in connection with the award of High Performance Bonus funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records containing data collected pursuant to program regulations at 45 CFR Part 265 may be disclosed for statistical purposes, and only for such purposes, as described below:

1. in response to specific requests from public or private entities, supply untabulated and/or tabulated data without personal identifiers in a form that is not individually identifiable to a recipient who has provided the agency with advance adequate written assurance that the records will be used solely as statistical research or reporting records;

2. in response to specific requests from public or private entities, where the requester's proposed use of data from the TANF Data System is found compatible with the purposes for which this data was collected, supply untabulated data which may include personal identifiers for individuals whose information is included in the data. No data which may include personal identifiers will be disclosed until the requester has agreed in writing not to use such data to identify any individuals and has provided advance adequate written assurance that the records will be used solely as statistical research or reporting records.

Note: Data produced by matching State-provided data with data from OCSE's National Directory of New Hires will only be disclosed in accordance with applicable routine use disclosures set forth in OCSE's Locate and Collection System No. 09–90–0074.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

States electronically transmit the TANF data for each fiscal quarter to a computer in the Center for Information Technology (CIT) of the National Institute of Health. The data sets received from the States in accordance with the requirements program regulations at 45 CFR Part 265 are pooled to create a national database for each fiscal quarter. The national database thus created for a given fiscal year is also kept in a computer disk on the mainframe of the CIT for up to 24 months after the end of such fiscal year. Afterwards, the database is copied to

compact discs (CDs) and securely kept in ACF under lock and key or on personal computers by individuals whose access to the CDs has been authorized by the OFA and/or ACF's Office of Information Services, Office of Administration.

Although SSNs of adult TANF recipients collected from States which have chosen to compete for High-Performance bonuses are stored on the CIT as well, they are also provided to Office of Child Support Enforcement for matching with records of individual employment information contained in the National Directory of New Hires (NDNH) portion of OCSE's Location and Collection System No. 09–90–0074, published at 65 FR 57817, September 26, 2000. Thereafter, match results are transmitted back to OFA without SSNs in a form which is not individually identifiable, and the SSNs supplied to perform the match are destroyed by OCSE.

RETRIEVABILITY:

The national database kept in the CIT is accessed by authorized users of the data following established procedures. The authorized users are selected individuals in the Office of Administration, ACF (including its contractors who may handle processing of the data and the creation of the national database), and selected individuals in the Division of Data Collection and Analysis, OFA, ACF (who perform analyses of the data). The database is accessed and downloaded by authorized individuals to secure personal computers (PCs). Sharing of the data downloaded to individual PCs is allowed only with permission of the System Manager. Although all data elements in the database can be retrieved, the SSNs are not generally included in any retrieval, since they are not used in the routine analyses of the data.

SAFEGUARDS:

1. Physical security: The CIT of NIH, as a U.S. government facility, abides by all U.S. government policies with regard to the physical security of the data kept there. Physical security at CIT includes: An uninterruptible power supply; climate control; a central backup and recovery system; a disaster recovery program; security procedures for data access; and normal physical and system security procedures (restricted physical access to computer machine rooms and output handling areas, which is enforced by a round-the-clock security guard stationed at the main entrance to the area, valid government identification (ID) badge or photo identification and registration with the security guard to obtain a temporary entry badge for a specifically authorized purpose, such as maintenance service or repair of equipment). The outputs generated at the facility are placed in locked boxes that can be accessed only by users knowing the correct box access code. To ensure physical security of data kept on tapes or other portable media, the CIT requires that the sponsor of an account authorize the removal of them from the CIT. When such items are taken out, the person receiving the items provides the following to the production unit staff of the CIT: Name and signature; ID badge number; driver's license number and State; and organization's (which is represented by the person) name and phone number. Only after confirming these items of information by the production unit staff will the items be given to the person. Data older than 24 months is downloaded by authorized individuals to secure PCs, and then copied to CDs which are then kept under lock and key. After copying the data to CDs, the data on the PCs are deleted.

2. Authorized access: Access to the data is strictly regulated with passwords and other controls. Only individuals whose work responsibilities specifically include accessing the data system (either for processing or for analysis) are allowed to access these data. They include designated individuals (including contractors) in the Office of Information Services, Office of Administration, ACF (mostly for processing incoming data and database creation), and designated individuals in the Division of Data Collection and Analysis, OFA, ACF.

3. Procedural and technical safeguards: The individuals who are authorized to access the data have been adequately instructed on the privacy and confidentiality of the data, and they have been trained to handle the data in such a manner as to protect its privacy and confidentiality. Release of any personal identification particulars by these individuals is strictly forbidden, and release of even tabulated data is allowed only under specific authorization. Established clearance procedures must be observed before any release of the information contained in the data system.

RETENTION AND DISPOSAL:

The data transmitted by a State for a fiscal quarter to the CIT's computer are backed up to a computer tape after the initial processing of the data. The backed-up version of the data is kept only for a period of 30 days.

The data transmitted by the States for a fiscal quarter, after processing and acceptance, are pooled to create a national database for the quarter. The national database is stored in the CIT's computer for up to 24 months after the end of the fiscal year. Afterwards, the database is copied to a compact disc, and the original data in CIT's computer is scratched. The data on the compact disc is securely maintained by ACF for up to 20 years in order to facilitate research on caseload trends, changes in the characteristics of TANF recipients, or other pertinent research. The eventual disposal of the data will be by means of physical destruction of the CD's containing the data. The Office of Information Systems of the Office of Administration and OFA, ACF, are responsible for the retention and disposal of the data system.

The SSNs obtained for the HPB award program for a performance year, although initially kept in an electronic file in the CIT, are erased after identifying the States that merited awards for that performance year. The erasing of these SSN data file will be done within two years after the awards are actually made for a performance year (which precedes the award year). Aggregate data files based on information provided for the HPB award program are also erased at the same time.

SYSTEM MANAGER(S) AND ADDRESS:

1. Director, Division of Applications Development Services, Office of Information Services, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

2. Director, Division of Data Collection and Analysis, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to either of the System Managers noted above. The Privacy Act provides that, except under certain conditions specified in the law, only the subject of the records may have access to them. All requests must be submitted in the following manner: Identify the system of records that is desired to be searched; have the request for search notarized certifying the identity of the requestor; and indicate that the requestor is aware that the knowing and willful request for or acquisition of Privacy Act record under false pretenses is a criminal offense subject to a $10,000 fine. The

letter of request should also provide sufficient particulars to enable the System Manager to distinguish among records on subject individuals with the same name.

RECORD ACCESS PROCEDURES:

Write to either of the System Managers listed above to obtain access to the records. Requestors should provide a detailed description of the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Write to either of the System Managers listed above, at the address noted, identifying the record and specifying the information to be contested and corrective action sought, together with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

All information is obtained from the states.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 04–13575 Filed 6–15–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 2004

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2004, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name	Address	Effective date
Program-Related Convictions:		
Alvarez, Humberto	Miami, FL	6/17/2004
Alvero, German	Hialeah, FL	6/17/2004
Anderson, Cathy	Dublin, CA	6/17/2004
Baluch, Abdul	Beaumont, TX	6/17/2004
Baum, Richard	Hood, CA	6/17/2004
Bedi, Surindar	Treasure Island, FL	6/17/2004
Brown, Patricia	Alburg, VT	6/17/2004
Castellano, Dolores	Miami, FL	6/17/2004
Chuldzhyan, Gevork	Sacramento, CA	6/17/2004
Coll, Gustavo	Edgefield, SC	6/17/2004
De Lamar, Rene	Miami, FL	6/17/2004
Eads Mullins, Tracie	Celina, TN	6/17/2004
Edmonds, Margaret	McComb, MS	6/17/2004
Elbashir, Imad	Trenton, NJ	6/17/2004
Evans, Cheryl	Portland, OR	6/17/2004
Flores, Serafin	Big Spring, TX	6/17/2004
Franklin, Kimberly	Lebanon, TN	6/17/2004
Garcia, Yegort	Hialeah, FL	6/17/2004
Gonzalez, Arnaldo	Hialeah, FL	6/17/2004
Hostetler, Terri	Marysville, OH	6/17/2004
I Dennis Potocsky, DDS, PC	Melvindale, MI	6/17/2004
Incer, Ana	Miami, FL	6/17/2004
Jefferson, Michael	Los Angeles, CA	6/17/2004
Johnson, Stanley	Atlanta, GA	6/17/2004
Kantor, Sheldon	Miami, FL	6/17/2004
Ku, Jay	Long Beach, CA	6/17/2004
Mesa, Eduardo	Hialeah, FL	6/17/2004
Miller, Chadd	Miami Beach, FL	6/17/2004
Mirchou, Liliana	Las Vegas, NV	6/17/2004
Mompie, Mariana	Miami, FL	6/17/2004
Monduy, Juan	Hialeah, FL	6/17/2004
Morales, Eugenio	Miami, FL	6/17/2004
Neff, Todd	Red Lion, PA	6/17/2004
Pacheco, Orlando	Miami, FL	6/17/2004
Poggioli, Stephan	Linden, NJ	6/17/2004
Reed, Theresa	Milwaukee, WI	6/17/2004
Rodriguez, Alfredo	Miami, FL	6/17/2004
Singh, Arvinder	Fairton, NJ	6/17/2004
Souaid, Victor	Miami, FL	6/17/2004
Vital Care Pharmaceutical Corp	Staten Island, NY	6/17/2004
Wimbish, Danielle	Stone Mountain, GA	6/17/2004
Felony Conviction for Health Care Fraud:		
Chime, Deborah	Corning, OH	6/17/2004
Dickson, Richard	Leavittsburg, OH	6/17/2004
Fryman, Michael	Louisville, KY	6/17/2004
Gardiner, Michael	Elizabeth, NJ	6/17/2004

Subject name	Address	Effective date
Lucia, Jamie	Los Altos, CA	6/17/2004
Palmer, Cheryl	Little Rock, AR	6/17/2004
Robinson, KIM	Elizabeth, NJ	6/17/2004
Felony Control Substance Conviction:		
Brousseau, Gregory	Ontario, CZ	6/17/2004
Derosia, Lori	N Fort Myers, FL	6/17/2004
Egli, Sandra	Ankeny, IA	6/17/2004
Musial, Thomas	Thousand Oaks, CA	6/17/2004
Nalbone, Philip	Trenton, NJ	6/17/2004
Peterson, Shelley	Marion, IA	6/17/2004
Sledd, Gayla	Ruckersville, VA	6/17/2004
Taylor, James	Riverside, CA	6/17/2004
Wilson, Aisha	National City, CA	6/17/2004
Patient Abuse/Neglect Convictions:		
American Healthcare Mgmt, Inc	Chesterfield, MO	6/17/2004
Bigornia, Virginia	Waipahu, HI	6/17/2004
Claiborne, Timothy	Rockledge, FL	6/17/2004
Claywest House Healthcare, LLC	Chesterfield, MO	6/17/2004
Costley, Betty	Woodbine, MD	6/17/2004
Crouch, Howard	Charleston, WV	6/17/2004
Deenadayalu, Venkatesan	Naperville, IL	6/17/2004
Feagin, Clarence	Richmond, CA	6/17/2004
McMillan, Derrick	Laurel, MS	6/17/2004
Moton, Kevin	Tuscaloosa, AL	6/17/2004
Reddy, Rebala	Alden, NY	6/17/2004
Watts, Lawanda	Hattiesburg, MS	6/17/2004
Wiggins, Michael	Sneads, FL	6/17/2004
License Revocation/Suspension/Surrendered:		
Adams, Pamela	Attalia, AL	6/17/2004
Alger, James	Luray, VA	6/17/2004
Allison, Sandra	Birmingham, AL	6/17/2004
Alvarez, Mark	Cranston, RI	6/17/2004
Ashkar, Michael	Eatontown, NJ	6/17/2004
Avery, Alfred	Billings, MT	6/17/2004
Baayen, Peggy	Blanca, CO	6/17/2004
Baggett, Lynn	Oklahoma City, OK	6/17/2004
Barrett, Vanessa	Yakima, WA	6/17/2004
Barrow, Holly	King of Prussia, PA	6/17/2004
Bedard, Ellen	Douglas, MA	6/17/2004
Bertani, Peter	Rumford, RI	6/17/2004
Borchardt, Karen	N Charleston, SC	6/17/2004
Bradley, Mary	Salem, VA	6/17/2004
Brant, Gloria	Tucson, AZ	6/17/2004
Brown, Robert	Miami, FL	6/17/2004
Brown, Sharon	Sarasota, FL	6/17/2004
Butler, Shirley	Atlanta, GA	6/17/2004
Cappello, Nicholas	Manchester, MA	6/17/2004
Carone, Lawrence	Wattsburg, PA	6/17/2004
Coker, Dawn	Phoenix, AZ	6/17/2004
Conklin, Janet	New Milford, PA	6/17/2004
Costa, Arminda	Pawtucket, RI	6/17/2004
Crawford, Elaine	Sicklerville, NJ	6/17/2004
Crowder, Jason	Birmingham, AL	6/17/2004
Crowe, Sandra	Ragland, AL	6/17/2004
Culp, Stephanie	Nampa, ID	6/17/2004
Daley, Mary	Waltham, MA	6/17/2004
Edmondson, Justina	Chattanooga, TN	6/17/2004
Ennis, Kathleen	Erie, PA	6/17/2004
Fedoruk, Dana	Creekside, PA	6/17/2004
Felton, Wilbert	Tacoma, WA	6/17/2004
Fields, Christine	Abbeville, LA	6/17/2004
Flod, Ramona	Somerset, WI	6/17/2004
Franzie, John	Sandwich, MA	6/17/2004
Frazer, Gabrielle	Carlsbad, CA	6/17/2004
Gage, Renee	Pembroke, MA	6/17/2004
Gagneaux, Susan	Des Allemands, LA	6/17/2004
Gneiting, Karen	Rigby, ID	6/17/2004
Hendricks, Jerry	Salem, IN	6/17/2004
Hill, Richard	Glendale, AZ	6/17/2004
Hood, Jerry	Thorsby, AL	6/17/2004
Horosh, Mildred	Buffalo, NY	6/17/2004
Jackson, Anna	Philadelphia, PA	6/17/2004
Johnson, Samuel	Alexandria, VA	6/17/2004
Katz, Jeffrey	Elmira, NY	6/17/2004

Subject name	Address	Effective date
Knox, Linda	Graysville, AL	6/17/2004
Landy, John	Philadelphia, PA	6/17/2004
Ledbetter, Angela	Jamestown, TN	6/17/2004
Lemich, Boja	Yerington, NV	6/17/2004
Leos, Jennifer	Gilbert, AZ	6/17/2004
Lint, Erik	Hanford, CA	6/17/2004
Lonergan, Dennis	Erie, PA	6/17/2004
Love, Paula	Crescent City, FL	6/17/2004
Malberg, Robyn	Twin Falls, ID	6/17/2004
Martin, Marie	Worcester, MA	6/17/2004
Maxion, Mary	San Mateo, CA	6/17/2004
Medina, Celia	Nampa, ID	6/17/2004
Montgomery, Amy	Montgomery, AL	6/17/2004
Moreland, Susan	Norfolk, VA	6/17/2004
Muhammad, Abdul	Stone Mountain, GA	6/17/2004
Murray, Renee	Opelika, AL	6/17/2004
Najar, Adel	Bayside, NY	6/17/2004
O'Dell, Samantha	Martinsville, VA	6/17/2004
Ornelas, Leonor	Denver, CO	6/17/2004
Perkins, Junior	New Orleans, LA	6/17/2004
Perry, Virgil	Stuarts Draft, VA	6/17/2004
Puryear, Randolph	Bonifay, FL	6/17/2004
Rivera, Rose	Blue Bell, PA	6/17/2004
Roomes, Pamela	Providence, RI	6/17/2004
Runkles, Rachel	Rochester, PA	6/17/2004
Rybka, Rhonda	Springville, AL	6/17/2004
Sanders, Justin	Burleson, TX	6/17/2004
Schreiber, Tina	Deer Park, TX	6/17/2004
Schuler, Judy	Grass Valley, CA	6/17/2004
Sheffield, Misty	Millbrook, AL	6/17/2004
Smalt, Michael	Wayland, NY	6/17/2004
Smith, Cathleen	Penndel, PA	6/17/2004
Smith, Marian	Everson, PA	6/17/2004
Stafford, Denise	Winter Haven, FL	6/17/2004
Stith, Tashell	Richmond, VA	6/17/2004
Storm, Susan	Cincinnati, OH	6/17/2004
Strykowski, Beth	Seabrook, NH	6/17/2004
Summers, Brenda	Meridian, SC	6/17/2004
Taylor, Gregory	Catonsville, MD	6/17/2004
Truskolaski, Michael	Corning, NY	6/17/2004
Ungvari, Christine	Carmeron Park, CA	6/17/2004
Ussery, Ronny	Federal Way, WA	6/17/2004
Vanleer, Jan	Williamstown, NJ	6/17/2004
Walls, Melanie	Valley, AL	6/17/2004
Watts, Tina	Star, ID	6/17/2004
Wilson, Maureen	Camano Island, WA	6/17/2004
Wyatt, Teresa	Crossville, TN	6/17/2004
Yates, Julia	Blackridge, VA	6/17/2004
Federal/State Exclusion/Suspension:		
Townsend, Tiffany	Eastport, ME	6/17/2004
Fraud/Kickbacks:		
McCarty, Patricia	Houston, TX	1/20/2004
Owned/Controlled by Convicted Entities:		
Coral Gables Male Ctr, Inc	Coral Gables, FL	6/17/2004
Emmett Manor, Inc	Emmett, ID	6/17/2004
Great DME, Inc	Hialeah, FL	6/17/2004
Gustavo E Coll, MD, PA	Coral Gables, FL	6/17/2004
Parker Chiropractic Life Ctr, Inc	Akron, OH	6/17/2004
R W Puryear, DMD, Inc	Bonifay, FL	6/17/2004
Safe Harbor Counseling	Rigby, ID	6/17/2004
Superior Medical Wholesalers, Inc	Miami, FL	6/17/2004
Total Family Eye Care, Inc	Miami, FL	6/17/2004
Urology, PA	Miami, FL	6/17/2004
William K Gibson, DMD, PA	Naples, FL	6/17/2004
Default on Heal Loan:		
Ashlock, Ken	Clyde, TX	6/17/2004
Bonner, Jerry	Irving, TX	6/17/2004
Carlos, Lester	Castro Valley, CA	6/17/2004
Coalmon, Perry	Milwaukee, WI	6/17/2004
Steder, Sandra	San Rafael, CA	6/17/2004
Stockslager, Viki	Sylvania, OH	5/3/2004

Dated: June 4, 2004.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 04–13502 Filed 6–15–04; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for the Detroit River International Wildlife Refuge (IWR), Wayne and Monroe Counties, MI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Detroit River IWR, Michigan.

The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals and objectives in the CCP describe how the agency intends to manage the Refuge over the next 15 years.

DATES: Written comments on the Draft CCP and EA must be received by close of business, July 23, 2004.

ADDRESSES: To request a copy of the plan or to submit comments on the plan you may use one of the following methods:

1. You may write to: U.S. Fish and Wildlife Service, Branch of Conservation Planning, BHW Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056.

2. Go to the Refuge Web site: *http://midwest.fws.gov/planning/detroitriver/index.html.*

3. E-mail us at: *r3planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Muehlenhardt at 612/713–5477.

SUPPLEMENTARY INFORMATION: The approved boundary of the Detroit River IWR is located along 48 miles of the lower Detroit River and Michigan's Lake Erie shoreline to the Ohio state border. The Refuge was established by legislation in December 2001 and expanded in May 2003. Refuge land ownership is currently small and limited to several islands in the Detroit River and two coastal parcels in Monroe County. The key biological focus of the refuge is protecting and enhancing remnant coastal wetlands and island habitats for the benefit of migratory birds; especially diving waterfowl.

The planning process for this CCP began in April 2002. A series of open house events, meetings, and workshops were held in local communities throughout the following year.

The EA evaluates three different approaches, or alternatives, to future management and growth of the Detroit River IWR. Alternative C, Leading through Partnerships, is the agency's preferred alternative. Under this alternative, the Detroit River IWR would seek to serve as a focal point for the many ongoing conservation efforts on the Detroit River and surrounding watersheds. The Service would continue to direct habitat protection efforts but with an emphasis on cooperative management instead of fee ownership. The refuge land base would grow primarily through management agreements with private industry and government agencies.

The CCP also identifies wildlife-dependent recreational opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Wildlife-dependent recreational uses would be encouraged on future refuge-owned lands where it is safe and appropriate.

Dated: December 24, 2003.

Gerry Jackson,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on June 10, 2004.

[FR Doc. 04–13569 Filed 6–15–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by July 16, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Los Angeles Zoo, Los Angeles, California, PRT–082594.

The applicant requests a permit to import three captive-born Sichuan snub-nosed monkeys (*Pygathrix roxellana*) from the Beijing Wildlife Park for the purpose of enhancement of the survival of the species through scientific research, captive propagation and conservation education.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Glenn E. Peterson, Meadville, PA, PRT–088271.

The applicant requests a permit to import a polar bear (*Ursus maritimus*)

sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Roger A. Martin, Albermarle, NC, PRT–088193.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: June 4, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–13510 Filed 6–15–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received on or before July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number: TE087769

Applicant: Michigan Department of Natural Resources, Lansing, Michigan.

The applicant requests a permit to take the Karner blue butterfly (*Lycaeides melissa samuelis*) in Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE087770

Applicant: Kimberly Livengood, University of Missouri, Columbia, Missouri.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) and gray bat (*M. grisecen*) throughout Iowa and Missouri. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE087771

Applicant: Jeremy Fant, Chicago Botanic Garden, Illinois.

The applicant requests a permit to take Pitcher's thistle (Cirsium pitcherii) in Indiana and Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE071086

Applicant: John Chenger, Bat Conservation and Management, Carlisle, Pennsylvania.

The applicant requests a permit amendment to take the Indiana bat (Myotis sodalis) in Indiana and Ohio. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE088720

Applicant: George T. Watters, Ohio State University, Columbus, Ohio.

The applicant requests a permit to take (collect and hold) all endangered mussel species throughout the Ohio River system in eastern and central United States. Activities are proposed for studies to identify host species, propagation, and release into the wild. The scientific research is aimed at enhancement of survival of the species in the wild.

Dated: May 27, 2004.

Dan Sobieck,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 04–13496 Filed 6–15–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from the public, and from local, State and Federal agencies on the following permit request.

DATES: Comments on these permit applications must be received on or before July 16, 2004.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–799558–4

Applicant: Idaho Power Company, Boise, Idaho. The permittee requests an amendment to its permit to authorize take (harass by survey, capture, collect, and captively propagate) the Bliss Rapids snail (*Taylorconcha serpenticola*), the Idaho springsnail (*Pyrgulopsis idahoensis*), the Utah valvata snail (*Valvata utahensis*), the Snake River physa snail (*Haitia (Physa) natricina*), and the Banbury Springs limpet (*Lanx* sp.) in conjunction with life history studies, genetic research, pressure transducer studies, major tributaries studies, and ecological research throughout the range of each species for the purpose of enhancing their survival.

We solicit public review and comment on this recovery permit applications.

Dated: May 27, 2004.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–13570 Filed 6–15–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–03–840–1610–241A]

Canyons of the Ancients National Monument Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Canyons of the Ancients National Monument (Monument) Advisory Committee (Committee), will meet as directed below.

DATES: Meetings will be held July 6th, August 10th and September 14th at the Anasazi Heritage Center in Dolores, Colorado at 9 a.m. The public comment period for each meeting will begin at approximately 2:30 p.m. and the meetings will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: LouAnn Jacobson, Monument Manager or Stephen Kandell, Monument Planner, Anasazi Heritage Center, 27501 Hwy 184, Dolores, Colorado 81323; Telephone (970) 882–5600.

SUPPLEMENTARY INFORMATION: The eleven member committee provides counsel and advice to the Secretary of the Interior, through the BLM, concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. At these meetings, topics we plan to discuss include planning issues and management concerns in the field, planning alternatives, partnerships, science and other issues as appropriate.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Committee meetings will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Committee can be obtained from the Monument planning Web site at: *http://www.blm.gov/rmp/canm* which will be updated following each Committee meeting.

Dated: June 8, 2004.

LouAnn Jacobson,

Monument Manager, Canyons of the Ancients National Monument.

[FR Doc. 04–13572 Filed 6–15–04; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–04–1150–JP]

Notice of Proposed Supplementary Rules for Public Land on Quail Ridge, Napa County, CA

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: BLM is proposing supplementary rules to prohibit the use of firearms and paintball weapons on 4 parcels of public land within the Quail Ridge Area, Napa County, California. The purpose of prohibiting the use of firearms and paintball weapons on these 4 small land parcels is to eliminate the risk to BLM and the Federal Government of firearm accident liability. The second purpose is to ensure that BLM is in compliance with a 1991 multi-landowner signed memorandum of agreement that established management practices at Quail Ridge.

DATES: You should submit your comments by July 16, 2004. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: *Mail:* Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482.

Personal or messenger delivery: Bureau of Land Management, Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482.

Internet e-mail: ca340@ca.blm.gov. (Include "Attn: *Walter Gabler*")

FOR FURTHER INFORMATION CONTACT: Walter Gabler, Law Enforcement Ranger 707–468–4090, or by e-mail at *wgabler@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: BLM manages 4 parcels at Quail Ridge: one is 360 acres, one is 78.38 acres, and the other two are 40 acres each. None of the parcels is contiguous to any of the others, and none of them has legal public access. The major land owners in this region, including the University of California at Davis, California Department of Fish and Game, Bureau of Reclamation, and all but 2 private land owners, have prohibited the use of firearms and paint ball weapons on their property. The lands subject to the proposed supplementary rules are described as follows: Mt. Diablo Meridian, Township 7 North Range 3 West Section 1, W½ Lot 2 in the NE¼, 38.38 acres; Section 1, W½ Lot 1 in the NE¼, 40 Acres; Section 2, SE¼NE¼, 40 Acres; Township 8 North Range 3 West Section 25, SE¼NE¼, S½NW¼, SW¼, W½SE¼, 360 Acres; Section 26, SE¼NE¼, 40 acres; Section 35, NE¼NE¼, 40 acres.

BLM proposes these supplementary rules under the authority of 43 CFR 8365.1–6. Any person who fails to comply with the supplementary rules may be subject to the penalties provided in 43 CFR 8360.0–7.

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of these proposed supplementary rules at BLM's Internet home page: *www.blm.gov.* You may also comment via the Internet to: *ca340@ca.blm.gov.* (Include "Attn: *Walter Gabler*"). Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 707–468–4000.

Written Comments

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed rules and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final supplementary rules comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

Comments, including names, streets addresses, and other contact information of respondents, will be available for public review at (2550 North State Street, Ukiah, CA 95482) during regular business hours (7:45 a.m. to 4:30 p.m.,), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your

name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will not consider anonymous comments. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Discussion of the Supplementary Rules

These supplementary rules would apply to the public lands within the Mt. Diablo Meridian, Township 7 North Range 3 West Section 1, W½ Lot 2 in the NE¼, 38.38 acres; Section 1, W½ Lot 1 in the NE¼, 40 Acres; Section 2, SE¼NE¼, 40 Acres; Township 8 North Range 3 West Section 25, SE¼NE¼, S½NW¼, SW¼, W½SE¼, 360 Acres; Section 26, SE¼NE¼, 40 acres; Section 35, NE¼NE¼, 40 acres. The supplementary rules would prohibit the use of firearms and paintball weapons within the Quail Ridge Area.

III. Procedural Matters

Regulatory Planning and Review (E.O. 12866)

These supplementary rules are not significant and are not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) The supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

(2) The supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These supplementary rules do not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) The supplementary rules do not raise novel legal or policy issues.

The supplementary rules contain rules of conduct for public use of a limited selection of public lands.

Regulatory Flexibility Act

The Department of the Interior certifies that these supplementary rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et sea.*). The supplementary rules merely contain rules of conduct for public use of a limited selection of public lands.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules are not major under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rules:

Do not have an annual effect on the economy of $100 million or more.

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. They do not have a significant or unique effect on state, local, or tribal governments or the private sector. The rules have no effect on governmental or tribal entities. The supplementary rules would impose no requirements on any of these entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

National Environmental Policy Act

BLM has determined that these proposed supplementary rules, which would prohibit discharge of firearms and paintball weapons in public lands on Quail Ridge, qualify as policies, directives, regulations, or guidelines of an administrative, financial, legal, technical, or procedural nature. The subject area would still be open to other uses. The restriction would improve the protection of the resources. Therefore, they are categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the interim final supplementary rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with Constitutionally protected property rights. The rules would apply only on public lands and would not affect the real or personal property of any individual or entity. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism [Replaces Executive Orders 12612 and 13083.]

The proposed supplementary rules 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. The supplementary rules would impose no requirements on states or have any effect on Federal-state relations. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, we have found that these supplementary rules do not include policies that have tribal implications. The supplementary rules would impose

no requirements on tribes or tribal governments or have any effect on Federal-tribal relations. The prohibitions in the supplementary rules would apply equally to all persons, including Indian individuals, who visit or use the parcels of public land on which they apply.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Walter Gabler, Law Enforcement Ranger at the Bureau of Land Management, Ukiah Field Office, California.

BLM proposes the following supplementary rules:

Supplementary Rules for Public Land on Quail Ridge, Napa County, California

Sec. 1 Prohibited acts.

a. You must not discharge firearms of any kind on public lands on Quail Ridge, Napa County, California.

b. You must not discharge paintball weapons on public lands on Quail Ridge, Napa County, California.

Sec. 2 Penalties.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 if you violate these supplementary rules on public lands within the boundaries established, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: June 9, 2004.

Rich Burns,

Field Manager, BLM Ukiah California.

[FR Doc. 04–13571 Filed 6–15–04; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Intention To Request for Clearance of Information Collection to the Office of Management and Budget; Opportunity for Public Comment.

AGENCY: National Park Service, The Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the Provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR, part 1320 Reporting and Record Keeping Requirements, the National Park Service (NPS) invites comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved information collection (OMB #1024–0022). This information collection is associated with permits implementing provisions of the agency regulations pertaining to the use of public lands. The information collected critical to backcountry managers and allows them to monitor levels of use to identify any impacts to the resources.

DATES: Public comments on this final notice must be received by July 16, 2004 to be assured of consideration.

The bureau solicits public comments as to:

(1) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected; and

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB#1024–0022), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566, or by electronic mail at *OIRA_DOCKET@omb.eop.gov*. Please also mail or hand carry a copy of your comments to Lee Dickinson, National Park Service, 1849 C Street, NW, (2460), Washington, DC 20240. Electronic mail may also be sent to *Lee_Dickinson@nps.gov*. All comments will become a matter of public record.

For Further Information or a copy of the Study Package Submitted for OMB Review Contact: Lee Dickinson, Special Park Uses Program Manager, National Park Service at 202/513–7092 or electronic mail at *Lee_Dickinson@nps.gov*.

SUPPLEMENTARY INFORMATION:

(1) *Title:* Backcountry Use Permit. (36 CFR 1.5, 1.6 and 2.1).

(2) *Form Number:* 10–404A.

(3) *OMB Number:* 1024–0022.

(4) *Expiration Date:* 4/30/04.

(5) *Type of Request:* Extension of a currently approved collection.

(6) *Description of Need:* collection of information allows park managers to monitor backcountry use and to uniformly distribute necessary guidance and safety information to backcountry users.

(7) *Estimated number of Applicants:* 285,000.

(8) *Estimated number of Responses:* 285,000.

(9) *Estimated burden per response:* 5 minutes.

(10) *Estimated Total Annual Burden:* 23,750 hours.

Analysis of Comments Regarding the 60-Day Federal Register Notice

There were no comments received from the public on the proposed regulations during the 60-day public comment period that closed February 3, 2004. The forms were first approved in November 1976. No comments concerning the forms have been received in the last 3 years.

Dated: April 22, 2004.

Leonard E. Stowe,

Acting NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 04–13518 Filed 6–15–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ Fire Management Plan, Santa Monica Mountains National Recreation Area, Los Angeles and Ventura Counties, CA; Notice of Availability

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR Part 1500–1508), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement identifying and evaluating four alternatives for a proposed update to the Fire Management Plan at Santa Monica Mountains National Recreation Area (SMMNRA), California. Potential impacts and appropriate mitigations are assessed for each alternative. When approved, the plan will guide all future fire management actions in the SMMNRA for five to ten years.

The Draft Santa Monica Mountains Environmental Impact Statement (DSMMEIS) documents the

environmental impact analysis of three action alternatives, and a no action alternative. These fire management alternatives are needed to meet public safety, natural and cultural resource management, and wildland urban interface protection objectives on National Park Service (NPS) managed lands within the SMMNRA. They are also designed to protect ecological and cultural resource values based on a current understanding of the dynamic relationship between the native chaparral/coastal sage scrub vegetation and the fire climate of the Santa Monica Mountains. Related activities such as coordination with local fire agencies, assessment of fire hazards, and public education apply to all private and public lands within the SMMNRA boundary. In varying degrees each action alternative identifies measures to address resource condition and education goals as called for in the SMMNRA General Management Plan, which was approved in 2003.

Alternatives Analyzed: Elements common to all alternatives include the goal of complete suppression of wildland fires. Under the management preferred alternative, which is also the "environmentally preferred" alternative (Alternative 2, Mechanical Fuel Reduction/Ecological Prescribed Fire/ Strategic Fuels Treatment) prescribed burning is used to provide resource enhancement. In addition, hazard fuel reduction projects using prescribed fire or mechanical fuel reduction are considered in strategic locations to reduce the chance of wildfires which may damage life and property or impact natural and cultural resources. Short-term and site-specific resource impacts of strategic prescribed fires are weighed against long-term and regional hazard fuel reduction benefits. Strategic zones are identified using up-to-date analysis of vegetation types, fuel characteristics, fire spread models, and potential hazards to life, property and natural and cultural resources. Mechanical fuel reduction is concentrated at the wildland urban interface to protect homes. This alternative provides maximum potential environmental benefit and minimizes the adverse impacts of fire management actions. It is also the most flexible alternative, utilizing all available fire management strategies identified to be appropriate in the Santa Monica Mountains.

Under the No-Action Alternative (Alternative 1) the current SMMNRA fire and vegetation management program, approved in 1986 and revised in 1994, would be retained. It is intended to create a landscape mosaic of varying aged chaparral stands through the application of prescribed fire in separate watersheds. Brush clearance is limited to the wildland urban interface (those areas directly adjacent to homes and roads that abut parkland or open space). In recent years the desired execution of this program has been difficult because of increasingly complex regulatory constraints on prescribed fire, especially those relating to air quality standards. Maintaining the current program has the potential in the long term to be ecologically damaging to native plant communities. It may not provide direct protection for residential areas by reducing fuel loads at the wildland urban interface. A growing body of research indicates that the program does not provide effective control of wildfire spread under severe weather conditions.

Under Alternative 3 (Mechanical Fuel Reduction/Ecological Prescribed Fire) prescribed burning is used exclusively to provide resource enhancement including control of exotic species and restoration of natural communities. Mosaic burning is eliminated. Fuel hazard reduction is concentrated at the wildland urban interface to protect homes and development and emphasizes brush clearance by mechanical means. This alternative lacks the potential risk reduction benefits from strategic fuel modification.

Under Alternative 4 (Mechanical Fuel Reduction only) vegetation management is limited to expanded brush clearance at the wildland urban interface. Prescribed fire is eliminated. This alternative provides effective protection of homes by focusing mechanical fuel reduction at the interface between homes and wildland vegetation, but lacks the ecological benefits of resource prescribed burning, and the potential risk reduction benefits from strategic fuel modification.

Planning Background: The DSMMEIS was prepared pursuant to the National Environmental Policy Act in compliance with NPS environmental requirements. Public outreach was initiated in June 2001 with a planning workshop for agencies, cooperators and other partners attended by approximately 30 people. A Scoping Notice published in the **Federal Register** in March 2002 encouraged comments during a six month period. Four public meetings were also held in April 2002, in Beverly Hills, Calabasas, Malibu and Thousand Oaks, California. Two additional meetings were held in June 2002 to gain additional input on the alternatives from fire agencies, cooperators and other partners. Approximately 35 citizens attended these six sessions. Letters were also sent to Native American representatives, requesting their comments and concerns related to cultural activities, practices or resources. In addition to the oral comments, the park received nine letters, faxes and emails; a majority of respondents supported a strategy that provided the most flexibility. One letter encouraged planners to minimize prescribed burning as a management tool. These responses, along with information from the 2001 preliminary workshop involving numerous fire management and land management agencies, have been taken into account in the development of alternatives.

Public Meetings: In order to facilitate public review and comment on the DSMMEIS, several public meetings are planned for August 2004 (with at least two to be held in the evening and one in the afternoon; possible locations include Beverly Hills, Malibu, Calabasas/Agoura Hills, and Thousand Oaks, California). Detailed information on location and times for all public meetings will be published in local and regional newspapers several weeks in advance and announced on the park's webpage. SMMNRA management and fire planning officials will attend all sessions to present the DSMMEIS and receive comments and answer questions.

Comments: The complete DSMMEIS will be posted on the SMMNRA webpage at *http://www.nps.gov/samo/pphtml/documents.html.* Copies in printed or CD form will be available at park headquarters in Thousand Oaks and at local and regional libraries in the greater Los Angeles area; these locations will also be posted on the Web site. Copies will also be sent directly to those who request it (specify desired format and inquire at (805) 370–2331 or via eMail per address below). All written comments must be postmarked, or transmitted electronically, not later than September 15, 2004. All comments should be addressed to the Superintendent and mailed to Santa Monica Mountains NRA, 401 W. Hillcrest Drive, Thousand Oaks, CA 91360 Attn: Fire Management Plan; or eMailed to: <*samo_fire@nps.gov*> (in the subject line, type: Fire Mgmt Plan EIS). All comments received will be maintained in the administrative record and the information provided may be made available for public review. If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will

withhold a respondent's identity as allowable by law. As always, NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses, and, anonymous comments may not be considered.

Decision Process: Depending upon the degree of public interest and response from other agencies and organizations, at this time it is anticipated that the Final Fire Management Plan and Environmental Impact Statement will be completed during 2005; availability of the document will be duly noticed in the **Federal Register** and announced in local and regional press. Subsequently, a Record of Decision may be approved not sooner than thirty days after the final document is distributed. As a delegated EIS, the official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; subsequently the official responsible for implementation is the Superintendent, Santa Monica Mountains NRA.

Dated: May 11, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–13520 Filed 6–15–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ Fire Management Plan, Whiskeytown National Recreation Area, Shasta County, CA; Notice of Availability

Summary: Pursuant to § 102(2) (C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR Part 1500–1508), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement identifying and evaluating four alternatives for a Fire Management Plan for Whiskeytown National Recreation Area, California. Potential impacts and mitigating measures are described for each alternative. The alternative selected upon conclusion of the conservation planning/environmental impact analysis process will guide future fire management actions at Whiskeytown National Recreation Area over the next 10 years.

The Whiskeytown Fire Management Plan (FMP) and Final Environmental Impact Statement (FEIS) describes and evaluates three action alternatives and a no action alternative for an updated fire management program at Whiskeytown National Recreation Area. Revisions to the current plan are needed to meet public and firefighter safety, natural and cultural resource management, and wildland urban interface objectives of the park. The action alternatives vary in the emphasis they place on fire management goals developed by the park. The current program has been effective in fire suppression, but has not been able to restore large portions of the park landscape to circa 1800 conditions as required by the park's General Management Plan (GMP). Also, each action alternative would amend the park's GMP to allow future consideration of rebuilding the park's administration building at its current headquarters location, in conjunction with relocating the fire cache to the Oak Bottom recreational complex.

Whiskeytown National Recreation Area is located eight miles west of Redding, California and encompasses 42,500 acres, including the 3000-acre Whiskeytown Lake—a reservoir created as part of California's Central Valley Project, Trinity River Diversion. In the past, wildland fire occurred naturally in the environs of the park as an important ecosystem process that kept forest fuels and vegetation structure within a natural range of variability. Mining, logging and fire suppression activities (mostly pre-dating the establishment of the park) have lead to increased fuel loads and changes in vegetation community structure. In turn this has increased the risk of large, high-intensity wildland fire within the park, threatening developed zones, the park's natural and cultural resources, and neighboring landowners and communities.

Planning Background: A Notice of Intent was published in the **Federal Register** on August 8, 2001; the public scoping period officially ended on September 15, 2001, although comments were accepted throughout 2002. During this time the park held discussions and briefings with local communities; local residents; local, regional and state fire organizations; air quality regulators; other agency representatives; tribes; elected officials; representatives of city and county government; public service organizations and other interested members of the public. A public scoping meeting was conducted on August 23, 2001 in the town of Old Shasta at Shasta Elementary School. The meeting was advertised in the local media and letters were sent to agencies, organizations and members of the public inviting them to participate in the scoping process. Twenty members of the public attended. Issues raised during scoping included air quality concerns; the management capacity for wildland fire use in a wildland urban interface zone; how well the park met past prescribed fire goals; the use of herbicides; interactions between overstocked forests and beetle infestations; and the use of heavy equipment in forest lands for thinning operations.

Response to the Draft Plan: A Notice of Availability of the Draft Environmental Impact Statement was published in the **Federal Register** on April 23, 2003, and a press release was issued coinciding with publication of the **Federal Register** notice (and notice was posted on the park's Web site). Postcards announcing the availability of the draft document were mailed out to the park's mailing list. Copies of the document were available at the park's Visitor Center and at local libraries in Shasta, Tehama and Trinity counties. The public comment period concluded on June 24, 2003.

During April and May, 2003 several hundred copies of the draft plan were mailed to agencies, organizations and interested individuals. During the public comment period, two public meetings were held (May 28 & June 12) and two public tours of the park were held (June 10 & 14). A total of seven pieces of written correspondence were received—including letters from agencies, organizations and individuals (the written comments were received from the local area, with two exceptions, one from Crescent City, California and one from Wisconsin. In addition, 15 people attended public meetings and tours. The following elements received the most comments: Support for addressing the wildland urban interface area; clarifications of the air quality analysis; and qualified support for forest thinning. Comments on wildland fire use were uniformly against the practice of using this management tool at Whiskeytown. All letters with substantive comments noted are reproduced in the WFMP FEIS.

Throughout the overall conservation planning and environmental impact analysis, consultations were held with the U.S. Fish and Wildlife Service, the U.S. Forest Service, the National Marine Fisheries Service, the Bureau of Land Management, the California Department of Forestry and Fire Protection and the California State Historic Preservation Office. Additional consultations were held with local Native American groups and county air districts. With the exceptions of the Bureau of Land Management, the Shasta County air quality district and the California

Department of Forestry and Fire Protection, no written comments were received.

Final Proposed Plan and Alternatives: The WFMP FEIS includes three action alternatives and a no action alternative. No substantive changes in actions proposed or attendant mitigation strategies have occurred as a result of public review and comment. Under all of the action alternatives, the park's 2001 GMP would be amended to allow future consideration of rebuilding the park's administration building at its current headquarters location, in conjunction with relocating the fire cache to the Oak Bottom recreational complex.

Under the no-action alternative (Alternative I), the current fire management program would continue utilizing a limited range of fire management strategies—including prescribed fire, limited mechanical treatment and suppression of all wildland fires (including natural ignitions). The current program includes both broadcast and pile burning components, with prescribed fire projects ranging in size from 0.5 to 1000 acres occurring in all vegetation types. Maximum burning in a given year typically is about 1400 acres. Limited mechanical treatment methods would continue to be utilized to reduce hazardous fuel levels in the park. These would include the use of chain saws, weed-eaters, hand crews, and chippers to clear around buildings, to install and maintain shaded fuel breaks, and to clear along roadways. Total maintained shaded fuel break system would be 850 acres, with maintenance occurring at least once every three years as needed. Annual average maintenance of all mechanically treated areas would be 275 acres.

Under Alternative II, the fire program would focus on the application of prescribed fire to meet ecological restoration objectives, and to reduce hazardous fuels throughout the park. All other fires would be suppressed including natural ignitions. Mechanical treatment would only be used to construct prescribed fire burn unit boundaries and to reduce fuels around developed areas. Alternative ll would only utilize hand tools, chainsaws, weed eaters and chippers for mechanical treatment for an average 80 acres annually. This alternative would include pile burning and broadcast burning. Projects under Alternative II would include areas up to 1,000 acres in size to simulate, to the greatest extent feasible, the scale and pattern of natural fire events. Up to 3,000 acres would be burned during each year of implementation. Due to windows of opportunity during the dormant season, Alternative II would implement prescribed burns during the non-dormant season from 10%-20% of the time to maximize opportunities for execution of prescribed fire projects.

Under Alternative III, all natural and human-ignited wildland fires would be suppressed. Prescribed burning would only occur in conjunction with mechanical fuel treatments around developments and on shaded fuel breaks. Alternative III would consist of pile burning and a few prescribed fire projects to strengthen and widen by up to ¼ to ½ mile shaded fuel breaks for tactical purposes in the case of suppression fire events. No large, prescribed fires would be conducted. Up to 250 acres would be burned during each year of implementation. This alternative would use mechanical treatment to reduce forest fuels in and around developed areas, and to install new, and widen existing shaded fuel breaks. Hand tools, chainsaws, weed eaters, chippers, and brush masticators would be used. Annual program levels would be up to 225 acres for each of the two mechanical treatment levels proposed in this alternative.

Under the preferred alternative (Alternative IV), the park would focus on restoring Whiskeytown's plant communities to reduce the risk of high severity wildland fire by decreasing forest stand density, reducing surface fuels, and attempting to restore fire as a natural disturbance process to the greatest extent feasible using prescribed fire and mechanical treatment. Up to 2,200 acres per year would be treated through prescribed fire. Three levels of mechanical treatment would be utilized to reduce fuel levels and mimic the effects of fire on structural patterns of woody vegetation, including the use of hand tools, chainsaws, weed eaters, chippers, brush mastication and small-scale logging of trees up to 12 inches in diameter at breast height. Mechanical treatment would be used to reduce forest fuels in and around developed areas, and to install and widen some new and existing shaded fuel breaks. Mechanical treatment would be used on up to 1075 acres per year.

As documented in the FEIS, this alternative is "environmentally preferred" because with the expanded range of management options, Whiskeytown will be able to more quickly reduce the hazardous fuels issues in the wildland urban interface'focusing on community safety. Additionally, greater flexibility in mechanical treatment will allow the park to be better able to manage second growth forest stands and their attendant fuels problems. lmproved second growth management is expected to improve wildlife habitat and ecological functions. The other alternatives are not "environmentally preferred" because of the reliance on limited management actions, such as prescribed fire, suppression or simple mechanical treatment. The limited nature of how, where and when each of these alternatives could be implemented increases the public and fire fighter exposure to unsafe conditions and do not adequately address habitat improvement and biological diversity issues.

In addition to minor corrections and editorial changes in preparing the final EIS and WFMP, one element of the proposed plan (as identified in the draft EIS) was modified based on public comment. Comments from the public meetings and letters stressed the importance of protection of private property adjacent to the park and concern about the park's capacity in managing wildland fire use. In response, the NPS planning team recommended removing wildland fire use from consideration as a management tool in the park's fire management program. This change does not constitute an impairment of park resources or a significant impact of a singular or cumulative nature.

Public Availability: The FEIS is now available; copies may be obtained from the Superintendent, Whiskeytown NRA, P.O. Box 188, Whiskeytown, CA 96095; telephone (530) 242–3400. The document will also be posted electronically at the park's Web site (*http://www.nps.gov/whis*), and distributed to Shasta, Trinity, and Tehama county libraries. Any responses received will be documented and will become part of the public record. If individuals responding request that their name or/and address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the letter. There also may be circumstances wherein the NPS will withhold a commenter's identity as allowable by law. As always, the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations; and, anonymous comments may not be considered.

Decision: Not sooner than 30 days after EPA's notice of the FEIS filing is published in the **Federal Register** a Record of Decision will be prepared.

Notice of the approved Record of Decision will also be published in the **Federal Register**. As this is a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementing the approved fire management plan would be the Superintendent, Whiskeytown National Recreation Area.

Dated: May 7, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–13519 Filed 6–15–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Record of Decision on the Final Environmental Impact Statement/General Management Plan, Arkansas Post National Memorial, Arkansas

SUMMARY: On April 2, the Director, Midwest Region approved the Record of Decision for the project. As soon as practical, the National Park Service (NPS) will begin to implement the general management plan described as the preferred alternative (alternative B) contained in the final environmental impact statement (FEIS) issued on January 6. In the preferred alternative, the visitor center would be rehabilitated and expanded to better highlight the park's cultural and natural resources. The park staff would develop activities such as festivals and programs that focus on cultures that are associated with Arkansas Post National Memorial (ARPO). Interpretation of the resources associated with the Civil War battle would be enhanced to provide for greater visitor appreciation and understanding. The picnic area would be retained and an informal overflow parking area would be developed to accommodate these special events. Present road systems would be retained.

At the Osotouy Unit, an access road and a small visitor contact station and a parking area would be developed in an area that is now an agricultural field. This area would include a staging area for group tours. Housing for a park ranger and an adjacent small maintenance area would be developed near by. A small research support facility would also be constructed on site and would provide the necessary support for scientific study at Osotouy. An interpretive loop trail focusing on American Indian Culture, Euro-American arrival and the interaction between the two cultures would be developed for the visitor contact station to the mounds with a portion along Lake Dumond.

This alternative was deemed to be the environmentally preferred alternative, and it was determined that implementation of the selected actions will not constitute an impairment of park resources and values. This course of action and three alternatives were analyzed in the draft and FEIS. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures identified.

The full record of decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, and a listing of measures to minimize environmental harm.

Basis for Decision

In reaching its decision to select the preferred alternative, the NPS considered the purposes for which Arkansas Post National Memorial was established, and other laws and policies that apply to lands in the memorial, including the Organic Act, National Environmental Policy Act, and the NPS Management Policies. The NPS, also, carefully considered public comments received during the planning process.

To develop a preliminary preferred alternative, the planning team evaluated the four draft alternatives that had been reviewed by the public. To minimize the influence of individual biases and opinions, the team used an objective analysis process called "Choosing by Advantages." This process has been used extensively by government agencies and the private sector. Decision points identify the key choices that still remain to be made after all the mandates are taken into account and the park's purpose and significance are considered. For this general management plan, three "decision points" were identified:

1. What level of development can be allowed while still preserving the park's cultural and natural resources unimpaired for future generation?
2. What visitor use, including local recreational use, can be accommodated while preserving the integrity of the park's cultural and natural resources?
3. How does the park best memorialize the legislated historical period while preserving park resources?

These decision points were covered by looking at the varying degrees of these decision points: Alternative C emphasizes the preservation of cultural and natural resources of the park for future generations. In this alternative there are limited recreational areas and trails are kept to a minimum, offering very little interpretation or orientation for the park visitor. In this alternative, recreational use is minimized.

Alternative D focuses on decision points 2 and 3. In this alternative, trails would be expanded and the park lake would be opened up for recreation. This alternative would seek to develop new ways for the public to gain an appreciation and understanding of the park's natural and cultural resources. Educational and interpretive goals would be emphasized though an array of recreational activities and visitor interpretation would emphasize the parks historical significance. This alternative, however, opens additional areas to recreation and interpretation and does not focus enough on the preservation of the park's cultural and natural resources for future generations.

The preferred alternative, alternative B, best answers all three of these decision points by striking a balance between recreational use, cultural and natural resource preservation and memorizing the legislated historical period. By emphasizing interpretation of the area's 300 years of cultural cooperation, conflict, synthesis, and diversity, alternative B encompasses both recreational use and conservation of cultural and natural resources. A no-action alternative, alternative A was included for comparison.

FOR FURTHER INFORMATION CONTACT: Superintendent Edward Wood, Jr., Arkansas Post National Memorial, 1741 Old Post Road, Gillett, AR 72055; telephone 870–548–2207, or *http://planning.nps.gov/plans.cfm.*

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Record of Decision may be obtained from the Superintendent listed above.

Dated: April 21, 2004.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 04–13517 Filed 6–15–04; 8:45 am]

BILLING CODE 4312–BW–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 04–33]

Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2005 to 2014

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact statement/ environmental impact report (Draft EIS/ EIR) and notice of public hearing.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) have made available for public review and comment the Draft EIS/EIR for a 10-year water transfer program. The program would consist of the transfer of up to 130,000 acre-feet of substitute water (a maximum of 80,000 acre-feet of developed water from conservation measures, including tailwater recovery, and groundwater pumping and a maximum of 50,000 acre-feet from temporary land fallowing) from the Exchange Contractors to other Central Valley Project (CVP) contractors, to Reclamation for delivery to the San Joaquin Valley wetland habitat areas (wildlife refuges), and to Reclamation and/or DWR for use by the CALFED Environmental Water Account (EWA) as replacement water for CVP contractors. Reclamation would approve and/or execute short-term and/or long-term temporary water transfers or agreements.

DATES: A public hearing will be held to receive oral or written comments regarding the project's environmental effects on July 7, 2004 from 5 p.m. to 7 p.m. in Los Banos, California.

Submit written comments on the Draft EIS/EIR on or before August 2, 2004 at the address provided below.

ADDRESSES: The public hearing will be held at the Miller & Lux Building, 830 Sixth Street, Los Banos, CA 93635.

Written comments should be sent to Bureau of Reclamation, Mid-Pacific Region, Division of Environmental Affairs, Attention: Mr. Bob Eckart, 2800 Cottage Way, Sacramento, California 95825, Fax: (916) 978–5055.

Copies of the Draft EIS/EIR may be requested from Mr. Eckart at the above address or by calling (916) 978–5051. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS/EIR are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Eckart at the above address, by calling (916) 978–5051, or by e-mail: *reckart@mp.usbr.gov*.

SUPPLEMENTARY INFORMATION: The purpose/objective of the proposed 10-year transfer program is the transfer of water from the Exchange Contractors to:

- South of Delta CVP contractors to meet demands of agriculture, municipal, and industrial uses,
- The Department of the Interior's Water Acquisition Program for delivery to the San Joaquin Valley Federal, State, and private wildlife refuges to meet Incremental Level 4 needs, and/or
- Reclamation and/or DWR for use by the CALFED EWA Program to benefit CVP operations by providing replacement water to CVP contractors.

The Exchange Contractors' proposed water transfer program would assist Reclamation in maximizing the use of limited existing water resources for agriculture, fish and wildlife resources, and municipal and industrial purposes. Water would be transferred to other CVP contractors to support the production of agricultural crops and livestock within the limits of their current agreements. CVP contractors include Santa Clara Valley Water District which is in need of short-term water supplies to support agriculture, municipal, and industrial uses in Santa Clara County. Reclamation's Water Acquisition Program needs additional water to provide the refuges with the increment between Level 2 and Level 4 water quantities for fish and wildlife habitat development. Reclamation and/or DWR may also need to acquire additional CVP water south of the Delta to replace water used for fish protection actions pursuant to CALFED's EWA Program (for the benefit of the CVP).

The water transfers would occur largely within the San Joaquin Valley of Central California. The Exchange Contractors service area covers parts of Fresno, Madera, Merced, and Stanislaus counties. The agricultural water users that would benefit from the potential transfers are located in the counties of Stanislaus, San Joaquin, Merced, Madera, Fresno, San Benito, Santa Clara, Tulare, Kings, and Kern. The wetland habitat areas that may receive the water are located in Merced, Fresno, Tulare, and Kern counties. Water purchased for use by Reclamation and/ or DWR for the EWA may be provided to CVP contractors in the West San Joaquin and San Felipe divisions to replace water bypassed at Tracy Pumping Plant pursuant to EWA fish protection actions.

The Draft EIS/EIR addresses impacts associated with water development by the Exchange Contractors and related effects associated with water use by CVP contractors and the wildlife refuges. Resources evaluated for potential direct and indirect effects from the proposed transfer program include: surface water, groundwater, biological (vegetation, wildlife, and fisheries), air quality, land use (including agriculture), socioeconomics, Indian Trust Assets, and environmental justice. An evaluation of cumulative hydrologic and water service area impacts associated with reasonably foreseeable actions is included also.

Copies of the Draft EIS/EIR are available for public inspection and review at the following locations:

- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5100
- San Joaquin River Exchange Contractors Water Authority, 541 H Street, Los Banos, CA 93635; telephone: (209) 827–8616
- California State Library, 914 Capitol Mall, Suite E–29, Sacramento
- Resources Agency Library, 1416 Ninth Street, Suite 117, Sacramento
- San Francisco Public Library, McAllister and Larkin, San Francisco
- Fresno County Public Library, 2420 Mariposa Street, Fresno
- Merced County Public Library, 1312 South 7th Street, Los Banos
- Santa Clara County Public Library, 10441 Bandley Drive, Cupertino
- Kern County Library, 701 Truxton Avenue, Bakersfield
- UCD Shields Library, Documents Department, University of California, Davis
- UCB Water Resources Center Archives, 410 O'Brien Hall, Berkeley

Oral and written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Hearing Process Information:

The purpose of the public hearing is to provide the public with an opportunity to comment on environmental issues addressed in the Draft EIS/EIR. Written comments will also be accepted.

Dated: April 15, 2004.

Susan L. Ramos,

Assistant Regional Director, Mid-Pacific Region.

[FR Doc. 04–13546 Filed 6–15–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–101 (Second Review)]

Greige Polyester Cotton Printcloth From China

AGENCY: International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on greige polyester cotton printcloth from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on greige polyester cotton printcloth from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On June 4, 2004, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act.[1] The Commission found that the domestic interested party group response to its notice of institution (69 FR 9640, March 1, 2004) was adequate and that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 10, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13550 Filed 6–15–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–415]

U.S. Trade and Investment With Sub-Saharan Africa

AGENCY: United States International Trade Commission.

ACTION: Notice of preparation of fifth report and opportunity to submit information and comments.

SUMMARY: Following receipt on March 12, 2000, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–415, U.S. Trade and Investment with Sub-Saharan Africa, under section 1332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of preparing a series of five annual reports. This is the fifth and final report in the series, and the Commission plans to transmit this fifth report to the USTR by December 10, 2004.

DATES: *Effective Date:* June 9, 2004.

FOR FURTHER INFORMATION CONTACT: Nannette Christ, Office of Economics (202–205–3263), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects of the investigation. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the 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 202–205–2000. General information about the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov*.

Background: The USTR requested that the Commission prepare a series of annual reports for five years containing the following information:

1. For the last five years (and the latest quarter available), data on U.S. merchandise trade and services trade with sub-Saharan Africa (SSA), including statistics by country, by major sectors, and by the top 25 commodities.
2. A summary of U.S. and total foreign direct investment and portfolio investment in sub-Saharan Africa.
3. Statistical information on U.S. imports from sub-Saharan Africa under the AGOA and GSP programs, by country and by major product categories/commodities, and information on AGOA-related investment.
4. Updates on regional integration organizations in sub-Saharan Africa including statistics on U.S. trade with major regional groupings (ECOWAS, WAEMU, COMESA, SADC, SACU, EAC, IGAD, IOC, and CEMAC) and, where applicable, information on each group's tariff structure.
5. A description of major U.S. trade capacity-building initiatives related to SSA, a summary of multilateral and U.S. bilateral assistance to the countries of sub-Saharan Africa, and, where applicable, a description of major non-U.S. trade preference programs for countries in SSA.
6. Sector profiles for sub-Saharan Africa, including information on trade, investment, industry and policy developments, by major sector. The six sector profiles in this investigation include: agricultural, fisheries and forest products; chemicals; petroleum and energy-related products; minerals and metals; textiles and apparel; and certain transportation equipment.
7. Country-by-country profiles on each of the 48 countries in sub-Saharan Africa, including information on major trading partners, by country. Summary of the economic, trade, and investment climates in each of the countries of sub-Saharan Africa, including a description of the basic tariff structure (*e.g.*, the average tariff rate and the average

[1] Commissioner Miller is not participating in this second five-year review.

agricultural tariff rate), as well as significant impediments to trade, such as import bans.

The 48 countries of sub-Saharan Africa covered in this investigation include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, São Tomé and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

The USTR requested that the Commission provide its first report by December 10, 2000, and annually for a period of 4 years thereafter. The second report in the series was delivered to USTR on December 10, 2001; and the third report was delivered on December 10, 2002; the fourth report was delivered to USTR on December 19, 2003. The Commission expects to deliver the fifth report by December 10, 2004.

Written Submissions: The Commission does not plan to hold a public hearing in connection with this fifth report. However, interested persons are invited to submit written statements concerning matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission may include such confidential business information in the report it sends to USTR. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules. All written statements, except for confidential business information will be made available for inspection by interested persons in the Office of the Secretary to the Commission. Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that the confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules require that the cover of the document and the individual pages clearly be marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than July 26, 2004. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington DC 20436.

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.

Issued: June 10, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–13549 Filed 6–15–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

ALRA Laboratories, Inc. Order Denying Procurement Quota

On July 26, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to ALRA Laboratories, Inc. (ALRA) of Gurnee, Illinois, notifying ALRA of an opportunity to show cause as to why DEA should not revoke ALRA's DEA Certificate of Registration, RA0205193, under 21 U.S.C. 823(a) and (d) and 824(a)(4) and deny any pending applications for renewal or modification of ALRA's manufacturing registration. As a basis for revocation, the Order to Show Cause alleged that ALRA's continued registration was inconsistent with the public interest, citing a long history of regulatory violations dating from 1987 and the 1996 criminal conviction of ALRA's President and Chief Executive Officer, Baldev Ray Bhutani, of seven felony counts of violating the Federal Food, Drug and Cosmetic Act by introducing adulterated pharmaceuticals into commerce. The Order to Show Cause further notified ALRA that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to ALRA's registered location at 3850 Clearview Court, Gurnee, Illinois 60031. According to its return receipt, the Order to Show Cause was received at the registered address by Sandra Montana on or around August 5, 2002.

Additionally, on September 27, 2002, pursuant to 21 U.S.C. 826(c) and (d), the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Deny Procurement Quota on the ground that ALRA's anticipated requirements for the then-current and following years did not justify its request. The Order to Deny Procurement Quota noted that on May 23, 2002, ALRA had submitted a procurement request for, *inter alia*, cocaine, oxycodone and methadone. The denial order recited ALRA's history of regulatory violations set forth in the Order to Show Cause, the June 30, 2002, expiration of its DEA manufacturing registration, Mr. Bhutani's 1996 conviction and following exhaustion of appeals, commencement of his 30 month prison sentence in September 2002. The Order to Deny Procurement Quota further notified ALRA that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

The Order to Deny Procurement Quota was sent by certified mail on September 27, 2002, to ALRA's registered address in Illinois and according to its return receipt, was receipted for by Neelam Bhutani on or around October 31, 2002.

DEA has not received a request for hearing or any other reply from ALRA or anyone purporting to represent it in this matter on either the Order to Show Cause or the Order to Deny Procurement Quota. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause and Order Denying Procurement Quota, and (2) no request for a hearing having been received, concludes that ALRA is deemed to have waived its hearing right as to both Orders. See *Samuel S. Jackson, D.D.S.*, 67 FR 65145 (2002); *David W. Linder*, 67 FR 12579 (2002). After considering material from the investigative file, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1303.34(e) and 1303.37.

The Deputy Administrator's review of the investigative file reveals that ALRA has been registered as a manufacturer with DEA since 1995 to handle controlled substances in Schedules II, III, III–N, IV and V under DEA registration number RA0205193. That registration was last renewed on May

31, 2001 and expired on June 30, 2002. There is no evidence in the record that a renewal application has been filed by ALRA for that certificate.

DEA has previously held that "[i]f a registrant has not submitted a timely renewal application prior to the expiration date, then the registration number expires and there is nothing to revoke." Marlou D. Davis, M.D., 69 FR 1307 (2004); Ronald J. Riegel, D.V.M., 63 FR 67132 (1998). Accordingly, while the record contains ample grounds for revocation of ALRA's registration under 21 U.S.C. 824(a)(4) and 823(a) and (d), in light of the expiration of ALRA's manufacturer registration prior to the issuance of the July 26, 2002, Order to Show Cause, revocation proceeding are moot and no further action is required in that regard.

With regard to the procurement quota, the Deputy Administrator finds that ALRA was incorporated as an over-the-counter pharmaceutical manufacturer in 1982. In 1984, ALRA obtained registration as a manufacturer under DEA Certificate of Registration, A0216209. That registration became delinquent and was retired on January 31, 1990. on June 1, 1992, ALRA obtained DEA Certificate of Registration, RA0174273, as a researcher and that registration was retired on January 31, 1996.

ALRA has a long history of regulatory violations. During on-site inspections of its registered location conducted in 1987, 1991 and 1997, DEA investigators noted repeated violations of Controlled Substances Act recordkeeping, reporting and security requirements, including ALRA's failure to maintain adequate records, inadequate security and failure to file appropriate acquisition/distribution reports (ARCOS reports).

On June 20, 1991, DEA issued an Order to Show Cause seeking to deny ALRA's Application for Registration, alleging it had engaged in the unlawful distribution of a controlled substance and unlawful distribution of a controlled substance by use of an expired DEA registration (Certificate of Registration, PA0216209), in violation of 21 U.S.C. 841(a)(1) and 843(a)(2). After an administrative process lasting over four years, on October 4, 1994, the then-Deputy Administrator issued a final decision denying ALRA's application. On May 17, 1995, the U.S. Court of Appeals for the Seventh Circuit issued its decision upholding the final agency action denying registration. *See* 59 FR 50620 (October 4, 1994) and *ALRA* v. *DEA*, 54 F.3d 450 (7th Cir. 1995).

On May 11, 1995, DEA and ALRA entered into a Memorandum of Agreement (MOA) and DEA approved ALRA's Application for Registration as a manufacturer on May 12, 1995, issuing Certificate of Registration RA0205193. Under the terms of the MOA, ALRA promised to surrender that registration within 180 days if ALRA or any of its officers were convicted of an offense in the then-pending matter of *United States* v. *Bhutani and ALRA Labs* (United States District court, Northern District of Illinois, Eastern division, Case No. 93 CR 585).

In February 1996, a jury found the defendants, including Baldev Raj Bhutani, ALRA's president and chief executive officer, his wife, Neelam Bhutani and ALRA, guilty of seven felony counts of violating the Federal Food, Drug and Cosmetic Act. Mr. Bhutani was sentenced to a term of 30 months imprisonment, which was stayed, pending appeal, remained free on bail and continued to serve as the principal officer and CEO of ALRA.

During an on-site inspection of ALRA's registered location conducted in September 1997, DEA investigators found, inter alia, that ALRA had failed to complete a biennial inventory, file ARCOS reports or maintain adequate security for controlled substances. In December 1997 and January 1998, ALRA requested the addition of eight Schedule II controlled substances to its DEA registration and on March 18, 1998, applied for renewal of it DEA manufacturer registration.

In April 1998, ALRA was issued a Letter of Admonition by DEA concerning the violations discovered during the September 1997 inspection. ALRA responded that it would comply with applicable DEA regulations and upgrade its security systems prior to acquisition of any Schedule II controlled substances. On December 28, 1998, after several inspections, the DEA Chicago Field Division verified that ALRA's security mechanisms complied with regulations and closed the case.

On February 9, 1999, because ALRA had failed to conform to current good manufacturing practices (CGMP), the U.S. Food and Drug Administration (FDA) seized all of ALRA's manufacturing lots of potassium chloride extended tablets, erythromycin ethylsuccinate and sulfi soxazole acetyl for oral suspension. In a consent decree filed in U.S. District Court, Northern District of Illinois, *U.S.* v. *ALRA* (Case No. 99 CV 0697), the FDA and ALRA entered into a consent agreement whereby ALRA agreed that the above products had been adulterated with ground metal and contaminated raw materials during the manufacturing process. In the consent decree, ALRA promised it would not begin manufacturing such products until it hired a consultant to assure that its manufacturing process met Federal requirements. ALRA has not yet hired such a consultant.

On May 31, 2001, ALRA's manufacturer registration was renewed and in July 2001, DEA investigators conducted a scheduled, on-site inspection of ALRA's registered location. ALRA had not manufactured any controlled substances for over two years and during that inspection investigators noted ALRA's failure to maintain a complete biennial inventory in December 2000, failure to file quarterly ARCOS reports in a timely manner for almost three years, failure to maintain readily retrievable records and failure to maintain adequate security for controlled substances.

Pursuant to terms of the 1995 MOA where the parties agreed that Mr. Bhutani was to surrender ALRA's certificate if he was convicted of any of the crimes alleged in his then pending criminal case, DEA requested the surrender of ALRA's manufacturer registration on December 31, 2001. However, on January 3, 2002, Mr. Bhutani responded that the MOA had been valid for only three years and asked for another chance. To date he has not surrendered ALRA's certificate of registration.

On May 23, 2002, ALRA submitted the subject Procurement Quota Requests for Year 2002, for the following quantities of Schedule II substances:

a. Cocaine: 128,160 grams
b. Codeine: 61,272 grams
c. Hydrocodone: 15,466 grams
d. Oxycodone: 35,214 grams
e. Morphine: 219,435 grams
f. Hydromorphone: 8,945 grams
g. Oxymorphone: 19,046 grams
h. Meperidine: 36,620 grams
i. Methadone: 82,414 grams
j. Dextropropoxphene: 524,489 grams
k. Thebaine: 83,750 grams
l. Opium granulated: 105,000 grams

However, by June 17, 2002, Mr. Bhutani's criminal judgment had been affirmed on appeal and all challenges to the conviction exhausted. *United States* v. *Bhutani and ALRA Labs*, 266 F.3d 661 (7th Cir. 2001), cert. denied, *Bhutani* v. *U.S.*, 563 U.S. 922 (June 17, 2002). On August 26, 2002, after his bail was revoked, Mr. Bhutani reported to the Federal Correctional Institute in Duluth, Minnesota to commence serving his 30 month sentence.

The FDA has not permitted ALRA to engage in manufacturing operations since 1999 and ALRA has not handled controlled substances for the last three years. It currently has ceased all

pharmaceutical manufacturing operations and, without required notification to DEA, discontinued business within the meaning of 21 CFR 1301.52(a).

Even assuming *arguendo*, that ALRA had a current DEA registration, it could not manufacture the controlled substances for which it seeks a permanent quota unless and until the FDA found the company was in compliance with CGMP. Moreover, as discussed, ALRA's president, who submitted the procurement quota request, is currently incarcerated in federal prison serving a 30 month sentence. Accordingly, ALRA's anticipated requirements for 2002 and its estimated requirements for 2003 do not justify approval of its requested procurement quota. *See* 21 U.S.C. 826(c) and (d); 21 CFR 1302.12.

Further, despite ample opportunities for corrective action, ALRA has a continuing history of regulatory violations under the Controlled Substances Act continuing from 1987 to the present. Under these circumstances, where the company has failed to conform its conduct to the requirements of federal law over an extensive period, where ALRA as well as its CEO and his wife were convicted of product adulteration felonies, and where the company has ceased manufacturing operations and allowed its DEA registration to lapse, granting a procurement quota under these conditions would be inimical to the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 826(c) and (d), 28 CFR 0.100(b) and 0.104 and 21 CFR 1303.37, hereby orders that ALRA Laboratories, Inc.'s Application for Procurement Quota for Controlled Substances be, and it hereby is, denied. This order is effective July 16, 2004.

Dated: May 17, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–13535 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 16, 2004, and published in the **Federal Register** on February 11, 2004, (69 FR 6691), American Radiolabeled Chemical, Inc., 104 ARC Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of American Radiolabeled Chemical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemical, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: May 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–13531 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–22]

Lewis B. Boone, M.D., Revocation of Registration, Denial of Request for Change of Registered Location

On March 23, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lewis B. Boone, M.D. (Respondent) of Russell, Kentucky, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BB7108550, as a practitioner pursuant to 21 U.S.C. 824(a)(3) and deny, pursuant to 21 U.S.C. 823(f), any pending applications or requests, including but not limited to, Respondent's request for a modification of his registration to reflect a move to an Ohio location. As a basis for revocation, the Order to Show Cause alleged that Respondent's license to practice medicine in Kentucky had been indefinitely restricted and that his medical license in Ohio had been permanently revoked. As a result, the Order alleged he was not authorized to handle controlled substances in either his current or proposed States of registration.

On April 28, 2003, Respondent, acting *pro se*, timely requested a hearing in this matter. On May 1, 2003, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued the Government, as well as Respondent, an Order for Prehearing Statements.

On May 7, 2003, in lieu of filing a prehearing statement, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Disposition. The Government argued Respondent was without authorization to handle controlled substances in the States of Kentucky and Ohio and, as a result, further proceedings in the matter were not required. Counsel for the Government subsequently filed a copy of the January 18, 2002, Commonwealth of Kentucky, State Board of Medical Licensure's Agreed Order of Indefinite Restriction, specifying Respondent "shall not prescribe, dispense or otherwise professionally utilize controlled substances within the Commonwealth of Kentucky." The Government also filed copies of the State Medical Board of Ohio's August 14, 2002, Entry of Order permanently revoking Respondent's license to practice medicine in Ohio.

On June 11, 2003, Judge Bittner issued a memorandum to the parties seeking clarification of what was encompassed by the term "controlled substances" as used in the Kentucky Agreed Order. Judge Bittner presumed that phrase referred to substances that were controlled pursuant to Kentucky's statutory and regulatory provisions, not the Federal Controlled Substances Act. Judge Bittner invited the parties to file statements (with supporting documents) as to whether there were any substances controlled pursuant to the Federal Controlled Substances Act, but not under Kentucky law. The memorandum reflected a concern that the Agreed Order's use of the State definition of "controlled substances" might not

include every substance defined as such under Federal law and thus, may not have restricted Respondent's ability to prescribe each and every substance controlled under the Federal scheme. The Government filed a response asserting such a comparison was unnecessary.

On August 29, 2003, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of the recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition, in part, finding Respondent was not licensed to practice medicine in Ohio, the jurisdiction where he sought to be registered and further finding, to the extent that substances scheduled under the Federal Controlled Substances Act are controlled under Kentucky State law, that he lacked authorization to handle controlled substances in Kentucky. Judge Bittner recommended, to that extent, that Respondent's DEA Certificate of Registration be revoked. She also recommended denial of Respondent's application to modify his DEA registration to reflect an Ohio address.

On September 9, 2003, along with a motion asking Judge Bittner to reconsider her Opinion and Recommended Decision, the Government filed newly obtained documentation showing Respondent's Kentucky medical license had recently been suspended. On September 24, 2003, Judge Bittner issued a Memorandum to the Parties, granting the Government's Motion for Reconsideration and rescinding the Opinion and Recommended Decision, insofar as it applied to the Kentucky registration. While reaffirming her findings and recommendations with regard to Ohio, she advised both parties that, with respect to Kentucky, she was considering the Government's motion as an amended motion for summary disposition, based on the ground that Respondent was not currently authorized to practice medicine in that State. Respondent did not avail himself of the opportunity afforded him to respond to the motion.

On October 22, 2003, Judge Bittner issued a Supplemental Opinion and Recommended Decision of the Administrative Law Judge (Supplemental Opinion and Recommended Decision). In it, Judge Bittner found Respondent's Kentucky medical license had been suspended by that State's June 20, 2003, Emergency Order of Suspension. Further, she concluded that because he is not currently licensed to practice medicine in Kentucky, he is not eligible to hold a DEA registration in that State. Accordingly, Judge Bittner granted the Government's Motion for Summary Disposition, recommending that Respondent's DEA registration be revoked.

No exceptions were filed by either party to the Supplemental Opinion and Recommended Decision or to those sections of Judge Bittner's initial Opinion and Recommended Decision which had not been rescinded. On November 24, 2003, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. As to the Kentucky registration, the Deputy Administrator adopts in full the Supplemental Opinion and Recommended Decision. Regarding Respondent's application for a change of registered location to Ohio, the Deputy Administrator adopts only those findings of fact and conclusions of law and recommendations in the Opinion and Recommended Decision which are relevant to that issue. The remaining findings of fact, conclusions of law and recommendations in the Opinion and Recommended Decision, pertaining to Respondent's Kentucky registration, were rescinded and the Deputy Administrator takes no action with regard to those findings, conclusions or recommendations.

The Deputy Administrator finds Respondent holds DEA Certificate of Registration, BB7108550, as a practitioner on the Commonwealth of Kentucky. The Deputy Administrator further finds that on June 20, 2003, the Commonwealth of Kentucky, Board of Medical Licensure, issued an Emergency Order of Suspension, indefinitely suspending Respondent's authority to practice as a physician in the Commonwealth of Kentucky. The Deputy Administrator further finds that on August 14, 2002, the Ohio Medical Board permanently revoked Respondent's medical license in that State. There is no evidence in the record indicating that either the suspension or revocation has been stayed or modified or that Respondent's license to practice medicine in either jurisdiction has been reinstated. As a result, he is not authorized to prescribe, dispense, administer, or otherwise handle controlled substances in Kentucky, the place of current DEA registration, or in Ohio, the location of proposed registration.

DEA does not have statutory authority under the Controlled Substances act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Karen Joe Smiley, M.D., 68 FR 48944 (2003); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988). Revocation is also appropriate when a State license has been suspended, but with a possibility of future reactivation. *See* Anne Lazar Thorn, M.D., 62 FR 12,847 (1997).

Here, it is clear that because Respondent is not currently licensed to practice medicine in either jurisdiction, he currently lacks authority to handle controlled substances in Kentucky, the State where he is registered and in Ohio, the State where he seeks to be registered. Therefore, DEA does not have authority to maintain Respondent's DEA Certificate of Registration or grant any pending applications for renewal or modification of that registration, including, but not limited to, Respondent's application to change his registered location to Ohio.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BB7108550, issued to Lewis B. Boone, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that his application for modification of such registration be, and they hereby are, denied. This order is effective July 16, 2004.

Dated: May 17, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–13533 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated October 7, 2003, and published in the **Federal Register** on October 29, 2003, (68 FR 61699), Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration

for registration as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a Schedule II cocaine derivative as a final intermediate for the production of dopascan injection.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Guilford Pharmaceuticals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Guilford Pharmaceuticals, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: May 26, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–13537 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated February 4, 2004, and published in the **Federal Register** on February 18, 2004, (69 FR 7656), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: May 26, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–13536 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 20, 2003, Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Methadone Intermediate (9254), a basic class of controlled substance in Schedule II. The code was inadvertently dropped from the subsequent Notices of Application and Renewal. On 5/14/2004, DEA received a telephonic communication requesting that the code be added back onto the firm's registration.

The firm plans to manufacture the listed controlled substance for distribution as a bulk product to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: **Federal Register** Representative, Office of Chief Counsel (CCD) and must be filed no later than August 16, 2004.

Dated: June 1, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–13532 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–48]

Deborah Y. Strauss, D.V.M., Revocation of Registration

On August 1, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Deborah Y. Strauss, D.V.M. (Respondent) notifying her of an opportunity to show cause as to why DEA should not revoke her Certificate of Registration, BS6351821, and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 824(a)(3) and (a)(4). Specifically, the Order to Show alleged that the Respondent's State controlled substances registration has been suspended and her continued registration would be inconsistent with the public interest based on matters concerning her purported issuance of prescriptions for Demerol, a Schedule II controlled substance, for no legitimate medical purpose. The Order to Show Cause further alleged that as a result of an accountability audit, the Respondent was unable to account for over 10,000 mg. of injectible Demerol, and her records involving the Schedule IV controlled substance diazepam, were not complete or accurate in violation of DEA regulations.

By letter dated September 3, 2003, the Respondent, through her legal counsel, timely requested a hearing in response to the show cause order. On September 29, 2003, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued to the Government as well as the Respondent an Order for Prehearing Statements.

In lieu of filing a pre-hearing statement, counsel for DEA filed Government's Motion for Summary Disposition. In its motion, the Government asserted that the Respondent is without authorization to handle controlled substances in the State of Iowa, and as a result, further proceedings in the matter wefe not required. Attached to the Government's motion was an Order of Immediate Suspension of Controlled Substance Registration issued by the Board of Pharmacy Examiners of the State of Iowa (Pharmacy Board), dated May 9, 2003.

On October 17, 2003, the Respondent filed a reply brief with the caption, "Resistance to Government's Motion for Summary Disposition." In its brief, the Respondent argued, *inter alia*, that she is entitled to due process of law; she has been wrongfully accused of having a controlled substance abuse problem; a requested hearing before the Pharmacy Board will clarify the issue and should result in the reinstatement of Respondent's State controlled substance registration; the Pharmacy Board arrived at an "incorrect decision" in suspending Respondent's State controlled substance registration; and, there is no compelling need for DEA to proceed with summary disposition in this proceeding when matters involving Respondent's State controlled substance registration are under review. The Respondent however, concedes that she is currently without authorization to handle controlled substances in Iowa.

On December 8, 2003, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner granted the Government's Motion for Summary Disposition and found that Respondent lacked authorization to handle controlled substances in Iowa, the jurisdiction where Respondent holds a DEA registration. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision, and on January 16, 2004, the record of these proceedings were transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration BS6351821, and is registered to handle controlled substances in Iowa. The record before the Deputy Administrator reveals that on May 9, 2003, the Iowa Pharmacy Board issued an order suspending the Respondent's State controlled substance registration, effective immediately.

In reaching its decision, the Pharmacy Board found that during a thirteen-month period, Respondent wrote 176 prescriptions for Demerol, purportedly for animal patients. Several of the animal patients were owned by the Respondent. The Pharmacy Board found however, that the Respondent did not administer Demerol to her patients, but instead, obtained the drug for her personal use. The Pharmacy Board also found that the Respondent did not maintain required records for the dispensing of controlled substances. There is no evidence before the Deputy Administrator that the Pharmacy Board's order has been stayed or rescinded, or that Respondent's State controlled substance privileges have otherwise been reinstated.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration if she finds that the registrant has had his State license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). Thomas B. Pelkowski, D.D.S., 57 FR 28538 (1992). Nevertheless, despite the Pharmacy Board's findings regarding the Respondent's inappropriate handling of controlled substances, and notwithstanding the other public interest factors for the revocation of her DEA registration asserted herein, the more relevant consideration here is the present status of the Respondent's State authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11661 (2004); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Respondent's Iowa controlled substance license has been suspended, and as a result, she is not licensed under Iowa law to handle these products. Therefore, she is not entitled to a DEA registration in that state. As a result of a finding that Respondent lacks State authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address further whether Respondent's DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M, 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BS6351821, issued to Deborah Y. Strauss, D.V.M., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 16, 2004.

Dated: May 17, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–13534 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: State Court Organization, 2004.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is

published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 68, number 69, on page 57 on March 24, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 16, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer. Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and afected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* State Court Organization, 2004.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form Number: SP–1, Office of Justice Programs.

(4) *Affected Public who Will be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: State Trial and Appellate Courts. 42 U.S.C. 3711, *et seq.* authorizes the Department of Justice to collect and analyze statistical information concerning crime, juvenile delinquency, the operation of the criminal justice system and related aspects of the civil justice system, and to support the development of information and statistical systems at the Federal, State, and local levels.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* An estimated 53 copies of a two part data collection survey will be submitted to the State Court Administration in each State and that 99 copies of appellate court surveys will be submitted to the Intermediate Appellate Clerk and the Clerk for the Court of Last Resort in each State.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* The estimated total burden hours associated with this information collection is 1,216.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 9, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–13528 Filed 6–15–04; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 9, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Operations Under Water.

OMB Number: 1219–0020.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 36.

Number of Annual Responses: 36.

Estimated Time Per Response: 5 hours.

Total Burden Hours: 180.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $540.

Description: Title 30 CFR 75.1716, 75.1716–1 and 75.1716–3 require operators of underground coal mines to provide MSHA notification before mining under bodies of water and to obtain a permit to mine under a body of water if, in the judgment of the Secretary, it is sufficiently large to constitute a hazard to miners. This is a statutory provision contained in section 317(r) of the Federal Mine Safety and Health Act of 1977. The regulation is necessary to prevent the inundation of underground coal mines with water which has the potential of drowning miners.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Program to Prevent Smoking in Hazardous Areas.

OMB Number: 1219–0041.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 184.

Number of Annual Responses: 184.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 92.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 317(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 877(c), and 30 CFR 75.1702 prohibits persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Under the Mine Act and 30 CFR 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, etc. The Mine Act and 30 CFR 75.1702 further require that the mine operator submit the program plan to MSHA for approval. The purpose of the program is to insure that a fire or explosion hazard does not occur.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–13525 Filed 6–15–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,082]

Fountain Construction Company, Inc., Assembly Board Tooling Division, Jackson, MS; Notice of Negative Determination on Reconsideration

On April 23, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 10, 2004 (69 FR 25926). The subject worker group produces assembly board tooling which is used to produce wire harnesses.

The Department denied the initial petition because the "contributed importantly" and shift of production group eligibility requirements of section 222(3) of the Trade Act of 1974, as amended, were not met. The initial investigation revealed that during the relevant time period, the subject company neither increased imports of assembly board tooling nor shifted production abroad. A survey of the subject company's major declining customer revealed decreased imports of assembly board tooling during the relevant time period.

In the request for reconsideration, the company asserted that because its major customer shifted wire harness production to Mexico, the subject worker group is eligible for Trade Adjustment Assistance.

During the reconsideration investigation, the Department contacted the subject company to clarify the relationship between assembly board tooling and wire harnesses and contacted the major customer to inquire about imports of assembly board tooling.

The subject company official explained that the assembly board tooling consists of assembly boards mounted on a conveyor system. Assembly boards are boards with pegs arranged in a specific pattern on it. The assembly boards sit on an apparatus that moves them from station to station. At various stations, wires are wrapped around them in a particular fashion, the wires are taped to maintain the configuration, and the taped units (wire harnesses) are pulled off the assembly board.

A review of the material revealed that neither the subject company nor the major customer increased imports or shifted production of assembly board tooling during the relevant period.

In order for the subject worker group to be considered eligible to apply for TAA benefits as secondarily-impacted, the subject firm must have customers that are TAA certified and these TAA certified customers would represent a significant portion of the subject company's business. In addition, the subject company would have to either produce a component part of the product that was the basis for the customer's certification or act as a downstream producer (assembling or finishing) of the product that was the basis for that certification.

In the case at hand, the subject company does not produce a component part of the wire harnesses and is not an assembler or finisher of wire harnesses. Although assembly board tooling is used to produce wire harnesses, it is not incorporated into the wire harnesses. Therefore, the subject company is not considered to be an upstream supplier to the major customer. Because the subject worker group assemblies the boards and neither assembles nor finishes the wire harnesses, the subject company is not considered a downstream producer of wire harnesses.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Fountain Construction Company, Inc., Assembly Board Tooling Division, Jackson, Mississippi.

Signed in Washington, DC, this 4th day of June, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–13541 Filed 6–15–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Invitation To Comment on Proposed Changes to UI Performs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice and opportunity to comment on proposed changes to UI Performs.

SUMMARY: The Employment and Training Administration (ETA) is soliciting comments concerning proposed changes to UI Performs, the Unemployment Insurance (UI) performance measurement system. An intensive review of the system was undertaken when the system had been operating for five years. Based on that review, ETA is proposing changes that will result in improved performance measurement and allow state UI managers to better focus attention on the most critical program areas.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before August 16, 2004.

ADDRESSES: Comments should be addressed to: Cheryl Atkinson, Administrator, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Avenue NW., Washington, DC 20210. Comments by e-mail are welcome. (See **FOR FURTHER INFORMATION CONTACT.**)

FOR FURTHER INFORMATION CONTACT: Darlyne Bryant, Chief, Division of Performance Review, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210, 202–693–2559, or Geri Oberloh, who can be contacted at the same address or at 202–693–3194. (These are not toll free numbers.) E-mail comments or questions should be directed to *Oberloh.Geri@dol.gov.*

SUPPLEMENTARY INFORMATION:

Background: Over the period 1993 to 1997 two joint federal-state workgroups designed a comprehensive performance management system for UI, and gave it the name UI Performs. Two kinds of measures emerged from this process: Tier I measures for which minimum national criteria were set, and Tier II measures for which criteria were not set. Planning and budget cycles at the state level are structured around State Quality Service Plans (SQSP) which include performance objectives referenced to Tier I and Tier II measures.

The UI Performs design also called for a review of the system within five (5) years of implementation. This initial review and resulting recommendations are discussed below.

The Review. The review of UI Performs, which began with a request to state UI agencies to identify issues relevant to the UI Performs system, addressed: (a) Performance measures; (b) criteria used to gauge success against the measures; and (c) the administration of UI Performs. Issues raised by states, a proposal by the National Association of State Workforce Agencies (NASWA), and issues raised by Federal staff formed the basis for the review which was conducted in consultation with a NASWA workgroup. The consultative process clarified the issues and informed much of the proposed changes described below.

In Washington, DC on June 9, 2004.

Emily Stover DeRocco,

Assistant Secretary of Labor.

BILLING CODE 4510–30–P

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	**CLASSIFICATION** UI Performs
	CORRESPONDENCE SYMBOL OWS/DPM
	DATE May 18, 2004

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 21-04

TO: STATE WORKFORCE AGENCIES

FROM: CHERYL ATKINSON
Administrator
Office of Workforce Security

SUBJECT: Proposed Changes to UI Performs

1. **Purpose**. To provide an opportunity for comment on proposed changes to the unemployment insurance (UI) performance management system "UI Performs."

2. **References**. Federal Unemployment Tax Act; Title III of the Social Security Act; 20 Code of Federal Regulations (CFR) Parts 640 and 650; Unemployment Insurance Program Letter (UIPL) 41-95, "Draft Narrative Describing the System for Enhancing Unemployment Insurance (UI) Performance: The 'UI Performs' System" (August 24, 1995); UIPL 06-03, "Review of UI Performs" (November 25, 2002); UIPL 37-99, "UI PERFORMS Tier I and Tier II Performance Measures, and Minimum Performance Criteria for Tier I Measures" (July 31, 1999); Employment and Training (ET) Handbook No. 336, 17th Edition, "Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines" (June 18, 2002); ET Handbook No. 401, 3rd Edition, "Unemployment Insurance Reports Handbook" and subsequent changes.

3. **Background**. Over the period 1993 to 1997 two joint federal-state workgroups designed a comprehensive performance management system for the UI program and gave it the name UI Performs. Two kinds of measures emerged from this process: Tier I measures for which minimum national criteria were set and Tier II measures for which criteria were not set. Tier I and Tier II measures and Tier I criteria were promulgated in July 1999. Planning and budget cycles at the state level are structured around State Quality Service Plans (SQSP) which include performance objectives related to Tier I and Tier II measures.

RESCISSIONS None	**EXPIRATION DATE** May 31, 2005

The UI Performs design also called for a review of the system within five (5) years of implementation. This initial review and resulting recommendations are discussed below.

4. **The Review**. The review of UI Performs, which began with the publication of UIPL 06–03 asking state agencies to identify issues relevant to the UI Performs system, addressed: (a) the performance measures; (b) the criteria used to gauge success against the measures; and (c) the administration of UI Performs. Issues raised by the 21 states that responded to UIPL 06–03, a proposal by the National Association of State Workforce Agencies (NASWA), and issues raised by Federal staff formed the basis for the review, which was conducted in consultation with a NASWA workgroup. The consultative process clarified the issues and informed many of the proposed changes described below.

Two overarching themes were found in the issues raised: (1) the large number of measures to which the states are held accountable diffuses management attention and (2) the administration of UI Performs is too complex and burdensome on the states. The review resulted in the following proposal to streamline UI Performs.

5. **Proposal**. The Department proposes to streamline UI Performs in three (3) ways:

a) *Reduce the number of measures for which performance goals are set to a few "core" measures.* This will allow states to better focus on the most critical program areas.
b) *Recognize remaining measures as management information for which no performance goals will be set.* All current performance measures not designated as "core" will be available to state and Federal partners as management information.
c) *Streamline the SQSP narrative.* The narrative requirement will be reduced and will focus on performance issues.

The Department proposes two categories of measures for the streamlined UI Performs: 1) Core Measures and 2) Management Information Measures. The measure categories and the review and reporting requirements that would underlie the revised UI Performs system are described below.

Measures.

- **Core Measures** are the 11 measures that would replace the current 19 Tier I measures and would be indicators of how well states perform critical activities. Core Measures would be comparable among states and would be assigned Acceptable Levels of Performance (ALPs) criteria. States would be expected to submit Corrective Action Plans (CAPs) when their performance falls below acceptable levels. The proposed measures and performance criteria are:

Tax Measures	*Acceptable Levels of Performance*
➢ New Employer Status Determinations Time Lapse	70% within 90 days of quarter ending (Q/E) date.
➢ Measure of Tax Quality	Failure of no more than 3 samples reviewed under the Tax Performance System (TPS) in a year and no sample failing the TPS review for 3 consecutive years.

Benefits Measures	*Acceptable Levels of Performance*
➢ First Payment Promptness	87% of all first payments made within 14/21 days (14 days if a waiting week is required, and 21 days if no waiting week is required) after the compensable week.
➢ Nonmonetary Determination Time Lapse	ALP deferred until state performance using the new parameters (days elapsed between the week-ending date of the first week affected and the date of the determination) has been recorded for four quarters.
➢ Nonmonetary Determination Quality Nonseparation Issues	75% of nonseparation determinations meeting quality.
➢ Nonmonetary Determination Quality Separation Issues	75% of separation determinations meeting quality.
➢ Detection of Overpayments	% of detectable/recoverable overpayments established for recovery. ALP will be set after a 1-year review of the data.

Appeals Measures	*Acceptable Levels of Performance*
➢ Average Age of Pending Lower Authority Appeals	ALP deferred until state performance using the new parameters has been recorded for four quarters.
➢ Average Age of Pending Higher Authority Appeals	ALP deferred until state performance using the new parameters has been recorded for four quarters.

➢ Lower Authority Appeals Quality	80% of lower authority appeals have quality scores of at least 85% of potential points.

Reemployment Measure	*Acceptable Levels of Performance*
➢ Facilitate Reemployment	% of UI claimants who are reemployed within the quarter following their first UI payment. ALP deferred until data have been collected from all states for four quarters.

Appendix A is a comparison of current to proposed measures.

- **Management Information Measures** would consist of currently collected performance data that provide additional insight into UI program operations. Some Management Information Measures are subsets of data included in Core Measures, such as timeliness of benefit payments to ex-military personnel and those claiming benefits on an interstate basis. These data alert state and Federal managers to performance issues that could result in lower performance on Core Measure goals and are useful for performance analysis.

  No performance criteria would be assigned to Management Information Measures. However, several measures' criteria are currently in regulation and will remain in effect until the regulation is replaced. Descriptions of the Management Information Measures can be reviewed in Handbook 401, 3rd Edition, Change 9. The Management Information Measures are listed in **Appendix B.**

Regulations. Secretary's Standards for benefit payment promptness and lower authority appeals promptness are found in 20 CFR Parts 640 and 650, respectively. Changes to the regulations will be proposed to reflect the measures and criteria noted above for first payment promptness and average age of pending appeals. (The change to the appeals promptness measure is contingent upon the outcome of a pilot test currently underway. See Appendix C.) Until the regulations are changed, the current measures and criteria will remain in force. Failure to meet criteria established in regulation will require corrective action.

Program Reviews and Reporting Requirements. States perform a variety of reviews and submit various reports as part of the overall performance management system. No changes to these reviews and reports (listed below) are proposed. However, efforts to correct deficiencies regarding these reviews and reports will be addressed in the SQSP narratives rather than by CAPs.

- ➢ Performing required program reviews, such as internal security, Federal programs, benefit payment control, tripartite reviews for nonmonetary determination quality, and reviews of lower authority appeals quality;
- ➢ Submitting required reports; and
- ➢ Meeting the requirements for performing the Benefits Accuracy Measurement (BAM), the Tax Performance System (TPS), and Data Validation (DV).

6. **Administering UI Performs**. The SQSP, which each state negotiates annually with the Federal partner, will continue to be central to the administration of UI Performs. The Department proposes that the SQSP will include narratives and CAPs:

- **Narratives**. Unlike the current SQSP format that requires a "Summary" narrative and "Focus" narratives, we propose that the states describe in a single narrative:
  - State performance in comparison to the GPRA goals;
  - Results of customer satisfaction surveys (optional);
  - Actions planned to correct deficiencies regarding the review and reporting requirements described in Section 5.

  Pending the outcome of a review of the Benefits Timeliness and Quality nonmonetary determination measurement instrument discussed in Appendix C, states will address nonmonetary determination quality performance deficiencies in the narrative. Upon completion of the review and implementation of resulting changes, nonmonetary determination deficiencies will be addressed in CAPs.

  States will no longer be asked to address environmental factors, such as economic conditions, political climate, labor/business relationships, or state legislative issues in the SQSP.

- **CAPs**. States would be expected to submit CAPs as a part of the SQSP when their annual performance on Core Measures does not meet the ALPs. With the exception of the Secretary's Standards currently in regulation, no CAPs will be required based on Management Information Measures. However, if a state's performance in one or more Management Information Measure is so conspicuously poor that a state's compliance with the Federal law is in question, the Department would require corrective action. States will provide quarterly updates for each CAP. The Federal partner will strive to attain uniform administration of CAP requirements among the states and regions.

- **Continuous Improvement Plans (CIPs)**. Under the current UI Performs structure, states prepare CIPS to improve Tier II performance or Tier I performance that is above the established criteria. However, CIPs proved to be administratively burdensome without demonstrating improved performance. States would no longer be asked to develop CIPs under UI Performs.

7. **Studies Affecting Core Measures**. In order to improve several Core Measures, the Department is conducting a number of studies. They are described in **Appendix C**.

8. **Publishing Data**. Three categories of performance data will be published each year:
   - The GPRA goals and national aggregate data;
   - Core Measures with state-specific data;
   - Management Information will be published in a format that does not compare states' performance.

9. **Effective Dates for Implementing Changes**. The Department proposes to begin implementing the changes in UI Performs with the SQSP for FY 2006 that states will prepare during the summer of 2005. UI Performs will use data from the Performance Year that extends from April 1, 2004, to March 31, 2005, for the FY 2006 SQSP. Implementation of the few measures for which data are not currently available will be phased in as the measures are finalized and the requisite programming is completed.

10. **Action**. State Workforce Agency administrators are requested to review and comment on the recommended changes to the UI Performs system by July 23, 2004. In addition to comments about specific measures, we would appreciate comments on preferred nomenclature for CAPs and ALPs. Please provide the following information for each comment:

a. Identify the section of this UIPL being commented on by topic or by section number.
b. Include supporting data or rationale along with the comment.
c. Recommend a course of action, with rationale.
d. Provide the name, phone, fax, and e-mail address for the person who can answer questions or provide further information about the comment and recommendation.

Address mailed or faxed comments to:

Cheryl Atkinson, Administrator
Office of Workforce Security
U.S. Department of Labor
Room S4231
Washington, DC 20210
Attention: Geri Oberloh
Telephone: 202-693-3194 (Not a toll-free number)
Fax number: 202-693-3975

E-mail comments are welcome and should be directed to Oberloh.Geri@dol.gov

11. **Inquiries**. Direct inquiries to your regional office.

12. **Appendices**. Appendix A: Comparison of Current to Proposed Measures.
Appendix B: Management Information.
Appendix C: Studies Affecting Core Measures

Appendix A

Comparison of Current to Proposed Measures

Current Tier I Measure	Proposed Core Measure
New Employer Status Determinations: % of new status determinations within 90/180 days of Q/E date. ➢ 60% within 90 days of Q/E date	New Employer Status Determinations: % of new status determinations within 90 days of Q/E date. ➢ 70% within 90 days of Q/E date
➢ 80% within 180 days of Q/E date	
Acceptance Sample for Accuracy: 60 New Status Determinations--Pass with no more than 6 Failed Cases	Tax Quality: New measure using data currently collected under TPS as sample scores for the tax functions. ➢ No more than 3 samples failing in a year, and no sample failing for 3 consecutive years.
Timeliness of Transfer to the UTF: Ratio of the monthly average daily loanable balance to the average daily transfer to the Trust Fund divided by the number of days in the month. (No criterion set)	
Timeliness of deposit into state's clearing account: ➢ % of employer contributions deposited into the state's clearing account within three days of receipt. (Criterion not set)	(Included in the Tax Quality Core Measure above. ➢ 90% of employer contributions deposited into the state's clearing account within 3 days.)
First Payment Timeliness: Number of days elapsed from week-ending date of the first compensable week in benefit year to date payment is made in person, mailed, or offset/intercept is applied on the claim. ➢ 87% of first payments within 14/21[1] days: Intrastate UI, full weeks [2]	First Payment Timeliness: Number of days elapsed from week-ending date of the first compensable week in benefit year to date payment is made in person, mailed, or offset/intercept is applied on the claim. ➢ 87% of all first payments including Intra + Interstate UI, UCFE, UCX, full & partial weeks, made within 14/21[1] days. Excludes Workshare, episodic claims, such as DUA, and retroactive payments for a compensable waiting period.
➢ 93% of 1st Payments within 35 days: Intrastate UI, full weeks [2]	
➢ 70% of 1st Payments within 14/21[1] days: Interstate UI, full weeks [2]	

1 "14/21" days: States requiring a waiting week before the payment of a week of benefits must make the first payment within 14 days of the week-ending date of the first compensable week claimed. States with no waiting week requirement must make the first payment within 21 days of the week-ending date of the first compensable week claimed.

2 Current measurement for Secretary's Standards.

Appendix A

Comparison of Current to Proposed Measures

Current Tier I Measure	Proposed Core Measure
➢ 78% of 1st Payments within 35 days: Interstate UI, full weeks [2]	
➢ 90% of all first payments, including Intra + Interstate UI, UCFE, UCX, full & partial weeks, within 14/21[1] days	
➢ 95% of all first payments, including Intra + Interstate UI, UCFE, UCX, full & partial weeks, within 35 days	
Nonmonetary Determinations Timeliness: Number of days elapsed from date of detection by the state of any nonmonetary issue that had the potential to affect the claimant's past, present or future benefit rights to the date on the determination. ➢ 80% of Separation Determinations within 21 days of Detection Date: Intra + Interstate UI, UCFE, UCX Programs, full + partial weeks	Nonmonetary Determinations Timeliness: Number of days elapsed from the week-ending date of the first week affected by the determination to the date on the determination for any issue that had the potential to affect the claimant's past, present or future benefit rights. The new starting parameter will require a change to the 9052 report. ➢ ___ % (to be determined) of all determinations made within 21 days of the week ending date of the first week affected. Excludes issues detected through BAM and BPC. ➢ Performance goal deferred until state performance using the new parameters has been recorded for four quarters.
➢ 80% of Nonseparation Determinations within 14 days of Detection Date: Intra + Interstate UI, UCFE, UCX Programs, full + partial weeks	
Nonmonetary Determinations Quality: Evaluation results of quarterly samples of nonmonetary determinations selected from the universe of nonmonetary determinations reported by the 9052 report. Intra + Interstate UI, UCFE, UCX. ➢ 75% of Separation and Nonseparation Determinations with Quality Scores >80 points:	Nonmonetary Determinations Quality: Evaluation results of quarterly samples of nonmonetary determinations selected from the universe of nonmonetary determinations reported on the 9052 report. Intra + Interstate UI, UCFE, UCX. Separation and nonseparation samples must each meet the threshold criteria for case material found and issue validity without reference to the validity of the other. Results will be reported separately for separation and nonseparation issues. ➢ 75% of separations scoring >80 points. ➢ 75% of nonseparations scoring >80 points.

Appendix A

Comparison of Current to Proposed Measures

Current Tier I Measure	Proposed Core Measure
	Detection of Overpayments: Overpayments (dollars) established for recovery as a percent of the overpaid amount estimated through BAM that the state can detect and recover. (Categories of overpayments that vary greatly from state to state or may be "technical" overpayments – failure to meet work search requirements and be registered with ES – are excluded from the measure.) ➢ % of all detectable/recoverable overpayments established for recovery: ALP will be set after a 1-year review of the data.
Lower Authority Appeals Timeliness: Number of days elapsed from the date the request for a lower authority appeals hearing is filed to the date of the decision. ➢ 60% of Lower Authority Appeals Decided within 30 days of filing: Intra + Interstate UI, UCFE, UCX [2]	Average Age of Pending Lower Authority Appeals: a count of all pending Lower Authority Appeals divided into the sum of their age in days. ➢ Performance goal deferred until state performance using the new parameters has been recorded for four quarters.
➢ 80% of Lower Authority Appeals Decided within 45 days of filing: Intra + Interstate UI, UCFE, UCX [2]	
➢ 95% of Lower Authority Appeals Decided within 90 days of filing: Intra + Interstate UI, UCFE, UCX (no criterion set)	
Higher Authority Appeals Timeliness: Number of days elapsed from the date a higher authority appeal is filed to date of the decision. ➢ 50% of Higher Authority Appeals Decided within 45 Days of filing: Intra + Interstate UI, UCFE, UCX	Average Age of Pending Higher Authority Appeals: a count of all pending Higher Authority Appeals (Intra + Interstate UI, UCFE, UCX) divided into the sum of their age in days. ➢ Performance goal deferred until state performance using the new parameters has been recorded for four quarters.
➢ 80% of Higher Authority Appeals Decided within 75 Days of filing: Intra + Interstate UI, UCFE, UCX	
➢ 95% of Higher Authority Appeals Decided within 150 Days of filing: Intra + Interstate UI, UCFE, UCX	

Appendix A

Comparison of Current to Proposed Measures

Lower Authority Appeals Quality: Evaluation results of quarterly samples of lower authority benefit appeals hearings selected and evaluated as instructed in ET Handbook #382 (2nd edition). Intra + Interstate UI, UCFE, UCX. ➢ 80% of Lower Authority Appeals with quality scores at least 85% of potential points.	Lower Authority Appeals Quality: Evaluation results of quarterly samples of lower authority benefit appeals hearings selected and evaluated as instructed in ET Handbook #382 (2nd edition). Intra + Interstate UI, UCFE, UCX. ➢ 80% of Lower Authority Appeals with quality scores at least 85% of potential points.
	Facilitate Reemployment: The percent of UI claimants who become reemployed within the quarter following their first UI payment. Performance goal deferred until data have been collected from all states for four quarters.

Appendix B

Management Information Measures

Benefits Payment Timeliness Measures

1. Intrastate UI First Payments Timeliness, full weeks, within 35 days
2. Interstate UI First Payments Timeliness
3. UI First Payments Timeliness (Partials/Part Totals)
4. UCFE First Payments Timeliness
5. UCX First Payments Timeliness
6. Continued Weeks Payment Timeliness
7. Continued Weeks Payment Timeliness (Partials/Part Totals)
8. Workshare First Payments Timeliness
9. Workshare Continued Weeks Timeliness
10. Intrastate Separation Determinations Timeliness
11. Intrastate Nonseparation Determinations Timeliness
12. Interstate Separation Determinations Timeliness
13. Interstate Nonseparation Determinations Timeliness
14. UCFE/UCX Nonmonetary Determinations Timeliness
15. Nonmonetary Determinations Implementation Timeliness

Appeals Timeliness Measures

16. Implementation of Appeals Decision Timeliness
17. Lower Authority Appeals Timeliness – 45 Days
18. Lower Authority Appeals Timeliness – 90 Days
19. Higher Authority Appeals Timeliness – 75 Days
20. Higher Authority Appeals Timeliness – 150 Days
21. Lower Authority Appeals, Average Pending Case Age
22. Higher Authority Appeals, Average Pending Case Age

Combined Wage Claims Timeliness Measures

23. Combined Wage Claim Wage Transfer Timeliness
24. Combined Wage Claim Billing Timeliness
25. Combined Wage Claim Reimbursements Timeliness

Tax Timeliness Measures

26. Contributory Employer Report Filing Timeliness
27. Reimbursing Employer Report Filing Timeliness
28. Securing Delinquent Contributory Reports Timeliness
29. Securing Delinquent Reimbursing Reports Timeliness
30. Resolving Delinquent Contributory Reports Timeliness
31. Resolving Delinquent Reimbursing Reports Timeliness

Appendix B

Management Information Measures

32. Contributory Employer Payments Timeliness
33. Reimbursing Employer Payments Timeliness
34. Successor Status Determination Timeliness (within 90 days of Quarter Ending Date)
35. Successor Status Determination Timeliness (within 180 days of Quarter Ending Date)

Appeals Quality Measures

36. Lower Authority Appeals Due Process Quality

Tax Quality Measures

37. Delinquent Reports Resolution Quality
38. Collection Actions Quality
39. Turnover of Contributory Receivables to Tax Due
40. Turnover of Reimbursing Receivables to Tax Due
41. Write off of Contributory Receivables to Tax Due
42. Write off of Reimbursing Receivables to Tax Due
43. Contributory Accounts Receivable as a Proportion of Tax Due
44. Reimbursing Accounts Receivable as a Proportion of Tax Due
45. Field Audits Quality
46. Field Audit Penetration, Employers
47. Field Audit Penetration, Wages
48. Percent Change as a Result of Field Audit

Benefits Accuracy Measures

49. Paid Claim Accuracy
50. Denied Claim Accuracy

Tax Accuracy Measures

51. Posting New Determinations Accuracy
52. Successor Determinations Accuracy
53. Posting Successor Determinations Accuracy
54. Inactivating Employer Accounts Accuracy
55. Posting Inactivations Accuracy
56. Employer Reports Processing Accuracy
57. Contributory Employer Debits/Billings Accuracy
58. Reimbursing Employer Debits/Billings Accuracy
59. Employer Credits/Refunds Accuracy
60. Benefit Charging Accuracy
61. Experience Rating Accuracy

Cash Management Measure

62. Timeliness of Transfer to UTF

Benefit Payment Control Measures

63. Benefit Payment Control, Establishment Effectiveness
64. Benefit Payment Control, Collection Effectiveness

Attachment C

Studies Affecting Core Measures

Nonmonetary Determination Quality. The Department convened a nonmonetary determinations Federal/state team to study the measurement instrument used in the quality review. The team is exploring ways to refine the measurement instrument to ensure the most accurate review results. During the interim, states will continue the current system of tripartite reviews using the existing instrument, but the Department will immediately begin to display separation and nonseparation scores separately in published reports. Pending the conclusion of the study, states will address performance below the established performance goals in narratives in the State Quality Service Plan rather than in corrective action plans.

Overpayment Detection Measure. The Department proposes to include as a Core Measure the percent of estimated detectable, recoverable overpayments that the state establishes for recovery. The Benefit Accuracy Measurement data provide the overpayment estimate, while Benefit Payment Control data provide the amount of overpayments established for collection. For a recent period, six states reported establishing over 100% of estimated recoverable overpayments, while at the same time several other states' ratios were extremely low. The Department will examine the BAM methods, procedures and results in an attempt to explain the phenomenon of inverse ratios in some states, and over the coming year will explore possible adjustments to the measure.

Average Age of Pending Appeals. The Department proposes that the promptness measure for Higher Authority and Lower Authority Appeals be changed and regulations amended appropriately. To determine if cases are being decided with the greatest promptness that is administratively feasible, UI Performs would no longer use the elapsed time between filing the appeal and the date of the decision, but would instead use the average age of all cases pending in the state on a given date. The Department thinks the new measure will encourage states to decide cases more quickly overall and is currently conducting a six-state pilot of the proposed measure. State agencies and other commentators are asked to address how the new measure might drive operational changes in the states' higher and lower authority appeals systems and how those changes might affect services to claimants and employers.

[FR Doc. 04–13526 Filed 6–15–04; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meetings (Teleconference)

TIMES AND DATES: 4 p.m. e.d.t., July 9, 2004.

PLACE: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

AGENCY: National Council on Disability (NCD).

STATUS: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the call.

AGENDA: Roll call, announcements, reports, new business, adjournment.

CONTACT PERSON FOR MORE INFORMATION: Geraldine (Gerrie) Drake Hawkins, Ph.D., Program Analyst, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov*.

CULTURAL DIVERSITY ADVISORY COMMITTEE MISSION: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop Federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: June 9, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–13527 Filed 6–15–04; 8:45 am]
BILLING CODE 6820–MA–P

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda

TIME AND PLACE: 9:30 a.m., Tuesday, June 22, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are Open to the Public.

MATTERS TO BE CONSIDERED:

7643 Highway Accident Report—Motorcoach Run-off-the-Road and Rollover Accident, Victor, New York, June 23, 2002.

7564A Hazardous Materials Accident Report—Nurse Tank Failure With Release of Hazardous Materials near Calamus, Iowa, April 15, 2003.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, June 18, 2004.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: June 10, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–13629 Filed 6–10–04; 4:22 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy) to include an interim enforcement policy regarding enforcement discretion for certain issues involving fire protection programs at operating nuclear power plants.

DATES: This revision is effective June 16, 2004. Comments on this revision to the Enforcement Policy may be submitted on or before July 16, 2004.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to *nrcep@nrc.gov*.

The NRC maintains the current Enforcement Policy on its Web site at *http://www.nrc.gov*, select What We Do, Enforcement, then Enforcement Policy.

FOR FURTHER INFORMATION CONTACT: Joseph Birmingham, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2829, e-mail (*JLB4@nrc.gov*) or Renée Pedersen, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–2742, e-mail (*RMP@nrc.gov*).

SUPPLEMENTARY INFORMATION: In a separate action published in today's **Federal Register**, the NRC is revising its regulations in 10 CFR 50.48 governing fire protection at operating nuclear power plants. The revision adds a new paragraph (c) to § 50.48 that allows reactor licensees to voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association (NFPA) Standard 805 NFPA 805), "Performance-based Standard For Fire Protection For Light Water Reactor Electric Generating Plants," 2001 Edition (with limited exceptions stated in the rule language), as an alternative to complying with § 50.48(b) or the requirements in their fire protection license conditions.

As part of the transition to 10 CFR 50.48(c), licensees will establish the fundamental fire protection program identified in NFPA 805. Licensees will perform a plant-wide assessment to identify fire areas and fire hazards and evaluate compliance with their existing fire protection licensing basis. This fire protection assessment is beyond the normal licensee review of their fire protection program.

During the assessment process, licensees may identify noncompliances with their existing fire protection licensing basis which must be evaluated to restore compliance with the existing plant requirements or to establish compliance with a performance-based approach under NFPA 805. These noncompliances would normally be identified by the licensee as part of the above fire protection assessment, entered into the licensee's corrective action program, and dispositioned for corrective action, including any compensatory measures. The NRC believes it is appropriate to provide incentives for licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts. Therefore, the NRC is issuing an interim policy that provides enforcement discretion for certain fire protection noncompliances identified as part of the transition to 10 CFR 50.48(c).

For these noncompliances discussed above, the enforcement discretion period would begin upon receipt of a letter of intent from the licensee stating their intention to adopt the risk-informed, performance-based fire protection program under 10 CFR 50.48(c) and providing a schedule for the transition to 10 CFR 50.48(c). The enforcement discretion period would be in effect for up to two years under the letter of intent and, if the licensee submits a license amendment request to complete the transition to 10 CFR 50.48(c), will continue until the NRC approval of the license amendment request is completed.

If the licensee decides not to complete its transition to 10 CFR 50.48(c), the licensee must submit a letter stating their intention to retain their existing license basis and withdrawing their letter of intent. Enforcement discretion would be provided for those violations that were identified under the letter of intent to transition to NFPA 805 provided those violations are resolved under the existing licensing basis and meet the criteria included in this policy for these violations. Violations identified after the date of the withdrawal letter will be dispositioned in accordance with normal enforcement practices.

Additionally, licensees who plan to comply with 20 CFR 50.48(c) may have existing identified noncompliances which could reasonable be corrected under 20 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective action so that those noncompliances may be corrected in accordance with the requirements of 10 CFR 50.48(c). Those noncompliances must be entered into the licensee's corrective action program, must not be associated with findings that the Reactor Oversight Process Significance Determination Process would evaluate as Red, or would not be categorized at Severity Level I, and appropriate compensatory measures have been taken. To prevent undue delay in either restoring these existing noncompliances to 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) or establishing compliance to 10 CFR 50.48(c), the letter of intent must be submitted within 6 months of the effective date of the final rule amending 10 CFR 50.48.

This interim enforcement discretion policy is consistent with the long-standing policy included in Section

VII.B.3, "Violations Involving Old Design Issues," of the Enforcement Policy addressing discretion when licensees voluntarily undertake a comprehensive review and assessment. This exercise of discretion provides appropriate incentives for licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts.

However, the NRC may take enforcement action when a violation that is associated with a finding of high safety significance is identified. The staff intends to normally rely on the licensee's risk assessment of an issue when making a decision on whether to exercise enforcement discretion under this policy.

Accordingly, the proposed revision to the NRC Enforcement Policy reads as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Interim Enforcement Policies

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR Part 26)

* * * * *

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR 50.48, Fire protection (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). Paragraph (c) allows reactor licensees to voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association (NFPA) Standard 805 (NFPA 805), "Performance-Based Standard For Fire Protection For Light Water Reactor Electric Generating Plants," 2001 Edition (with limited exceptions stated in the rule language).

For those noncompliances identified during the licensee's transition process, this enforcement discretion policy will be in effect for up to two years from the date of a licensee's letter of intent to adopt the requirements in 10 CFR 50.48(c) and will continue to be in place until NRC approval of the license amendment request to transition to 10 CFR 50.48(c). This discretion policy may be extended upon a request from the licensee with adequate justification.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the license amendment request, the licensee determines not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating their intent to retain their existing license basis and withdrawing their letter of intent to comply with 10 CFR 50.48(c). Any violations identified prior to the date of the above withdrawal letter will be eligible for discretion, provided they are resolved under the existing licensing basis and meet the criteria included in this policy for these violations. Violations identified after the date of the above withdrawal letter will be dispositioned in accordance with normal enforcement practices.

A. Noncompliances Identified During the Licensee's Transition Process

Under this interim enforcement policy, enforcement action normally will not be taken for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) involving a problem such as in engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets all of the following criteria:

(1) It was licensee-identified as a result of its voluntary initiative to adopt the risk-informed, performance-based fire protection program included under 10 CFR 50.48(c), or, if the NRC identifies the violation, it was likely in the NRC staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's transition to 10 CFR 50.48(c) provided the schedule reasonably provides for completion of the transition within two years of the date of the licensee's letter of intent to implement 10 CFR 50.48(c) or other period granted by NRC;

(2) It was corrected or will be corrected as a result of completing the transition to 10 CFR 50.48(c). Also, immediate corrective action and/or compensatory measures are taken within a reasonable time commensurate with the risk significance of the issue following identification (this action should involve expanding the initiative, as necessary, to identify other issues caused by similar root causes);

(3) It was not likely to have been previously identified by routine licensee efforts such as normal surveillance or quality assurance (QA) activities; and

(4) It was not willful.

The NRC may take enforcement action when these conditions are not met or when a violation that is associated with a finding of high safety significance is identified.

While the NRC may exercise discretion for violations meeting the required criteria where the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report.

B. Existing Identified Noncompliances

In addition, licensees may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective actions until the licensee has transitioned to 10 CFR 50.48(c) provided that the noncompliances meet all of the following criteria:

(1) The licensee has entered the noncompliance into their corrective action program and implemented appropriate compensatory measures,

(2) The noncompliance is not associated with a finding that the Reactor Oversight Process Significance Determination Process would evaluate as Red, or it would not be categorized at Severity Level I, and

(3) The licensee submits a letter of intent within 6 months of the effective date of the final rule stating their intent to transition to 10 CFR 50.48(c).

After the 6 month period described in (3) above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices.

* * * * *

Dated at Rockville, Maryland, this 8th day of June, 2004.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–13523 Filed 6–15–04; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Nuclear Management Company, LLC, Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Nuclear Management Company, LLC (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan. Therefore, as required by Title 10 of the Code of Federal Regulations (10 CFR), Section 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would give approval to the licensee to update the Final Safety Analysis Report (FSAR) to reflect a change in the licensing basis for the handling of heavy loads using the L–3 crane main hoist. Specifically, the proposed changes would credit the L–3 crane as a single-failure-proof design, meeting the guidelines of NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants" and NUREG–0554, "Single-Failure-Proof Cranes for Nuclear Power Plants," and the amendment would also approve use of the L–3 crane for below-the-hook loads up to 110 tons.

The proposed action is in accordance with the licensee's application dated January 29, 2004, as supplemented by letters dated May 14, and June 2, 2004.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to increase the rated capacity of the spent fuel pool crane and incorporate a single-failure-proof design. Upgrading the crane is necessary to allow the loading of a new dry fuel storage cask.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner; (2) such activities will be conducted in compliance with the Commission's regulations; and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The details of the staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site and there is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents, and it has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Palisades Plant, dated February 1978.

Agencies and Persons Consulted

On June 9, 2004, the staff consulted with the Michigan State official, Mary Ann Elzerman, of the Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 29, 2004, as supplemented on May 14 and June 2, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of June 2004.

For the Nuclear Regulatory Commission.

John F. Stang,

Sr. Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–13524 Filed 6–15–04; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. MC2004–2; Order No. 1408]

Experimental Priority Mail Flat-Rate Box

AGENCY: Postal Rate Commission.

ACTION: Notice and order on new experimental docket.

SUMMARY: This document establishes a formal docket for consideration of a proposed two-year experiment testing the feasibility of two new Priority Mail packaging options. Both options are priced at a flat rate of $7.70. The shape of one package makes it suitable for mailing garments; the shape of other accommodates shoes. Conducting the experiment would allow the Service to collect data and information on customer response and related matters, and thereby determine whether it should seek to establish these products as permanent offerings.

DATES: *See* **SUPPLEMENTARY INFORMATION** for dates.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, at 202–789–6818.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 3, 2004, the United States Postal Service filed a request for a recommended decision from the Postal Rate Commission approving a two-year experimental mail classification and rate for a new Priority Mail "flat-rate box" offering.[1] The Request, which includes five attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C 3601 *et seq.*[2] It was accompanied by three pieces of testimony (along with related exhibits and library references); a statement regarding satisfaction of certain compliance requirements, along with a conditional motion for waiver of certain standard filing requirements; and a request for prompt establishment of settlement procedures.[3] The Request and all related material are available for inspection in the Commission's docket section during regular business hours, and can be accessed electronically, via the Internet, on the Commission's Web site at *http://www.prc.gov*.

Summary. The proposal encompasses two new Priority Mail flat-rate box options, each priced at $7.70, and is geared primarily to convenience-oriented customers. Special boxes would be provided at no additional charge to customers by the Postal Service, and would be readily available at post offices, other physical locations and via the Internet. The two proposed package shapes were chosen based on an analysis of a national Priority Mail survey. Both boxes have the same cubic volume (0.34 feet), but one is a longer, shallower shape suitable for mailing garments, while the other is a taller package that could accommodate items such as shoes.[4] Text printed directly on the boxes would provide pertinent instructions and information, such as security-related entry limitations and payment methods. One payment option, given that the proposed rate is twice the postage now charged for the Service's existing Priority Mail flat-rate envelope, would be the application of two $3.85 denomination stamps. Request at 2.

The Service asserts that the proposed experiment will not materially affect its overall revenue position and will not entail any capital investment. It also says the proposed rate is sufficient to guard against any significant loss of revenue from existing Priority Mail customers, while providing for additional revenues from new Priority Mail business. Thus, it says the proposed experiment creates no appreciable risk of significant, negative financial results or harm to the Postal Service, mailers using the new packaging, or other mailers. *Id.* at 3. The Service also asserts, among other things, that the proposal is consistent with the logic of the experimental rules; will further the general policies of the Postal Reorganization Act; and conforms to the applicable statutory criteria. *Id.* at 4–5.

II. The Service Characterizes Its Proposal as a Short-Term Experiment Testing a Convenience-Oriented Option Similar, in Many Respects, to the Existing Priority Mail Flat-Rate Envelope

The Service cites customer convenience as the primary justification for offering the proposed flat-rate boxes as additional expedited mailing options. It says customers can simply put an item in a box obtained from the Postal Service, apply the known postage amount and address, and enter the box into the mailstream in an appropriate fashion, thereby avoiding the need to weigh and rate Priority Mail parcels, or to visit a post office for weighing and rating. *Id.* at 2.

The Service proposes a two-year experiment. It says this should allow mailers sufficient time to adjust their mailing practices to use the classification. It also says this amount of time will provide an adequate period to aggregate and analyze the experimental data, thereby facilitating a request for a permanent change in mail classification. *Id.* at 4. If a permanent request is made within the experimental period, the Service asks that the experiment be allowed to continue until action on that request can be completed, thus avoiding disruption. *Id.* at 5.

III. Supporting Testimony Supporting Testimony Addresses Pertinent Revenue, Volume and Statutory Criteria

A. Witness Scherer's Testimony (USPS–T–1)

Witness Scherer addresses derivation of the proposed rate, assesses risk, and describes the proposed data collection and reporting plan. He also discusses the proposal's conformance with the criteria for experiments and for rate and classification changes.

Scherer derives the proposed $7.70 rate from the current Priority Mail schedule, using new survey data on the size and density characteristics of existing Priority Mail parcels to determine an average weight for the box. These new data are from witness Loetscher's testimony. USPS–T–1 at 3, 5. The sampling study provides an average density of 6.70 pounds per cubic foot for a Priority Mail parcel of 0.34 ft, or an average weight of 2.28 pounds. This weight is used to interpolate between the average Priority Mail postage for two-pound parcels and three-pound parcels (across all zones) to arrive at a base postage amount of $5.92. Witness Scherer then considers economic and pricing criteria to reach a postage amount of $7.70 for Priority Mail flat-rate boxes. *Id.* at 3.

Risk. Scherer says the flat-rate box, like all new product offerings, entails risk to both the customer and the Postal Service. However, he considers the risk to customers minimal, as they may "overpay" for the flat-rate box in some instances. *Id.* at 8–9. With respect to the Service, Scherer says the risk is quantifiable, has an acceptable upper bound for an experiment, and will be at least partially offset by some unquantifiable potential benefits. *Id.* at 6. In his view, the prevailing risk for the Service is the revenue leakage that would occur if Priority Mail customers currently paying more than $7.70 "buy down" to the flat-rate box. In brief, Scherer finds 9.3 million eligible parcels currently priced above $7.70, but says he does not expect all of them to migrate to the flat-rate box.

Data collection plan. Scherer proposes semi-annual tabulation of flat-rate box volume, distinguished for the two box sizes, by weight increment and zone. He says volume data will come from the ODIS–RPW sampling regularly

[1] Request of the United States Postal Service for a Recommended Decision on Experimental Classification and Rate for Priority Mail Flat-Rate Box, June 3, 2004 (Request). *See also* Notice of United States Postal Service of Filing of Library Reference USPS–LR–1 and Notice of United States Postal Service of Filing of Library Reference USPS–LR–2, both filed June 3, 2004.

[2] Attachments A and B identify requested changes to the Domestic Mail Classification Schedule and the associated Priority Mail rate schedule; Attachment C is the certification regarding, among other things, the accuracy of the cost statements and supporting data submitted with the Request; Attachment D is an index of testimony and exhibits; and Attachment E is a compliance statement addressing the Service's satisfaction of various filing requirements or its interest in waiver of certain requirements.

[3] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 3, 2004 (collectively referred to as Motion for Waiver); United States Postal Service Request for Establishment of Settlement Procedures, June 3, 2004 (Settlement Request). The latter request seeks expedition in addition to that generally available under the Commission's experimental rules (39 CFR 3001.67–3001.67d).

[4] The external measurements of one box are 14″ x 12″ x 3.5″; the external measurements of the other are 11.25″ x 8.75″ x 6.″ Request at 2. Inside dimensions, respectively, are 13.25″ x 11.75″ x 3.25″ and 11″ x 8.5″ x 5.5″. USPS-T–2 at 4–5.

conducted by the Postal Service's Office of Revenue and Volume Reporting. He says some ODIS–RPW system changes will be required, but that sampling should be able to commence at the start of the experiment. In addition to weight and zone, the sampling will identify the method of postage payment, and thereby provide some insight into the types of customers using the flat-rate box. *Id.* at 13. Scherer also anticipates that sampling will be supplemented, in the second year of the experiment, with market research. He expects this to take the form of a nationwide flat-rate box user survey, and provides possible sample survey questions in Attachment A of his testimony. He notes that Question 8 addresses the main objective of the survey, which is to discern the origins of volume gravitating to the flat-rate box.

Scherer also reviews the proposal in terms of the statutory classification and pricing criteria, and finds that the experiment is consistent with them. *Id.* at 14–18.

B. Witness Barrett's Testimony (USPS–T–2)

Witness Barrett discusses three facets of the convenience the Service seeks to create: obtaining the product, selecting a method of payment, and entering the item into the mailstream. USPS–T–2 at 6. His testimony indicates that the new boxes will be available via multiple channels, including the Internet, but indicates that post offices are expected to remain the primary contact point for consumers and small business customers. *Ibid.* He notes that payment may be made via existing methods, including stamps and electronic postage. *Id.* at 7.

Barrett notes that given Postal Service security measures, Priority Mail packages bearing stamps and weighing 16 ounces or more may not be placed in a collection box, but instead must be entered at the post office or may be picked up by a letter carrier from a customer's home or place of business pursuant to certain conditions. He says the flat-rate boxes will be subject to the same security guidelines that apply to similar mailings.

Barrett asserts that the flat-rate box would meet customers' need for products that are easy to access and simple to use, and would provide enhanced simplicity and convenience. *Id.* at 3. He says it would offer customers a single, predetermined rate regardless of the actual weight or destination zone of the mailpiece. *Ibid.* He also says the Postal Service hopes, by creating a simplified transaction, to make it easier for retailers, contract postal units, and individuals or small businesses selling merchandise online to offer Priority Mail to their customers. *Ibid.*

C. Loetscher Testimony (USPS–T–3)

Witness Loetscher presents and sponsors a national study that estimates the size distributions and densities of Priority Mail parcels. Details and documentation are supplied in USPS–LR–2/MC2004–2.[5] Section 1 of the library reference describes the study; section 2 describes the sample frame, site selection, and data collection methods; and section 3 describes the estimation methodology. An appendix presents the software code used to generate the estimates. USPS–T–3 at 1.

Loetscher's study estimates the proportion of Priority Mail parcels by pound increment, zone and cubic foot increment. *Id.* at 2. Based on the 5,368 Priority Mail parcels that were sampled, Loetscher estimated parcels as having a density of 6.70 pounds per cubic foot. *Id.* at 2–3.

IV. Experimental Designation

The Service asserts that by designating its Request as an experiment, it intends for the Commission to apply its expedited rules of practice for experimental changes. Request at 3. The Service says that this filing is consistent with the logic of the experimental rules. In particular, it notes that flexibility is required because the detailed, conventional data necessary to support a request for a permanent classification are currently unavailable. The Service believes that this proposal will be attractive to mailers, contribute to the long-term viability of the postal system, and further the general policies of efficient postal operations and reasonable rates and fees enunciated in the Postal Reorganization Act, including 39 U.S.C. 3622(b) and 3623(c). *Id.* at 4–5.

V. Conditional Motion for Waiver

The instant filing incorporates by reference materials submitted with the Service's Docket No. R2001–1 Request, as well as other materials routinely provided to the Commission by the Service. *Id.* at 5. The Service says it believes that its filing satisfies all applicable Commission filing requirements, but seeks waiver of pertinent provisions of rules 54, 64 and 67 to the extent the Commission concludes otherwise.

In support of its position, the Service contends that its Compliance Statement (Attachment E to the Request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent documentation from the recent omnibus rate case (Docket No. R2001–1). The Service contends, among other things, that the rate case documentation satisfies most filing requirements because the proposed discounts will not materially alter the rates, fees and classifications established in that docket, and therefore will have only a limited impact on overall postal costs, volumes and revenues. It further asserts that there is substantial overlap between the information sought in the general filing requirements and the materials provided in Docket No. R2001–1. Motion for Waiver at 1–4.

In the event the Commission concludes that the materials from the omnibus case are not sufficient to satisfy the requirements, the Service seeks waiver. In support thereof, it cites the reasons expressed in support of its general position on the adequacy of its filing; the nature of the proposed experiment; and the small impact on total costs and revenues and on the costs, volumes and revenues of mail categories. *Id.* at 4–5.

VI. The Service Requests Establishment of Settlement Procedures

The Service asks the Commission to authorize settlement procedures, citing, among other things, the straightforward nature of the proposal and its limited scope and duration. Settlement Request at 1–2. It asks that the Commission schedule several events: an informal, off-the-record technical conference involving witness Scherer, sometime on June 21–23, 2004; a settlement conference the following week, and a prehearing conference after the July 4th weekend. *Id.* at 3.

VII. Commission Response

Appropriateness of proceeding under the experimental rules. At this stage of the proceeding, the Commission has docketed the instant filing as an experimental case for administrative purposes. Formal status as an experiment under Commission rules 67–67d, which the Service makes clear it seeks for this Request, is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or

[5] In connection with his library reference, witness Loetscher states: "Some estimates used by witness Scherer rely on distributional Priority Mail volume data. The Postal Service considers these data to be commercially sensitive because they are similar to the GFY 2003 Priority Mail Billing Determinants data which, by convention, will not be reported to the Postal Rate Commission until spring of 2005. Data deemed too commercially sensitive by the Postal Service are not disclosed in the library reference." USPS–T–3 at 1.

difficulty of data collection, and duration. A final determination regarding the appropriateness of accepting the filing as an experimental case and application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by June 24, 2004.

Authorization of settlement negotiations. The Commission grants the Service's Request for Establishment of Settlement Procedures and appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions, with the first report to be submitted on or before July 2, 2004. The Commission further authorizes the settlement coordinator to hold a technical conference, at the convenience of participants, anytime between June 21 and 23, 2004; authorizes a settlement conference to be held the next week, with notice to the Commission of the date and time selected; and sets a public post-settlement conference hearing for July 8, 2004, at 10 a.m. in the Commission's hearing room. If progress in the settlement conference overtakes the need for the July 8 conference, the settlement coordinator is to notify the Commission and participants as promptly as possible.

The Commission notes that authorization of settlement discussions does not constitute a finding on the proposal's experimental status or on the need for a hearing in this case.

Representation of the general public. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Intervention; positions on need for hearing. Those wishing to be heard in this matter are directed to file a notice of intervention with Steven W. Williams, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001, on or before June 24, 2004. Notices shall indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001–20 and 3001–20a. Although the Commission is authorizing participants to engage in settlement discussions, no decision has been made at this time on whether a hearing will be held in this case. To assist the Commission in making this decision, participants are directed to indicate, in their notices of intervention, whether they seek a hearing and, if so, to identify with particularity any genuine issues of material facts believed to warrant such a hearing.

It is ordered:

1. The Commission establishes Docket No. MC2004–2, Experimental Priority Mail Flat-Rate Box, to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit *en banc* in this proceeding.

3. The deadline for filing notices of intervention is June 24, 2004.

4. Notices of intervention shall indicate whether the participant seeks a hearing and identify with particularity any genuine issues of material fact that warrant a hearing.

5. The deadline for answers to the Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 3, 2004, is June 24, 2004.

6. The Commission grants the United States Postal Service Request for Establishment of Settlement Procedures, June 3, 2004, to the extent described in the body of this ruling.

7. The Commission appoints Postal Service counsel to serve as settlement coordinator in this proceeding.

8. The deadline for comments on the Postal Service's request for treatment under Commission rules 67–67d is June 24, 2004.

9. The Commission will make its hearing room available for technical conferences during the period of June 21–23, 2004, and the following week for a settlement conference at such times deemed necessary by the settlement coordinator.

10. A public post-settlement conference hearing will be held July 8, 2004, at 10 a.m. in the Commission's hearing room.

11. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

12. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Dated: June 9, 2004.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 04–13529 Filed 6–15–04; 8:45 am]

BILLING CODE 7710–FW–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3588]

State of Louisiana

As a result of the President's major disaster declaration on June 8, 2004, I find that Acadia, Iberville, Lafayette, Livingston, Pointe Coupee, St. Landry, St. Martin, and West Baton Rouge Parishes in the State of Louisiana constitute a disaster area due to damages caused by severe storms and flooding occurring on May 12 through May 19, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 9, 2004, and for loans for economic injury until the close of business on March 8, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Rd., Fort Worth, TX 76155–2243.

In addition, applications for economic injury loans from small businesses located in the following contiguous Parishes may be filed until the specified date at the above location: Allen, Ascension, Assumption, Avoyelles, East Baton Rouge, East Feliciana, Evangeline, Iberia, Jefferson Davis, St. Helena, St. John The Baptist, St. Mary, Tangipahoa, Vermilion, and West Feliciana Parishes in Louisiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 358806 and for economic injury the number assigned is 9ZH900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 9, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–13511 Filed 6–15–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3577]

State of Nebraska; Amdt. #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 1, 2004, the above numbered declaration is hereby amended to include Adams, Buffalo, Butler, Clay, Dodge, Douglas, Fillmore, Franklin, Hall, Hamilton, Jefferson, Johnson, Kearney, Nuckolls, Otoe, Pawnee, Sarpy, Saunders, Seward, Thayer, Washington, Webster, and York Counties as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 20, 2004, and continuing through June 1, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Burt, Colfax, Cuming, Custer, Dawson, Harlan, Howard, Merrick, Nemaha, Phelps, Platte, Polk, Richardson, and Sherman in the State of Nebraska; Harrison and Pottawattamie Counties in the State of Iowa; Jewell, Nemaha, Phillips, Republic, and Smith Counties in the State of Kansas; and Atchison County in the State of Missouri may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Missouri is 9ZH800.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 26, 2004, and for economic injury the deadline is February 25, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 9, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–13513 Filed 6–15–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to terminate waivers of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft.

SUMMARY: The U.S. Small Business Administration (SBA) intends to terminate the waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft. SBA's intent to terminate the waivers of the Nonmanufacturer Rule is based on our recent discovery of a small business manufacturer for these classes of products. Terminating these waiver will require recipients of contracts set aside for small businesses or 8(a) Business Development Program provide the products of small business manufacturers or processor on such contracts.

DATES: Comments and sources must be submitted on or before July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX (202) 205–7280; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product.

This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of product, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on the six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on January 12, 2004 to waive the Nonmanufacturer Rule for General Aviation Turboprop Aircraft. In response, on February 4, 2004, SBA published in the **Federal Register** a notice of intent to grant the waiver of the Nonmanufactuer Rule for General Aviation Turboprop Aircraft. On March 15, 2004, SBA issued a notice of waiver of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft. In responses to these notices, no comments were received from any interested party. However, we recently discovered that the class of products was incorrectly classified as NAICS 441229. The correct NAICS code for Aircraft Manufacturing is NAICS 336411.

This notice proposes to terminate the class waivers of the Nonmanufacturer Rule for General Aviation Turboprop Aircraft, NAICS 441229.

The public is invited to comment to SBA on the proposed termination of the waivers of the nonmanufacturer rule for the class of products specified. All comments by the public will be duly considered by SBA in determining whether to finalize its intent to terminate these classes of products.

Authority: 15 U.S.C. 637(a)(17).

Dated: June 4, 2004.

Barry S. Meltz,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–13512 Filed 6–15–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Notice of Changes in Magnetic Media Filing Requirements for Form W–2 Wage Reports

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Social Security Administration will incorporate two changes into its Magnetic Media Reporting and Electronic Filing (MMREF) publication. The Social Security Administration will eliminate magnetic tapes and cartridges beginning with tax year (TY) 2005 W–2 reports (due to SSA in calendar year 2006). TY 2004 (calendar year 2005) is the last year SSA will accept tapes and cartridges. We will not accept tapes and cartridges starting with January 1, 2006. Diskettes will be eliminated beginning with TY 2006 W–2 reports (due to SSA in calendar year 2007). TY 2005 (calendar year 2006) is the last year SSA will accept diskettes. We will not accept diskettes starting with January 1, 2007. Instead, wage reports shall be filed electronically by employers or third-party preparers using the Social Security Administration's Business Services Online (BSO). BSO is a suite of Internet services for companies to conduct business with the Social Security Administration. The MMREF publication and additional information on wage report filing can be obtained by

accessing the Social Security Administration's employer reporting Web site at *http://www.socialsecurity.gov/employer* or by calling 1–800–772–6270.

DATES: Comments must be received by July 16, 2004.

ADDRESSES: Comments on this change should be mailed or delivered to Chuck Liptz, Director, Office of Employer Wage Reporting and Relations Staff, Social Security Administration, Room 834, Altmeyer Building, Baltimore, MD 21235; or sent by telefax to (410) 966–8753.

FOR FURTHER INFORMATION CONTACT: Chuck Liptz, Director, Employer Wage Reporting and Relations Staff, Social Security Administration, Room 834, Altmeyer Building, Baltimore, MD 21235; telefax (410) 966–8753.

Dated: June 9, 2004.

Richard Harron,

Director, Office of Earnings and Information Exchange.

[FR Doc. 04–13543 Filed 6–15–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4746]

Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

AGENCY: Department of State, Office of International Energy and Commodities Policy.

ACTION: Notice.

Notice is hereby given that the Department of State has received an application from Express Pipeline, LLC (Express) for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004. On August 30, 1996, the State Department had issued a Presidential permit to Express Pipeline partnership, the applicant's predecessor in interest, to construct, connect, operate and maintain a pipeline at the international boundary between the United States and Canada. On August 1, 2001, Express Pipeline partnership filed a certificate of conversion to a limited liability company with the Delaware Secretary of State, thereby automatically converting to a domestic limited liability company. On January 9, 2003, Encana Corporation of British Columbia sold Express to a consortium comprised of Terasen, Inc of British Columbia, Ontario Municipal Employees Retirement System, and Ontario Teachers' Pension Plan Board, each holding an equal one-third interest. The application filed with the Department of State requests authorization for Express to operate and maintain Express's existing crude oil transporter system that crosses the U.S.-Canadian border in the vicinity of Port of Wild Horse, Alberta, traverses the State of Montana, and terminates at Casper, Wyoming. It also requests authorization to construct, connect, operate, and maintain six additional pump stations alongside and connected to the existing crude oil transporter system.

Express is a limited liability company organized and existing under the laws of the State of Delaware and with its principal office located in Calgary, Alberta. Terasen Pipelines (USA) Inc. (Terasen Pipelines) operates and maintains the existing system on behalf of Express. Acting through Terasen Pipelines, Express will finance, construct, connect, operate and maintain the pump stations.

As required by E.O. 13337, the Department of State is circulating this application and a draft environmental assessment to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before July 16, 2004, to Pedro Erviti, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: Pedro Erviti, Office of International Energy and Commodities Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by fax at (202) 647–4037.

Dated: June 10, 2004.

Matthew T. McManus,

Acting Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. 04–13697 Filed 6–14–04; 2:22 pm]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Mutual Recognition Agreement on Marine Equipment Between the United States and the EEA EFTA States (Norway, Iceland and Liechtenstein)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The United States is considering a proposal to negotiate a mutual recognition agreement (MRA) on marine equipment with European Free Trade Association (EFTA) countries that are part of the European Economic Area (EEA)—*i.e.*, Norway, Iceland, and Liechtenstein. Such an agreement would parallel the provisions of the Marine Equipment MRA signed by the United States and European Community (EC) in 2004. The Office of the United States Trade Representative (USTR) seeks public comment on the desirability of negotiating a mutual recognition agreement in this sector with the EEA EFTA States

DATES: Comments should be submitted no later than Friday, July 16, 2004.

ADDRESSES: Submissions by electronic mail should be sent to: *FR0429@ustr.gov*. Submissions by fax should be sent to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee (TPSC), Office of the U.S. Trade Representative at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC 20508, tel: (202) 395–3475. Substantive questions should be addressed to Jim Sanford, Deputy Assistant USTR for European Affairs at (202) 395–3320; or Jason Buntin, Director for EFTA Affairs at (202) 395–4620.

SUPPLEMENTARY INFORMATION: On February 27, 2004, the United States and European Community (EC) signed the US–EC Marine Equipment MRA. This agreement is to enter into force on July 1, 2004. Under the terms of the US–EC Marine Equipment MRA, designated products which comply with U.S. requirements will be accepted for sale in the European Union (EU) without any additional testing. The MRA will permit U.S. rigid life rafts, for example, determined by the U.S. Coast Guard to conform to U.S. regulations to be sold in the EU marketplace without any additional tests. Likewise, European

rigid life rafts that are determined by European authorities to meet EU requirements can be sold in the United States without additional testing. The agreement fully preserves the U.S. Coast Guard's authority to determine the level of safety protection it considers appropriate, and in no way lowers current U.S. marine safety requirements. The text of the US–EC Marine Equipment MRA, including the current product scope, is available on USTR's Web site at: *http://www.ustr.gov/regions/eu-med/westeur/2004-02-27-agreement-marine.pdf.*

The EEA EFTA States (*i.e.*, Norway, Iceland, and Liechtenstein) formally have requested that the United States negotiate a mutual recognition agreement (MRA) that would parallel the agreement concluded between the United States and the EC.

The Agreement on the European Economic Area (EEA) established a single market ensuring free circulation of goods, persons, capital and services among the EU Member States and the three EEA EFTA States. Norway, Iceland, and Liechtenstein, are integrated into the European Community Single Market and thereby apply the internal market legislation (*acquis communautaire*). This ensures that the EEA EFTA States and their economic operators are subject to the same rights and obligations as their counterparts in the European Community, and that a product placed on the market in accordance with the EU technical requirements freely circulates within the EEA.

An agreement between the United States and the EEA EFTA States would ensure U.S. producers of designated marine equipment direct market access to the EFTA part of the Community's Single Market. In effect, an MRA with the EEA EFTA States would extend the benefits of the US–EC marine equipment MRA to the markets of Norway, Iceland, and Liechtenstein.

In the United States, the U.S. Coast Guard administers conformity assessment requirements for marine equipment used on merchant ships, which includes lifesaving equipment, fire protection systems, and navigational equipment. The US–EC Marine Equipment MRA product scope is based on a detailed product-by-product determination of the equivalency of U.S. and EU marine equipment requirements. Only products facing identical requirements in each market are included in the initial product scope. The initial MRA product scope includes 43 products in three main categories: life saving equipment (*e.g.*, distress signals, rigid life rafts); fire protection equipment (*e.g.*, deck coverings, flame retardant materials); and navigational equipment (*e.g.*, GPS equipment, echo-sounding equipment). The US–EC agreement also contemplates expanding the product scope in the future based on the results of international regulatory cooperation.

Public Comments: USTR invites written comments from interested persons on the desirability of negotiating an MRA with the EEA EFTA States which would parallel the US–EC Marine Equipment MRA. Comments are invited in particular on: (a) The benefits for pursuing an MRA in this sector; and (b) any specific issues regarding an MRA in this sector. All submissions must be in English and should conform to the information requirements of 15 CFR part 2003. Comments should state clearly the position taken and should describe the specific information (including data, if possible) supporting that position.

USTR strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0429@ustr.gov*. Submissions by e-mail should include "US–EEA EFTA States Marine Equipment MRA" in the message subject line. Documents should be submitted in Word, WordPerfect, or text (.txt) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format.

For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–"; and the file name of the public version should begin with the character "P–". The "P–" or "BC–" should be followed by the name of the submitted information. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself.

Written comments or other information submitted in connection with this request, except information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 3, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10 a.m. to noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–13576 Filed 6–15–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 16, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Christopher Horton, Manager of Finance, Airport Authority of Washoe County, at the following address: 2001 East Plumb Lane, Reno, NV 89502. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Airport Authority of Washoe County under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriguez, Environmental Planning and Compliance Section Supervisor, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010, Telephone: (650) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION:

The FAA proposes to rule and invites public comment on the application to impose and use the revenue from 9 PFC at Reno/Tahoe International Airport under the provisions of the 49 U.S.C.

40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 25, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 28, 2004.

The following is a brief overview of the impose and use application No. 04–08–C–00–RNO:

Level of proposed PFC: $4.50.

Proposed charge effective date: December 1, 2004.

Proposed charge expiration date: January 1, 2008.

Total estimated PFC revenue: $25,440,000.

Brief description of the proposed projects: Checked baggage screening system construction, and second floor concourse restrooms expansion. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: nonscheduled/on-demand air carriers (formerly air taxi/commercial operators) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County.

Issued in Lawndale, California, on May 25, 2004.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 04–13581 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–98–3430]

Reports, Forms and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for Public Comment on a 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 (PRA), 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 a proposed collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on August 16, 2004.

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 as the "dealer notification rule." It is requested, but not required, that one (1) original plus two (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: Larry Long, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Room 5319, NVS–215, Washington, DC 20590. Telephone: (202) 366–6281.

SUPPLEMENTARY INFORMATION: Under the PRA, 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 the proposed collection of information. 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 amendments of the following described collection of information:

Title: Dealer Notification of Defects and Noncompliances.

Type of Request: Amendment to existing information collection adding new requirements.

OMB Control Number: 2127–0004.

Affected Public: This collection of information applies to manufacturers of motor vehicles and items of motor vehicle equipment that conduct safety recalls.

Abstract: On September 27, 1993, NHTSA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) proposing several amendments to its regulations (49 CFR parts 573 and 577) implementing the provisions of 49 U.S.C. chapter 301 concerning manufacturers' obligations to provide notification and remedy without charge for motor vehicles and items of replacement motor vehicle equipment found to contain a defect related to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard (58 FR 50314). On April 5, 1995, we issued a final rule addressing most aspects of that NPRM (60 FR 17254), and on January 4, 1996, we amended several provisions of that final rule after receiving petitions for reconsideration (61 FR 274). However, we decided to delay issuance of the final rule on the subject of dealer notification because we had not resolved all the issues raised by the comments on that subject that were submitted in response to the NPRM. On May 19, 1999, we issued a supplemental notice of proposed rulemaking (SNPRM) in order to seek additional public comment on several significant proposed revisions to the proposal that we had originally set out in the NPRM (64 FR 27227).

We had originally proposed to require manufacturers to notify their dealers and distributors of safety defects and noncompliances that had been determined to exist in their products within 5 days after notifying the agency of the determination pursuant to 49 CFR part 573. In the SNPRM, however, rather than specify a particular time period, we proposed to require manufacturers to notify dealers in accordance with a schedule that is to be submitted to the agency with the manufacturer's defect or noncompliance information report already required by 49 CFR 573.6 (section 573.5 prior to August 9, 2002).

Under the SNPRM, if the agency were to find that the public interest requires dealers to be notified at an earlier date than that proposed by the manufacturer, the manufacturer would have to notify its dealers in accordance with the agency's directive. The SNPRM also proposed to require that the dealer notification contain certain information (including language about manufacturer and dealer obligations under 49 U.S.C. 30116 and 30120(i)) and described the manner in which such notification is to be accomplished.

We fully considered the comments submitted in response to the SNPRM, and are about to issue a final rule. Consistent with the PRA, we are issuing this request for comments on the burden of complying with the dealer notification requirements. Before issuing the SNPRM in May 1999, we had published a request for such comments on a different version of the regulation. *See* 62 FR 63598 (December 1, 1997). Since the SNPRM made major changes to the proposal (based in part on the comments submitted in response to that request), we are issuing a new request for comments on the PRA burdens.

Estimated annual burden: Pursuant to statute (*see* 49 U.S.C. 30116, 30118(b) and (c), and 30119(d)(4)) and their own internal practices, manufacturers currently notify their dealers and distributors of all recalls that address safety defects or noncompliances in their products. Under the revised regulation, manufacturers conducting recalls will be required to (1) add information about the manufacturer's intended schedule for dealer notification to the manufacturer's notifications to NHTSA of defects and noncompliances that are already provided pursuant to 49 CFR part 573, and (2) include certain specified language in the notifications that they send to their dealers and distributors. In addition, vehicle manufacturers will now be required to maintain a list of its dealers and distributors that it notified for a period of 5 years. (Pursuant to 49 CFR 573.8(c), manufacturers of motor vehicle equipment are already subject to such a retention requirement.) Each manufacturer conducting a recall would only have to develop language for inclusion in its notifications to its dealers and distributors once, since the language will be the same in succeeding recalls. With respect to retention requirement, vehicle manufacturers already maintain lists of all of their dealers and distributors, and the dealers and distributors that are notified are likely to be identical or at least substantially similar for all recalls conducted by a manufacturer.

Based on the above, we estimate that the average time needed for a manufacturer to perform these activities will be no more than 2 hours per recall. Based on past experience, we estimate that there will be about 500 recalls per year. Accordingly, the manufacturer burden hours are estimated to be 1,000 per year (500 recalls × 2 hours).

In cases in which a manufacturer sells or arranges for the delivery of vehicles or items of equipment to or through independent distributors that subsequently sell or arrange for the delivery of the vehicles or equipment items to independent retail outlets, manufacturers will be required to include in the notification to such distributors language instructing them to provide copies of the notification to all entities further along the distribution chain within five working days of its receipt. Although the regulation does not directly impose any requirement on the distributors to comply with the manufacturer's instructions, we expect them to do so, so we have estimated the paperwork burdens associated with subsequent notifications by distributors. As a practical matter, this requirement would only affect equipment recalls, since vehicle manufacturers generally communicate directly with their dealers rather than through a distribution network. Therefore, our estimate considers only equipment recalls. There are approximately 50 such recalls each year. The only thing that these distributors would do (assuming they followed the manufacturer's instructions) would be to forward copies of the manufacturer's notification to entities further down the distribution chain. We estimate that identifying the applicable lower-tier entities, making copies, and sending out those copies would take about 5 hours per recall. Assuming that each recalling equipment manufacturer utilizes an average of three separate distributors (which is probably an over-estimate, since many equipment manufacturers do not use any independent distributors), the total number of burden hours potentially associated with this provision of the final rule is estimated to be 750 per year (50 recalls × 3 independent distributors × 5 hours).

Number of respondents: Every manufacturer of motor vehicles or replacement equipment is potentially affected by this rule. We estimate that there are 30,000 such manufacturers. However, on average, about 300 manufacturers actually conduct the approximately 500 safety recalls that are conducted each year.

Issued on: June 9, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–13583 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–04 17967]

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 a collection of information for which NHTSA intends to seek OMB approval. The collection of information is associated with the requirement that each new motor vehicle glazing manufacturer must request and be assigned a unique mark or number.

DATES: Comments must be received on or before August 16, 2004.

ADDRESSES: Comments must refer to the docket notice number cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. 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 Mr. John Lee, NHTSA 400 Seventh Street, SW., Room 5320, NVS–112, Washington, DC 20590. Mr. Lee's telephone number is (202) 366–4924. Please identify the relevant collection of information by referring to this Docket Number (Docket Number NHTSA–04–17967).

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995,

before a proposed collection of information is submitted to the OMB for approval, Federal agencies 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; and

(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 collection of information:

Title: 49 CFR 571.205, Glazing Materials.

OMB Control Number: 2127–0038.

Form Number: This collection of information uses no standard form.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Summary of the Collection of Information: NHTSA requires each new motor vehicle glazing manufacturer to request and be assigned a unique mark or number. This number is then used by the manufacturer as their unique company identification on their self-certification label on each piece of motor vehicle glazing.

Description of the need for the information and proposed use of the information: In order to ensure that glazing and motor vehicle manufacturers are complying with Federal Motor Vehicle Safety Standard No. 205, "Glazing materials." NHTSA requires a certification label on each piece of glazing. As part of that certification label, the company must identify itself with the simple two or three digit number assigned by the agency. Failure to clearly identify the manufacturer would make the certification label and therefore the safety standard compliance unenforceable.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): NHTSA anticipates that approximately 21 new prime glazing manufacturers [1] per year will contact the agency and request a manufacturer identification number. These new glazing manufacturers must submit one letter, one time, identifying their company. In turn, the agency responds by assigning them a unique manufacturer number.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that each manufacturer will need one-half hour to prepare a letter at a cost of $20.00 per hour. Thus, the number of estimated reporting burden hours a year on each manufacturer is 10.5 hours at a total cost of $210.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: June 9, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–13584 Filed 6–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 13, 2004, from 3 p.m. to 4:30 p.m. E.D.T.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1998) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, July 13, 2004 from 3 p.m. to 4:30 p.m. E.D.T. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 and 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: June 9, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–13586 Filed 6–15–04; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the E-Filing Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 8, 2004, from 3 to 4 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, July 8, 2004, from 3 to 4 p.m., eastern time via a telephone conference call. You can

[1] A prime glazing manufacturer is a manufacturer that fabricates, laminates, or tempers glazing material.

submit written comments to the panel by faxing your comment to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or by submitting them via the Web site at *http://www.improveirs.org*. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: June 10, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–13587 Filed 6–15–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
June 16, 2004

Part II

Federal Communications Commission

47 CFR Parts 2, 25, and 73
WRC–03 Omnibus; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, and 73

[ET Docket No. 04–139; FCC 04–74]

WRC–03 Omnibus

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its rules in order to complete the domestic implementation of allocation decisions from the World Radiocommunication Conference (Geneva, 2003) (WRC–03) concerning the frequency bands between 5900 kHz and 27.5 GHz and to otherwise update its rules in this frequency range. At the request of the National Telecommunications and Information Administration (NTIA), we also propose allocation changes for Federal Government operations, which involve spectrum primarily used by the Federal Government. These actions would conform the Commission's rules to the International Telecommunication Union's (ITU) *World Radiocommunication Conference Final Acts* (Geneva, 2003) (WRC–2003 Final Acts) and are expected to provide significant benefits to the American public.

DATES: Written comments are due July 16, 2004, and reply comments are due August 2, 2004.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, TTY (202) 418–2989, e-mail: *Tom.Mooring@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 04–139; FCC 04–74, adopted March 29, 2004, and released March 31, 2004. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 16, 2004, and reply comments on or before August 2, 2004. 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*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. 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 an 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 file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although 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 for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of the Notice of Proposed Rulemaking

A. International Broadcast Stations

1. Prior to WRC–03, footnote 5.134 had prohibited traditional double sideband (DSB) transmissions in the bands allocated to high frequency broadcasting (HFBC) at the 1992 World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (Malaga-Torremolinos, 1992) (WARC–92 HFBC bands). WRC–03 modified footnote 5.134 to be more flexible to meet the needs of international broadcasters in that it permits the continued use of DSB transmissions as well as single sideband (SSB) in the WARC–92 HFBC bands as HF broadcasters transition to digital technology. Accordingly, we propose to add modified footnote 5.134 to the U.S. Table. Similar to the requirements in all other HFBC bands, this action would require the use of seasonal planning for the WARC–92 HFBC bands, which is codified in Article 12 of the ITU Radio Regulations.

2. Modified footnote 5.134 urges use of the WARC–92 HFBC bands to facilitate the introduction of digitally modulated emissions in accordance with the provisions of revised Resolution 517. To ensure that HF broadcasters have sufficient flexibility, we therefore propose to update the Commission's rules for international broadcast stations, which are codified in part 73, subpart F, to allow for SSB and digital transmissions in the HFBC bands. Specifically, so that there is no ambiguity regarding the rules with which HF broadcasters must comply, we propose to add to our rules the ITU requirements for DSB, SSB, and digital HFBC systems, which are listed in revised Appendix 11 of the ITU *Radio Regulations*.

3. The effect of these proposals would be to grant U.S.-licensed international broadcast stations the flexibility to continue to transmit analog DSB signals or to transmit SSB or digital signals, including Digital Radio Mondiale (DRM) signals (currently the only ITU-recommended digital standard for use in HFBC bands), which would allow international broadcast stations to provide FM-like sound quality to listeners in foreign countries. Nonetheless, we request comment on whether the DRM standard should be required for digital transmissions. We observe that broadcasting, unlike many other radiocommunication services, is a

mass media service and that for such a service, standards are often useful.

4. Currently, § 73.751 of the Commission's rules states that no international broadcast station will be authorized to install, or be licensed for operation of, transmitter equipment with a rated carrier power of less than 50 kilowatts (kW). The technical basis of this rule is that, given frequency congestion, an international broadcast station using DSB modulation needs to transmit with an output power of at least 50 kW in order to provide a signal that is strong enough to be received with low cost HFBC radios. We have previously waived this rule in order to authorize licensees to operate SSB transmitters with 50 kW peak envelope power (PEP) because this power provides approximately the same coverage area (even though this power is equivalent to only 15–20 kW relative to a DSB transmitter). Likewise, one of the advantages of digital transmission is that a lower rated transmitter output power can serve the same geographic area as a higher power analog signal. One expert from a transmitter manufacturer has averred that an average power of 20 kW for DRM transmissions would provide approximately the same coverage as our rule currently requires. Accordingly, we propose to revise § 73.751 to codify these minimum operating powers for SSB and digital systems.

5. We request comment on all of the proposals herein. In addition, we request comment on other needed changes to our rules for international broadcast stations that are in compliance with ITU or other international standards. In particular, we ask whether our rules should require the inclusion of the capability to offer digital modulation in all new HFBC transmitters put into service after the effective date of the Report and Order in this proceeding.

B. 7 MHz Realignment

6. We generally propose to implement the WRC–03 realignment at 7 MHz. However, in some cases we propose exceptions. First, we propose to upgrade the secondary mobile service allocation in the bands 6765–7000 kHz and 7400–8100 kHz to primary allocations for the mobile except aeronautical mobile route (R) service. This action would give licensees increased flexibility and would facilitate adaptive techniques, which together with automation techniques, would reduce the burden on the operator while making these mobile service radios more responsive to changing HF propagation conditions. However, because the band 6765–7000 kHz is allocated to the broader mobile service in the United States (rather than the land mobile service), we propose to adopt new United States footnote USxxx that maintains this secondary mobile service allocation until the end of the transition period, and that otherwise parallels footnote 5.138A.

7. At the request of NTIA, we propose to upgrade the secondary mobile service allocation in the band 7400–8100 kHz to a primary mobile except aeronautical mobile (R) service allocation, upon the effective date of the Report and Order in this proceeding. We note that many of the existing licenses in the band 7400–8100 kHz are for mobile service use and request comment on the effect of the proposed early upgrade on fixed service users, if any.

8. Second, we propose to allocate the band 7350–7400 kHz to the broadcasting service on a primary basis; to adopt the Region 2 transition plan for the band 7350–7400 kHz as shown in footnote 5.143D; and to delete the table entries for the fixed and mobile service allocations from the band 7300–7400 kHz. Our proposal herein would provide international broadcasters with an additional 50 kilohertz of primary, exclusive spectrum in the band 7350–7400 kHz, effective March 29, 2009. While the band 7300–7350 MHz has previously been reallocated to the broadcasting service on a primary, exclusive basis, effective April 1, 2007, the table entries for the fixed and mobile service allocations were maintained at NTIA's request. As a consequence of our proposal to delete the table entries for the fixed and mobile service allocations from the band 7300–7350 kHz, we propose to provide for these allocations in a new United States footnote (USyyy) and to remove the frequency band from footnote US366. Specifically, we propose to revise footnote US366 and to add new footnote USyyy.

9. We also propose to cease issuing licenses for new non-Federal Government stations in the fixed and mobile services in the band 7350–7400 kHz as of March 29, 2009, consistent with the proposed allocation changes for these services. We anticipate that these requirements can be met in other HF bands allocated to the fixed and mobile services.

10. The band 7100–7300 kHz is allocated to the amateur service on primary, exclusive basis in Region 2. We note that WRC–03 allocated the band 7100–7200 kHz to the amateur service in Regions 1 and 3 on a co-primary basis with the broadcasting service, effective January 1, 2005. After March 29, 2009, the band 7100–7200 kHz is allocated to the amateur service on an exclusive basis throughout the world, except in certain Region 1 and 3 countries. As such, amateur service use of this 100 kilohertz will be on a *de facto* secondary basis in Regions 1 and 3 until the broadcasting service vacates the band 7100–7200 kHz at the conclusion of Schedule B in 2009. This means that amateur stations in Regions 1 and 3 will shortly be permitted to transmit in the band 7100–7200 kHz, if they can find a frequency that is not being used by an international broadcast station. Currently, amateur stations in Regions 1 and 3 use the segment 7075–7100 kHz for phone emissions. The Commission authorizes amateur stations to transmit phone emissions in the segment 7150–7300 kHz. Together, these segments are used by amateur stations for full duplex operations when communicating between Region 2 countries and Regions 1 and 3 countries. We anticipate that administrations in Regions 1 and 3 will in the near future authorize phone emissions in the segment 7150–7200 kHz, and we note the ARRL has requested that the frequency segment for phone emissions be expanded to 7125–7300 kHz. These changes, if implemented, would permit half duplex operations, that is, amateur stations would be able to transmit and receive on a single frequency. If this occurs, spectrum efficiency would be increased.

11. Until administrations in Regions 1 and 3 implement changes allowing amateur stations to transmit in the band 7100–7200 kHz, we believe that §§ 97.301 and 97.305 of our rules need not be updated. As a practical matter, we do not believe that the amateur service can make use of the band 7100–7200 kHz in Regions 1 and 3 in advance of HFBC stations vacating the band because of the great power disparity between amateur stations and international broadcast stations. We request comment on these proposals.

C. Space Radiocommunication Services

SRS Uplinks at 7145–7235 MHz

12. At the request of NTIA, we propose to move the space research service (SRS) uplink allocation currently authorized in footnote US252 to a table entry in the Federal Government Table for the band 7145–7190 MHz. NTIA prefers to highlight that SRS uplinks in the band 7145–7190 MHz are for deep space communications and does not believe that footnote 5.460 adequately highlights this important use. We believe our proposal would adequately clarify that the band 7145–7190 MHz is allocated to the SRS (deep space) (Earth-to-space) on a primary basis for Federal

Government use. NTIA states that Federal Government SRS operations should be limited by adopting the remaining requirements in footnote 5.460 as footnote Gyyy.

13. Accordingly, we propose to adopt footnote Gyyy, which would prohibit deep space communications in the band 7190–7235 MHz and which would specifically not require that stations in the fixed and mobile services protect geostationary SRS satellites. We believe that these actions are fully in accordance with the ITU *Radio Regulations*.

14. With regard to the requested change in the allocation status for non-Federal Government SRS use of the Federal facility at Goldstone, we view this downgrade as having a minimal impact on future non-Federal Government users of the facility. That is, NTIA has coordinated the deep space facility at Goldstone in order to avoid interference problems with other Federal Government stations. Therefore any non-Federal Government SRS use, if it ever develops, should be coincidentally protected. See § 2.106, footnotes US252 and US262 of the Commission's rules. We request comment on these proposals.

SRS at 14.8–15.35 GHz

15. The Commission proposes to upgrade the secondary SRS allocation in the band 14.8–15.35 GHz to primary status for Federal Government use, except that SRS (passive) use of the segment 15.2–15.35 GHz would retain secondary status. We tentatively find that the upgrade is in the national interest. Specifically, the United States has developed extensive SRS operations in this band at great expense and these operations merit the protection that a primary allocation provides. However, since this primary SRS allocation would be in derogation of the ITU *Radio Regulations*, we note that, for example, Federal Government SRS receive earth stations would not be protected from stations in the fixed and mobile services operating in neighboring countries.

16. In addition, we propose to revise footnote US310 by using a reference bandwidth that is more appropriate for today's digital transmissions than a reference bandwidth based on an analog channel. We request comment on these proposals.

SRS and EESS Downlinks at 25.5–27 GHz and ISS at 25.25–27.5 GHz

17. The Commission proposes to upgrade the secondary non-Federal Government allocation in the Earth exploration-satellite service, limited to space-to-Earth transmissions, (EESS downlinks) in the band 25.5–27 GHz to primary status. We believe that this upgrade is necessary to meet the requirements of the commercial remote sensing industry and is consistent with the Fact Sheet on U.S. Commercial Remote Sensing Policy that was released by the White House on April 25, 2003. Specifically, we propose to revise footnote US258 to include the band 25.5–27 GHz in its text, to add footnote US258 to the non-Federal Government Table in the band 25.5–27 GHz, and consequently to delete the table entry for the secondary EESS downlink allocation from the non-Federal Government Table.

18. By adding the band 25.5–27 GHz to footnote US258, we would also subject each non-Federal Government authorization to a case-by-case electromagnetic compatibility (EMC) analysis. Because of existing and planned Federal Government SRS and EESS requirements in the band 25.5–27 GHz, we believe that it is important that non-Federal Government EESS downlinks operated in this band be designed to ensure compatibility with Federal Government systems. We also propose to add footnote 5.536A to the non-Federal Government Table in the band 25.5–27 GHz. This action would provide guidance to earth station applicants, *e.g.*, Annex 1 of Recommendation ITU–R SA.1278 provides a methodology for estimating needed separation distances between EESS earth stations and fixed stations, and would better alert commercial remote sensing operators of the EESS downlink allocation's status in border areas, *i.e.*, where possible, these operators should consider placing their receive earth stations away from border areas.

19. In order to protect Federal Government terrestrial receivers, we propose to require that non-Federal EESS space stations transmitting in the band 25.5–27 GHz meet the pfd limits contained in Article 21 of the ITU *Radio Regulations*. We would codify this requirement by adding these pfd limits to part 25 of the Commission's rules. Based on a request from NTIA, we seek comment from potential EESS applicants as to whether the constraints listed in paragraph 59 of the NPRM, would be helpful in fostering compatibility between Federal and non-Federal Government systems.

20. We also propose to broaden the secondary non-Federal Government allocation for the EESS (space-to-space) in the band 25.25–27.5 GHz to a secondary ISS allocation. However, we also propose to adopt footnote 5.536, which would limit the use of this ISS allocation to SRS and EESS applications, and also to transmissions of data originating from industrial and medical activities in space. This restriction is necessary to ensure that this frequency band meets the needs of the scientific community without being overtaken for FSS or MSS use. Nevertheless, we request comment on the need for this restriction. In order to protect Federal Government terrestrial receivers, we propose to require that non-Federal ISS space stations transmitting in the band 25.25–27.5 GHz meet the pfd limits contained in Article 21 of the ITU *Radio Regulations*. The ISS pfd requirements and the EESS pfd requirements are the same and would be shown once in part 25 of the Commission's rules.

21. We propose to allocate the band 25.5–27 GHz to the SRS (space-to-Earth) on a primary basis for Federal Government use. This action would provide a primary SRS allocation to satisfy Federal requirements for high data rate space science missions. We request comment on all of these proposals.

EESS (Active) at 432–438 MHz

22. We tentatively find that any secondary EESS (active) allocation in the band 432–438 MHz should be limited to Federal Government use and that this allocation should not cause harmful interference to, nor claim protection from, any other services allocated in the band in the United States, including the amateur-satellite service. Accordingly, we propose to adopt a new United States footnote (USzzz). The adoption of this footnote would permit NASA to perform limited pre-operational testing of its systems within line-of-sight of its U.S. control stations, provided that it does not cause harmful interference to the radiolocation, amateur, and amateur-satellite services in the United States. We request comment on this proposal.

D. RNSS Allocations

RNSS at 960–1300 MHz

23. We propose to remove the radionavigation-satellite service (RNSS) (space-to-Earth) (space-to-space) allocation in the band 1164–1215 MHz from footnote US385 and make it a table entry. We also propose to adopt international footnote 5.328A, which requires that RNSS stations in the band 1164–1215 MHz operate in accordance with Resolution 609 (WRC–03) and that they not claim protection from ARNS in the band 960–1215 MHz. NTIA has informed us that it intends to limit Federal Government use of the RNSS

(space-to-Earth) (space-to-space) allocation in the band 1215–1240 MHz through new footnote Gxxx.

24. The band 1240–1300 MHz is allocated to the ARNS in the United States and Canada on a primary basis in footnote 5.334 and this international footnote has previously been added to the U.S. Table. At WRC–03, this ARNS allocation was moved to footnote 5.331, but its primary status was not explicitly restated. Therefore, we propose to remove this primary ARNS allocation in the band 1240–1300 MHz from deleted international footnote 5.334 and make it a table entry. We request comment on these proposals and on whether the RNSS allocation at 1215–1240 MHz, which is currently limited to Federal Government use, should be expanded to the band 1215–1300 MHz and made available for both Federal and non-Federal Government use. In this regard, we note that Lockheed Martin Corporation in 2001 filed a waiver with the Commission in order to use the band 1215–1240 MHz for its Regional Positioning System. If non-Federal Government entities demonstrate that they have RNSS requirements in the band 1215–1300 MHz, we will work closely with NTIA to determine if spectrum can be allocated for that purpose.

RNSS at 5000–5030 MHz

25. Consistent with the *WRC–03 Final Acts*, we propose to allocate the band 5000–5030 MHz to the RNSS on a primary basis for Federal and non-Federal Government use. We further propose to limit the use of the segment 5000–5010 MHz to Earth-to-space transmissions and the segment 5010–5020 MHz to space-to-Earth and space-to-space transmissions. Consequently and also because the Microwave Landing System (MLS) does not operate in the band 5000–5030 MHz, we propose to replace footnote US370 with footnote 5.444, thereby removing the band 5000–5030 MHz from the spectrum in which MLS has precedence over other uses. In order to protect MLS operations above 5030 MHz and radio astronomy service (RAS) observations in the band 4990–5000 MHz, we propose to limit the adjacent band pfd at the Earth's surface from RNSS operations in the band 5010–5030 MHz through the adoption of footnote 5.443B. This action would align the band 5000–5030 MHz with international usage by providing 10 megahertz of spectrum for RNSS uplinks and 20 megahertz for RNSS downlinks and crosslinks. We seek comment on this proposal and information on future ARNS use of the band 5030–5150 MHz.

E. Little LEO Feeder Link Spectrum

26. While WRC–03 allocated spectrum for feeder links that can be used by the Non-Voice Non-Geostationary Mobile-Satellite Service (generally know as Little LEOs) on a secondary basis throughout the world, WRC–03 resolved that use of these allocations is contingent on the subsequent completion of ITU–R spectrum sharing studies to determine the impact of these non-geostationary orbit (NGSO) fixed-satellite service (FSS) operations on incumbent services, including passive service operations in the adjacent band 1400–1427 MHz. Furthermore, Resolution 745 (WRC–03) indicates that any Little LEO use of these bands is subject to additional decisions on compatibility issues that may be adopted at the 2007 World Radiocommunication Conference (WRC–07).

27. Given the differences between US368 and the decision made at WRC–03, we are reconsidering this conditional allocation herein to conform to the WRC–03 allocation. We tentatively conclude that the best way forward is to implement WRC–03's decision regarding Little LEO feeder links. We continue to recognize that it is important for sharing studies for these bands to be successfully completed. We tentatively find that replacing footnote US368 with 5.339A is insufficient for our needs. Instead, we propose to maintain footnote US368 in a modified form that recognizes the actions taken at WRC–03. Specifically, we propose the following actions: First, we would downgrade the provisional Little LEO feeder link allocations from primary to secondary status. Second, we would require the completion of ITU–R studies on all identified compatibility issues as shown in Annex 1 of Resolution 745 (WRC–2003). Third, we would make any use of the worldwide feeder links subject to any further compatibility decisions by WRC–07. Accordingly, we propose to amend the Table entries for the FSS uplink allocation in the band 1390–1392 MHz and the FSS downlink allocation in the band 1430–1432 MHz to show secondary status in lieu of primary status, and to revise footnote US368.

28. Further, any Little LEO application for use of these bands will be subject to the outcome of this rule making. The Commission would review the results of any studies and measurements of emissions from equipment that would be employed in operational systems and demonstrations to validate the studies. The Commission would decide what technical and operational requirements to impose to protect other services, and individual assignments would be coordinated with the FAS to ensure the protection of passive services in the band 1400–1427 MHz. Any further decisions taken by WRC–07 would be considered by the Commission once they are final. We request comment on these proposals.

F. Radiolocation Upgrade in the Band 2900–3100 MHz

29. We propose to upgrade the Federal Government's radiolocation service allocation in the band 2900–3100 MHz to primary status and to add footnote 5.424A to the Federal Government Table to protect important ship navigation systems. As described in more detail in the *U.S. Proposal for WRC–03*, radionavigation radars operating in the band 2900–3100 MHz have demonstrated compatible operations with radiolocation systems, mainly as a result of newer radar design features that mitigate received radar-to-radar interference. We believe that this action would increase the usefulness of this band without causing any burden on existing operations. We request comment on this proposal and on whether the secondary non-Federal Government radiolocation service allocation should also be upgraded to primary status.

G. Terms, Definitions, and Editorial Amendments

30. In order to reflect additions and revisions to the terms and definitions listed in the ITU *Radio Regulations* and in the *WRC–03 Final Acts*, we propose to amend § 2.1 of the Commission's rules to: (1) Add definitions for adaptive system and high altitude platform station; (2) revise the definitions for coordinated universal time, coordination area, coordination distance, facsimile, geostationary satellite, harmful interference, inclination of an orbit of an earth satellite, telegraphy, and telephony; and (3) make minor editorial modifications to the definitions for administration, broadcasting service, mobile service, permissible interference, power, public correspondence, radio, radiocommunication, safety service, semi-duplex operation, telecommunication, and telegram. We would also correct a typographical error in the definition for telemetry. The UTC definition would also be revised in part 73. The definitions of these terms are shown in the § 2.1 of the Commission's rules.

31. We also propose to take the following non-substantive actions in this proceeding, which would correct

and update § 2.106 of the Commission's rules, the Table of Frequency Allocations (Table). The effect of these actions would be to reflect the *WRC–03 Final Acts* with regard to the International Table within our Rules, to remove confusing and unnecessary material from the U.S. Table, and to add rule part cross references in column 6 of the Table for the frequency bands where they are missing. Specifically, we would revise the table entries in the International Table and the list of International Footnotes to reflect the *WRC–03 Final Acts* in those frequency bands not otherwise discussed in the NPRM.

32. In the U.S. Table, we propose to take six actions. First, we would delete footnote US238 from our rules because the transition period has expired. This action means that Federal Government stations would no longer be permitted to operate in the band 1605–1705 kHz (AM Expanded Band). Second, we would delete footnote NG129 because there are no fixed stations in Alaska listed in our licensing database for the band 76–100 MHz. Consequently, we would also delete §§ 73.220(b) and 73.603(b) from our rules. Third, we would delete footnote NG151 because licensees in the Cellular Radiotelephone Service have previously been authorized to provide fixed service on a primary basis and thus, there is no longer need for separate authority to provide auxiliary services on a secondary basis. Fourth, we would revise footnote US352 to delete the 14 sites in the band 1427–1432 MHz at which Federal operations have operated on a fully protected basis because the transition period has expired. Fifth, we would delete footnote NG176 because the fixed and mobile service allocations in the band 1710–1755 MHz, which will be auctioned for use by Advanced Wireless Services (AWS), are now effective. Sixth, we would delete footnote US264 from the band 47.2–48.2 GHz in the non-Federal Government Table because the footnote does not apply to this band.

33. In the FCC rule part(s) column, we would add cross references to part 90 in the bands 4750–4995 kHz, 5730–5900 kHz, 6765–7000 kHz, 9040–9400 kHz, 9900–9995 kHz, 10150–11175 kHz, 11400–11600 kHz, 12100–12230 kHz, 13410–13570 kHz, 13870–14000 kHz, 14350–14990 kHz, 15800–16350 KHz, 17410–17480 kHz, 18030–18068 kHz, 18168–18780 kHz, 19020–19680 kHz, 19800–19990 kHz, 20010–21000 kHz, 21850–21924 kHz, 22855–23200 kHz, and 23350–24890 kHz; part 25 in the band 399.9–400.05 MHz; and part 27 in the bands 1710–1755 MHz and 2110–2155 MHz.

Initial Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (Omnibus NPRM). Written public comments are requested on this IRFA and must be filed by the deadlines for comments on the *Omnibus NPRM*, which are provided in paragraph 111 of the Omnibus NPRM. The Commission will send a copy of the *Omnibus NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2]

A. Need for, and Objectives of, the Proposed Rules

35. In the *Omnibus NPRM*, the Commission proposes to amend parts 2, 25, and 73 of its rules to complete the domestic implementation of allocation decisions from the World Radiocommunication Conference (Geneva, 2003) (WRC–03) concerning the frequency bands between 5900 kHz and 27.5 GHz and to otherwise update its rules in this frequency range. In general, these changes would provide additional flexibility to Commission licensees. However, the proposals would in one case reallocate spectrum and in two cases add constraints.

First, the Commission proposes to reallocate the band 7350–7400 kHz from the fixed and mobile services to the broadcasting service, effective March 29, 2009. The Commission also proposes to cease issuing licenses for new stations in the fixed and mobile services as of March 29, 2009.

Second, the Commission proposes to change the allocation status of the fixed-satellite service in the bands 1390–1392 MHz and 1430–1432 MHz from primary to secondary in order to conform to the decisions made at WRC–03.

Third, the Commission proposes (1) to require that space stations and earth stations in the Earth exploration-satellite service (space-to-Earth) in the band 25.5–27 GHz be subject to case-by-case electromagnetic compatibility analysis in order to share this spectrum with Federal Government facilities; and (2) that these space stations specifically meet the international power flux-density limits for this band. In addition, the Commission requests comment on several constraints that may be helpful in fostering compatibility.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 603(a).

B. Legal Basis

36. This action is authorized under sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f) and (r), 332, 337.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

37. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules if adopted.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

38. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Nationwide, as of 1992, there were approximately 275,801 small organizations.[8] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[9] As of 1997, there were approximately 87,453 governmental entities in the United States.[10] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have

[3] 5 U.S.C. 604(b)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[6] 15 U.S.C. 632.

[7] 5 U.S.C. 601(4).

[8] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[9] 5 U.S.C. 601(5).

[10] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

populations of fewer then 50,000 and 1,498 have populations of 500,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

39. The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such firms having $12.5 million or less in annual receipts.[11] According to Census Bureau data for 1997, in this category there was a total of 324 firms that operated for the entire year.[12] Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999.[13] Thus, under this size standard, the majority of firms can be considered small.

Little LEO licensees operate non-geostationary mobile-satellite systems that provide non-voice services. There are currently two Little LEO licensees now in operation. Another Little LEO licensee has expressed interest in this band, but does not yet provide service. We believe that all Little LEO licensees are small businesses.

Licensees in the Earth Exploration-Satellite Service (EESS) provide remote sensing services. While there are currently no EESS licensees in the band 25.5–27 GHz, two companies have expressed interest in using this band in the future. We believe that all EESS licensees are small businesses.

Wireless Service Providers. The SBA has developed a small business size standard for wireless small businesses in the category of Cellular and Other Wireless Telecommunications.[14] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's mot recent data,[15] 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees.[16] Consequently, the Commission estimates that most wireless service providers are small entities.

Licensees in the Fixed and Mobile Services in the band 7350–7400 kHz provide conventional Industrial/Business Pool services (44 licensees with 111 call signs), coastal group services (2 licensees, each with a single call sign), and Alaska group services (11 licensees with 18 call signs). We believe that some of the 44 licensees providing conventional Industrial/Business Pool services are small businesses; that both of the licensees providing coastal group services are small businesses; and that almost all of the licensees providing Alaska group services are small businesses.

We seek comment on this analysis. In providing such comment, commenters are requested to provide information regarding how many total and small business entities would be affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

40. EESS applicants would be required to do a technical analysis of the interference potential between their proposed operations and Federal Government operations, *i.e.*, an electromagnetic compatibility analysis. Engineering skills would be needed in order to perform the analysis. The power flux-density at the Earth's surface produced by emissions from an EESS space station would be limited in accordance with the ITU *Radio Regulations*.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[17]

42. The Commission proposes to reallocate the band 7350–7400 kHz from the fixed and mobile services to the broadcasting service, effective March 29, 2009. The Commission also proposes to cease issuing licenses for new stations in the fixed and mobile services as of March 29, 2009. The phase-in of these rules would provide small businesses with a reasonable amount of time in which to relocate to other spectrum allocated to the fixed and mobile services, thus minimizing the impact of these proposed actions. In addition, the new broadcasting service allocation would provide new opportunities for international broadcasters that are small businesses.

43. The Commission had conditionally allocated the Little LEO feeder links on a primary basis, subject to the outcome of WRC–03. At WRC–03, the United States was unable to secure a primary.

Ordering Clauses

44. Pursuant to sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336, the Notice of Proposed Rulemaking is hereby *adopted*.

45. The Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of this Notice Of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in Parts 2, 25, and 73

Radio, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 25, and 73 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.1 is amended by revising paragraph (b) and by adding the definitions in paragraph (c) in alphabetical order to read as follows:

§ 2.1 Terms and definitions.

* * * * *

(b) The source of each definition is indicated as follows:

CS—Annex to the Constitution of the International Telecommunication Union (ITU).

CV—Annex to the Convention of the ITU.

FCC—Federal Communications Commission.

[11] 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

[12] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513340 (issued October 2000).

[13] *Id.*

[14] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322 (changed to 517212 in October 2002).

[15] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, (May 2002).

[16] *Id.*

[17] 5 U.S.C. 603(c).

RR—ITU Radio Regulations.

(c) The following terms and definitions are issued:

* * * * *

Adaptive System. A radiocommunication system which varies its radio characteristics according to channel quality. (RR)

Administration. Any governmental department or service responsible for discharging the obligations undertaken in the Constitution of the International Telecommunication Union, in the Convention of the International Telecommunication Union and in the Administrative Regulations. (CS)

* * * * *

Broadcasting Service. A radiocommunication service in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, television transmissions or other types of transmission. (CS)

* * * * *

Coordinated Universal Time (UTC). Time scale, based on the second (SI), as defined in Recommendation ITU–R TF.460–6. (RR)

Coordination Area. When determining the need for coordination, the area surrounding an earth station sharing the same frequency band with terrestrial stations, or surrounding a transmitting earth station sharing the same bidirectionally allocated frequency band with receiving earth stations, beyond which the level of permissible interference will not be exceeded and coordination is therefore not required. (RR)

* * * * *

Coordination Distance. When determining the need for coordination, the distance on a given azimuth from an earth station sharing the same frequency band with terrestrial stations, or from a transmitting earth station sharing the same bidirectionally allocated frequency band with receiving earth stations, beyond which the level of permissible interference will not be exceeded and coordination is therefore not required. (RR)

* * * * *

Facsimile. A form of telegraphy for the transmission of fixed images, with or without half-tones, with a view to their reproduction in a permanent form. (RR)

* * * * *

Geostationary Satellite. A geosynchronous satellite whose circular and direct orbit lies in the plane of the Earth's equator and which thus remains fixed relative to the Earth; by extension, a geosynchronous satellite which remains approximately fixed relative to the Earth. (RR)

* * * * *

Harmful Interference. Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with [the ITU] Radio Regulations. (CS)

High Altitude Platform Station (HAPS). A station located on an object at an altitude of 20 to 50 km and at a specified, nominal, fixed point relative to the Earth. (RR)

* * * * *

Inclination of an Orbit (of an earth satellite). The angle determined by the plane containing the orbit and the plane of the Earth's equator measured in degrees between 0° and 180° and in counter-clockwise direction from the Earth's equatorial plane at the ascending node of the orbit. (RR)

* * * * *

Mobile Service. A radiocommunication service between mobile and land stations, or between mobile stations. (CV)

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Permissible Interference.[1] Observed or predicted interference which complies with quantitative interference and sharing criteria contained in these [ITU Radio] Regulations or in ITU–R Recommendations or in special agreements as provided for in these Regulations. (RR)

* * * * *

Power. Whenever the power of a radio transmitter, *etc.* is referred to it shall be expressed in one of the following forms, according to the class of emission, using the arbitrary symbols indicated:

—Peak envelope power (PX or pX);

—Mean power (PY or pY);

—Carrier power (PZ or pZ).

Note 1: For different classes of emission, the relationships between peak envelope power, mean power and carrier power, under the conditions of normal operation and of no modulation, are contained in ITU–R Recommendations which may be used as a guide.

Note 2: For use in formulae, the symbol p denotes power expressed in watts and the symbol P denotes power expressed in decibels relative to a reference level. (RR)

* * * * *

Public Correspondence. Any telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission. (CS)

* * * * *

Radio. A general term applied to the use of radio waves. (RR)

* * * * *

Radiocommunication. Telecommunication by means of radio waves. (CS) (CV)

* * * * *

Safety Service. Any radiocommunication service used permanently or temporarily for the safeguarding of human life and property. (RR)

* * * * *

Semi-Duplex Operation. A method which is simplex operation on one end of the circuit and duplex operation at the other.[4] (RR)

Telecommunication. Any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems. (CS)

* * * * *

Telegram. Written matter intended to be transmitted by telegraphy for delivery to the addressee. This term also includes radiotelegrams unless otherwise specified. (CS)

Note: In this definition the term telegraphy has the same general meaning as defined in the Convention.

Telegraphy.[6] A form of telecommunication in which the transmitted information is intended to be recorded on arrival as a graphic document; the transmitted information may sometimes be presented in an alternative form or may be stored for subsequent use. (CS)

Telemetry. The use of telecommunication for automatically indicating or recording measurements at a distance from the measuring instrument. (RR)

Telephony. A form of telecommunication primarily intended for the exchange of information in the form of speech. (CS)

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3. Section 2.106, the Table of Frequency Allocations, is amended to read as follows:

a. Revise pages 5, 10–19, 26, 32, 33, 35, 36, 38, 39, 41–49, 52–61, 64–70, 72, 73, 75, 78, and 79.

b. In the list of International footnotes, remove footnotes 5.377, 5.389D, 5.421,

[1] See footnote under Accepted Interference.

[4] See footnote under Duplex Operations.

[6] A graphic document records information in a permanent form and is capable of being filed and consulted; it may take the form of written or printed matter or of a fixed image.

5.443A, 5.467, 5.491, 5.503A, 5.534, 5.551A, and 5.555A.

c. In the list of International footnotes, revise footnotes 5.56, 5.68, 5.70, 5.87, 5.96, 5.98, 5.99, 5.107, 5.112, 5.114, 5.117, 5.118, 5.134, 5.139, 5.140, 5.142, 5.152, 5.154, 5.155, 5.163, 5.164, 5.174, 5.177, 5.179, 5.181, 5.203B, 5.204, 5.210, 5.212, 5.221, 5.237, 5.254, 5.262, 5.271, 5.273, 5.277, 5.288, 5.294, 5.296, 5.311, 5.312, 5.316, 5.323, 5.328A, 5.329, 5.330, 5.331, 5.334, 5.338, 5.347, 5.348, 5.348A, 5.355, 5.359, 5.362B, 5.369, 5.381, 5.382, 5.386, 5.387, 5.388A, 5.395, 5.400, 5.416, 5.418, 5.418A, 5.418B, 5.418C, 5.422, 5.428, 5.429, 5.430, 5.431, 5.443B, 5.444, 5.444A, 5.447E, 5.453, 5.454, 5.455, 5.456, 5.460, 5.466, 5.468, 5.469, 5.473, 5.477, 5.478, 5.481, 5.482, 5.483, 5.487, 5.487A, 5.488, 5.494, 5.495, 5.500, 5.501, 5.502, 5.503, 5.504C, 5.505, 5.506A, 5.506B, 5.508, 5.508A, 5.509A, 5.512, 5.514, 5.516B, 5.521, 5.536A, 5.537A, 5.543A, 5.545, 5.546, 5.547C, 5.548, 5.549, 5.550, and 5.551I;

d. In the list of international footnotes, add footnotes 5.138A, 5.141A, 5.141B, 5.141C, 5.143A, 5.143B, 5.143C, 5.143D, 5.143E, 5.256A, 5.279A, 5.339A, 5.347A, 5.348B, 5.348C, 5.379B, 5.379C, 5.379D, 5.379E, 5.380A, 5.388B, 5.418AA, 5.418AB, 5.418AC, 5.418AD, 5.424A, 5.516A, 5.536C, 5.549A, and 5.555B.

e. In the list of United States (US) footnotes, remove footnotes US238, US370, and US385.

f. In the list of United States (US) revise footnotes US252, US258, US262, US310, US352, US366, and US368; and add footnotes USxxx, USyyy, and USzzz.

g. In the list of non-Federal Government (NG) footnotes, remove footnotes NG129, NG151, and NG176.

h. In the list of Federal Government (G) footnotes, add footnotes Gxxx and Gyyy.

§ 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

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505-2107 kHz (MF) Page 5

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
505-526.5 MARITIME MOBILE 5.79 5.79A 5.84 AERONAUTICAL RADIONAVIGATION	505-510 MARITIME MOBILE 5.79	505-526.5 MARITIME MOBILE 5.79 5.79A 5.84 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Land mobile	505-510 MARITIME MOBILE 5.79		Maritime (80)
	510-525 MOBILE 5.79A 5.84 AERONAUTICAL RADIONAVIGATION		510-525 MARITIME MOBILE (ships only) 5.79A 5.84 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 US14 US225		Maritime (80) Aviation (87)
5.72 526.5-1606.5 BROADCASTING	525-535 BROADCASTING 5.86 AERONAUTICAL RADIONAVIGATION	526.5-535 BROADCASTING Mobile 5.88	525-535 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 MOBILE US221 US239		Aviation (87) Private Land Mobile (90)
	535-1605 BROADCASTING	535-1606.5 BROADCASTING	535-1605 US321	535-1605 BROADCASTING US321 NG128	Radio Broadcast (AM) (73) Auxiliary Broadcast (74) Alaska Fixed (80)
5 87 5.87A 1606.5-1625 FIXED MARITIME MOBILE 5.90 LAND MOBILE 5.92	1605-1625 BROADCASTING 5.89 5.90	1606.5-1800 FIXED MOBILE RADIOLOCATION RADIONAVIGATION	1605-1615 MOBILE US221 US321	1605-1705 BROADCASTING 5.89	
1625-1635 RADIOLOCATION 5.93 1635-1800 FIXED MARITIME MOBILE 5.90 LAND MOBILE	1625-1705 FIXED MOBILE BROADCASTING 5.89 Radiolocation 5.90		1615-1705 US299 US321	US299 US321 NG128	

4438-4650 FIXED MOBILE except aeronautical mobile (R)		4438-4650 FIXED MOBILE except aeronautical mobile	4438-4650 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)
4650-4700 AERONAUTICAL MOBILE (R)			4650-4700 AERONAUTICAL MOBILE (R) US282 US283 US340		Aviation (87)
4700-4750 AERONAUTICAL MOBILE (OR)			4700-4750 AERONAUTICAL MOBILE (OR) US340		
4750-4850 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE BROADCASTING 5.113	4750-4850 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113	4750-4850 FIXED BROADCASTING 5.113 Land mobile	4750-4850 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Private Land Mobile (90)
4850-4995 FIXED LAND MOBILE BROADCASTING 5.113			4850-4995 FIXED MOBILE US340	4850-4995 FIXED US340	Aviation (87) Private Land Mobile (90)
4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz)			4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz) US340		
5003-5005 STANDARD FREQUENCY AND TIME SIGNAL Space research			5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340	
5005-5060 FIXED BROADCASTING 5.113			5005-5060 FIXED US340		Maritime (80) Aviation (87) Private Land Mobile (90)

5060-9040 kHz (HF) Page 11

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5060-5250 FIXED Mobile except aeronautical mobile 5.133			5060-5450 FIXED Mobile except aeronautical mobile		Maritime (80) Aviation (87) Private Land Mobile (90) Amateur (97)
5250-5450 FIXED MOBILE except aeronautical mobile			US212 US340 US381		
5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5480 AERONAUTICAL MOBILE (R)	5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5680 AERONAUTICAL MOBILE (R)		Aviation (87)
5480-5680 AERONAUTICAL MOBILE (R) 5.111 5.115			5.111 5.115 US283 US340		
5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115			5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115 US340		
5730-5900 FIXED LAND MOBILE	5730-5900 FIXED MOBILE except aeronautical mobile (R)	5730-5900 FIXED Mobile except aeronautical mobile (R)	5730-5900 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)
5900-5950 BROADCASTING 5.134 5.136			5900-5950 BROADCASTING 5.134 FIXED MOBILE except aeronautical mobile (R) US340 US366		Radio Broadcast (HF) (73) Maritime (80) Aviation (87)
5950-6200 BROADCASTING			5950-6200 BROADCASTING US340		Radio Broadcast (HF) (73)
6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 5.137			6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 US82 US296 US340		Maritime (80)
6525-6685 AERONAUTICAL MOBILE (R)			6525-6685 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)

6685-6765 AERONAUTICAL MOBILE (OR)			6685-6765 AERONAUTICAL MOBILE (OR) US340		
6765-7000 FIXED MOBILE except aeronautical mobile (R) 5.138 5.138A 5.139			6765-7000 FIXED MOBILE except aeronautical mobile (R) 5.138 US340 USxxx		ISM Equipment (18) Private Land Mobile (90)
7000-7100 AMATEUR AMATEUR-SATELLITE 5.140 5.141 5.141A			7000-7100 US340	7000-7100 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
7100-7200 AMATEUR 5.141A 5.141B 5.141C 5.142			7100-7300 US340	7100-7300 AMATEUR 5.142 US340	
7200-7300 BROADCASTING	7200-7300 AMATEUR 5.142	7200-7300 BROADCASTING			
7300-7400 BROADCASTING 5.134 5.143 5.143A 5.143B 5.143C 5.143D			7300-7400 BROADCASTING 5.134 5.143D US340 USyyy		Radio Broadcast (HF) (73) Maritime (80) Private Land Mobile (90)
7400-7450 BROADCASTING 5.143B 5.143C	7400-7450 FIXED MOBILE except aeronautical mobile (R)	7400-7450 BROADCASTING 5.143A 5.143C	7400-8100 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)
7450-8100 FIXED MOBILE except aeronautical mobile (R) 5.143E 5.144					
8100-8195 FIXED MARITIME MOBILE			8100-8195 FIXED MARITIME MOBILE US340		Maritime (80)
8195-8815 MARITIME MOBILE 5.109 5.110 5.132 5.145 5.111			8195-8815 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 5.111 US296 US340		Maritime (80) Aviation (87)
8815-8965 AERONAUTICAL MOBILE (R)			8815-8965 AERONAUTICAL MOBILE (R) US340		Aviation (87)
8965-9040 AERONAUTICAL MOBILE (OR)			8965-9040 AERONAUTICAL MOBILE (OR) US340		

9040-13410 kHz (HF) Page 13

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
9040-9400 FIXED			9040-9400 FIXED US340		Maritime (80) Private Land Mobile (90)
9400-9500 BROADCASTING 5.134 5.146			9400-9500 BROADCASTING 5.134 FIXED US340 US366		Radio Broadcast (HF) (73) Maritime (80)
9500-9900 BROADCASTING 5.147			9500-9900 BROADCASTING 5.147 US340 US367		Radio Broadcast (HF) (73)
9900-9995 FIXED			9900-9995 FIXED US340		Private Land Mobile (90)
9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz) 5.111			9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz) 5.111 US340		
10003-10005 STANDARD FREQUENCY AND TIME SIGNAL Space research 5.111			10003-10005 STANDARD FREQUENCY AND TIME SIGNAL 5.111 US340 G106	10003-10005 STANDARD FREQUENCY AND TIME SIGNAL 5.111 US340	
10005-10100 AERONAUTICAL MOBILE (R) 5.111			10005-10100 AERONAUTICAL MOBILE (R) 5.111 US283 US340		Aviation (87)
10100-10150 FIXED Amateur			10100-10150 US247 US340	10100-10150 AMATEUR US247 US340	Amateur (97)
10150-11175 FIXED Mobile except aeronautical mobile (R)			10150-11175 FIXED Mobile except aeronautical mobile (R) US340		Private Land Mobile (90)
11175-11275 AERONAUTICAL MOBILE (OR)			11175-11275 AERONAUTICAL MOBILE (OR) US340		

11275-11400 AERONAUTICAL MOBILE (R)	11275-11400 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
11400-11600 FIXED	11400-11600 FIXED US340		Private Land Mobile (90)
11600-11650 BROADCASTING 5.134 5.146	11600-11650 BROADCASTING 5.134 FIXED US340 US366		Radio Broadcast (HF) (73)
11650-12050 BROADCASTING 5.147	11650-12050 BROADCASTING US340 US367		
12050-12100 BROADCASTING 5.134 5.146	12050-12100 BROADCASTING 5.134 FIXED US340 US366		
12100-12230 FIXED	12100-12230 FIXED US340		Private Land Mobile (90)
12230-13200 MARITIME MOBILE 5.109 5.110 5.132 5.145	12230-13200 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 US296 US340		Maritime (80)
13200-13260 AERONAUTICAL MOBILE (OR)	13200-13260 AERONAUTICAL MOBILE (OR) US340		
13260-13360 AERONAUTICAL MOBILE (R)	13260-13360 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
13360-13410 FIXED RADIO ASTRONOMY 5.149	13360-13410 RADIO ASTRONOMY US342 G115	13360-13410 RADIO ASTRONOMY US342	

13410-17900 kHz (HF)					Page 15
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
13410-13570 FIXED Mobile except aeronautical mobile (R) 5.150			13410-13570 FIXED Mobile except aeronautical mobile (R) 5.150 US340	13410-13570 FIXED 5.150 US340	ISM Equipment (18) Private Land Mobile (90)
13570-13600 BROADCASTING 5.134 5.151			13570-13600 BROADCASTING 5.134 FIXED Mobile except aeronautical mobile (R) US340 US366	13570-13600 BROADCASTING FIXED US340 US366	Radio Broadcast (HF) (73)
13600-13800 BROADCASTING			13600-13800 BROADCASTING US340		
13800-13870 BROADCASTING 5.134 5.151			13800-13870 BROADCASTING 5.134 FIXED Mobile except aeronautical mobile (R) US340 US366	13800-13870 BROADCASTING FIXED US340 US366	
13870-14000 FIXED Mobile except aeronautical mobile (R)			13870-14000 FIXED Mobile except aeronautical mobile (R) US340	13870-14000 FIXED US340	Private Land Mobile (90)
14000-14250 AMATEUR AMATEUR-SATELLITE			14000-14350	14000-14250 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
14250-14350 AMATEUR 5.152			 US340	14250-14350 AMATEUR US340	
14350-14990 FIXED Mobile except aeronautical mobile (R)			14350-14990 FIXED Mobile except aeronautical mobile (R) US340	14350-14990 FIXED US340	Private Land Mobile (90)

14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz) 5.111	14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz) 5.111 US340		
15005-15010 STANDARD FREQUENCY AND TIME SIGNAL Space research	15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340	
15010-15100 AERONAUTICAL MOBILE (OR)	15010-15100 AERONAUTICAL MOBILE (OR) US340		
15100-15600 BROADCASTING	15100-15600 BROADCASTING US340		Radio Broadcast (HF) (73)
15600-15800 BROADCASTING 5.134 5.146	15600-15800 BROADCASTING 5.134 FIXED US340 US366		
15800-16360 FIXED 5.153	15800-16360 FIXED US340		Private Land Mobile (90)
16360-17410 MARITIME MOBILE 5.109 5.110 5.132 5.145	16360-17410 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 US296 US340		Maritime (80)
17410-17480 FIXED	17410-17480 FIXED US340		Private Land Mobile (90)
17480-17550 BROADCASTING 5.134 5.146	17480-17550 BROADCASTING 5.134 FIXED US340 US366		Radio Broadcast (HF) (73) Aviation (87)
17550-17900 BROADCASTING	17550-17900 BROADCASTING US340		Radio Broadcast (HF) (73)

17900-22855 kHz (HF) Page 17

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
17900-17970 AERONAUTICAL MOBILE (R)			17900-17970 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
17970-18030 AERONAUTICAL MOBILE (OR)			17970-18030 AERONAUTICAL MOBILE (OR) US340		
18030-18052 FIXED			18030-18068 FIXED		Maritime (80) Private Land Mobile (90)
18052-18068 FIXED Space research			US340		
18068-18168 AMATEUR AMATEUR-SATELLITE 5.154			18068-18168 US340	18068-18168 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
18168-18780 FIXED Mobile except aeronautical mobile			18168-18780 FIXED Mobile US340		Maritime (80) Private Land Mobile (90)
18780-18900 MARITIME MOBILE			18780-18900 MARITIME MOBILE US82 US296 US340		Maritime (80)
18900-19020 BROADCASTING 5.134 5.146			18900-19020 BROADCASTING 5.134 FIXED US340 US366		Radio Broadcast (HF) (73)
19020-19680 FIXED			19020-19680 FIXED US340		Private Land Mobile (90)
19680-19800 MARITIME MOBILE 5.132			19680-19800 MARITIME MOBILE 5.132 US340		Maritime (80)
19800-19990 FIXED			19800-19990 FIXED US340		Private Land Mobile (90)

19990-19995 STANDARD FREQUENCY AND TIME SIGNAL Space research 5.111	19990-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz) 5.111 US340 G106	19990-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz) 5.111 US340	
19995-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz) 5.111			
20010-21000 FIXED Mobile	20010-21000 FIXED Mobile US340	20010-21000 FIXED US340	Private Land Mobile (90)
21000-21450 AMATEUR AMATEUR-SATELLITE	21000-21450 US340	21000-21450 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
21450-21850 BROADCASTING	21450-21850 BROADCASTING US340		Radio Broadcast (HF) (73)
21850-21870 FIXED 5.155A 5.155	21850-21924 FIXED US340		Aviation (87) Private Land Mobile (90)
21870-21924 FIXED 5.155B			
21924-22000 AERONAUTICAL MOBILE (R)	21924-22000 AERONAUTICAL MOBILE (R) US340		Aviation (87)
22000-22855 MARITIME MOBILE 5.132 5.156	22000-22855 MARITIME MOBILE 5.132 US82 US296 US340		Maritime (80)

22855-26175 kHz (HF)					Page 19
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22855-23000 FIXED 5.156			22855-23000 FIXED US340		Private Land Mobile (90)
23000-23200 FIXED Mobile except aeronautical mobile (R) 5.156			23000-23200 FIXED Mobile except aeronautical mobile (R) US340	23000-23200 FIXED US340	
23200-23350 FIXED 5.156A AERONAUTICAL MOBILE (OR)			23200-23350 AERONAUTICAL MOBILE (OR) US340		
23350-24000 FIXED MOBILE except aeronautical mobile 5.157 24000-24890 FIXED LAND MOBILE			23350-24890 FIXED MOBILE except aeronautical mobile US340	23350-24890 FIXED US340	Private Land Mobile (90)
24890-24990 AMATEUR AMATEUR-SATELLITE			24890-24990 US340	24890-24990 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz)			24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz) US340		
25005-25010 STANDARD FREQUENCY AND TIME SIGNAL Space research			25005-25010 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	25005-25010 STANDARD FREQUENCY AND TIME SIGNAL US340	
25010-25070 FIXED MOBILE except aeronautical mobile			25010-25070 US340	25010-25070 LAND MOBILE US340 NG112	Private Land Mobile (90)

	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile	5.182 5.183 5.188		76-88 BROADCASTING	
5.175 5.179 5.184 5.187 87.5-100 BROADCASTING	5.185	87-100 FIXED MOBILE BROADCASTING		NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
5.190	88-100 BROADCASTING		88-108	88-108 BROADCASTING NG2	Broadcast Radio (FM) (73) Auxiliary Broadcasting (74)
100-108 BROADCASTING 5.192 5.194			US93	US93 NG128	
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197 5.197A			108-117.975 AERONAUTICAL RADIONAVIGATION US93 US343		Aviation (87)
117.975-137 AERONAUTICAL MOBILE (R)			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.198 5.199 5.200 US26 US28		
			121.9375-123.0875 5.198 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE 5.198 US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.198 5.200 US32 US33 US112		
5.111 5.198 5.199 5.200 5.201 5.202 5.203 5.203A 5.203B			See next page for 123.5875-137 MHz		See next page for 123.5875-137 MHz

223-230 BROADCASTING Fixed Mobile 5.243 5.246 5.247	225-235 FIXED MOBILE	223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250	225-235 FIXED MOBILE	225-235	
230-235 FIXED MOBILE 5.247 5.251 5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250	G27		
235-267 FIXED MOBILE 5.111 5.199 5.252 5.254 5.256 5.256A			235-267 FIXED MOBILE 5.111 5.199 5.256 G27 G100	235-267 5.111 5.199 5.256	
267-272 FIXED MOBILE Space operation (space-to-Earth) 5.254 5.257			267-322 FIXED MOBILE	267-322	
272-273 SPACE OPERATION (space-to-Earth) FIXED MOBILE 5.254					
273-312 FIXED MOBILE 5.254					
312-315 FIXED MOBILE Mobile-satellite (Earth-to-space) 5.254 5.255					
315-322 FIXED MOBILE 5.254			G27 G100		

322-410 MHz (UHF)					
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
322-328.6 FIXED MOBILE RADIO ASTRONOMY			322-328.6 FIXED MOBILE	322-328.6	
5.149			US342 G27	US342	
328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258			328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258		
5.259					
335.4-387 FIXED MOBILE			335.4-399.9 FIXED MOBILE	335.4-399.9	
5.254					
387-390 FIXED MOBILE Mobile-satellite (space-to-Earth) 5.208A 5.254 5.255					
390-399.9 FIXED MOBILE			G27 G100		
5.254					
399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.222 5.224B 5.260			399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.260		Satellite Communications (25)
5.220					
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz)			400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz)		
5.261 5.262			5.261		
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)			400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 US324	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263	Satellite Communications (25)

410-470 MHz (UHF)					
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) 5.268			410-420 FIXED US13 MOBILE SPACE RESEARCH (space-to-space) 5.268 G5	410-420 US13	Private Land Mobile (90)
420-430 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271			420-450 RADIOLOCATION US217 G2 G129	420-450 Amateur US7 NG135	Private Land Mobile (90) Amateur (97)
430-432 AMATEUR RADIOLOCATION 5.271 5.272 5.273 5.274 5.275 5.276 5.277	430-432 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279				
432-438 AMATEUR RADIOLOCATION Earth exploration-satellite (active) 5.279A 5.138 5.271 5.272 5.276 5.277 5.280 5.281 5.282	432-438 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.279A 5.271 5.276 5.277 5.278 5.279 5.281 5.282				
438-440 AMATEUR RADIOLOCATION 5.271 5.273 5.274 5.275 5.276 5.277 5.283	438-440 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279				
440-450 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271 5.284 5.285 5.286			5.286 US7 US87 US230 USzzz G8	5.282 5.286 US87 US217 US230 USzzz	
450-455 FIXED MOBILE			450-454 5.286 US87	450-454 LAND MOBILE 5.286 US87 NG112 NG124	Auxiliary Broadcast. (74) Private Land Mobile (90)

5.209 5.271 5.286 5.286A 5.286B 5.286C 5.286D 5.286E			454-456	454-455 FIXED LAND MOBILE NG12 NG112 NG148	Public Mobile (22) Maritime (80)
455-456 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	455-456 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	455-456 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E		455-456 LAND MOBILE	Auxiliary Broadcasting (74)
456-459 FIXED MOBILE 5.271 5.287 5.288			456-460	456-460 FIXED LAND MOBILE	Public Mobile (22) Maritime (80) Private Land Mobile (90)
459-460 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	5.287 5.288	5.287 5.288 NG112 NG124 NG148	
460-470 FIXED MOBILE Meteorological-satellite (space-to-Earth)			460-470 Meteorological-satellite (space-to-Earth)	460-462.5375 FIXED LAND MOBILE 5.289 US201 US209 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE 5.289 US201	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE 5.287 5.289 U S201 US209 US216 NG124	Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE 5.287 5.289 US201	Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE	Private Land Mobile (90)
5.287 5.288 5.289 5.290			5.287 5.288 5.289 US201 US209 US216	5.288 5.289 US201 US216 NG124	

5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311 5.312				776-794 FIXED MOBILE BROADCASTING NG115 NG128 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)
790-862 FIXED BROADCASTING	5.293 5.309 5.311			794-806 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
	806-890 FIXED MOBILE BROADCASTING			806-821 FIXED LAND MOBILE NG31	Public Mobile (22) Private Land Mobile (90)
				821-824 LAND MOBILE	Private Land Mobile (90)
5.312 5.314 5.315 5.316 5.319 5.321				824-849 FIXED LAND MOBILE	Public Mobile (22)
See next page for 862-890 MHz	5.317 5.318	5.149 5.305 5.306 5.307 5.311 5.320		See next page for 849-894 MHz	See next page for 866-896 MHz

849-941 MHz (UHF)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous pages for 790-862 MHz	See previous pages for 806-890 MHz	See previous pages for 610-890 MHz	See previous pages for 614-890 MHz	849-851 AERONAUTICAL MOBILE	Public Mobile (22)
862-890 FIXED MOBILE except aeronautical mobile BROADCASTING 5.322 5.319 5.323				851-866 FIXED LAND MOBILE NG31	Public Mobile (22) Private Land Mobile (90)
				866-869 LAND MOBILE	Private Land Mobile (90)
				869-894 FIXED LAND MOBILE US116 US268	Public Mobile (22)
890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation 5.318 5.325	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902 US116 US268 G2	894-896 AERONAUTICAL MOBILE US116 US268	
				896-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				901-902 FIXED MOBILE US116 US268	Personal Communications (24)

941-1429.5 MHz (UHF) Page 41

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 890-942 MHz	See previous page for 928-942 MHz	See previous page for 890-942 MHz	941-944 FIXED	941-944 FIXED	Public Mobile (22) Fixed Microwave (101)
942-960 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322	942-960 FIXED MOBILE 5.317A	942-960 FIXED MOBILE 5.317A BROADCASTING	US268 US301 US302 G2	US268 US301 US302 NG120	
5.323		5.320	944-960	944-960 FIXED NG120	Public Mobile (22) Auxiliary Broadcast. (74) Fixed Microwave (101)
960-1164 AERONAUTICAL RADIONAVIGATION 5.328			960-1164 AERONAUTICAL RADIONAVIGATION 5.328 US224		Aviation (87)
1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.328A			1164-1215 AERONAUTICAL RADIONAVIGATION 5.328 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328A US224		
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) 5.330 5.331 5.332			1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) Gxxx SPACE RESEARCH (active) 5.332	1215-1240 Earth exploration-satellite (active) Space research (active)	
1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329 5.329A SPACE RESEARCH (active) Amateur 5.282 5.330 5.331 5.332 5.335 5.335A			1240-1300 AERONAUTICAL RADIONAVIGATION EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active) 5.332 5.335	1240-1300 AERONAUTICAL RADIONAVIGATION Amateur Earth exploration-satellite (active) Space research (active) 5.282	Amateur (97)

1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 RADIOLOCATION RADIONAVIGATION-SATELLITE (Earth-to-space) 5.149 5.337A		1300-1350 AERONAUTICAL RADIO-NAVIGATION 5.337 Radiolocation G2 US342	1300-1350 AERONAUTICAL RADIO-NAVIGATION 5.337 US342	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION	1350-1390 FIXED MOBILE RADIOLOCATION G2 5.334 5.339 US311 US342 G27 G114	1350-1390 5.334 5.339 US311 US342	
		1390-1395	1390-1392 FIXED MOBILE except aeronautical mobile Fixed-satellite (Earth-to-space) US368 5.339 US311 US342 US351	Wireless Communications (27)
			1392-1395 FIXED MOBILE except aeronautical mobile 5.339 US311 US342 US351	
5.149 5.338 5.339 5.339A	5.149 5.334 5.339 5.339A	1395-1400 LAND MOBILE US350 5.339 US311 US342 US351		Personal (95)
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341		1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile 5.341		1427-1429.5 LAND MOBILE US350 5.341 US352	1427-1429.5 LAND MOBILE Fixed (telemetry) 5.341 US350 US352	Private Land Mobile (90) Personal (95)

See next page for 1429-1452 MHz

1429.5-1610 MHz (UHF)					Page 43
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1429-1452 FIXED MOBILE except aeronautical mobile	1429-1452 FIXED MOBILE 5.343		1429.5-1432	1429.5-1430 FIXED (telemetry) LAND MOBILE (telemetry) 5.341 US350 US352	Private Land Mobile (90) Personal (95)
				1430-1432 FIXED (telemetry) LAND MOBILE (telemetry) Fixed-satellite (space-to-Earth) US368	
5.339A 5.341 5.342	5.339A 5.341		5.341 US350 US352	5.341 US350 US352	
			1432-1435	1432-1435 FIXED MOBILE except aeronautical mobile	Wireless Communications (27)
			5.341 US361	5.341 US361	
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.347A	1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.347A		1435-1525 MOBILE (aeronautical telemetry)		Aviation (87)
5.341 5.342	5.341 5.344				
1492-1518 FIXED MOBILE except aeronautical mobile	1492-1518 FIXED MOBILE 5.343	1492-1518 FIXED MOBILE			
5.341 5.342	5.341 5.344	5.341			
1518-1525 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C	1518-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C	1518-1525 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C			
5.341 5.342	5.341 5.344	5.341	5.341 US78		

1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile except aeronautical mobile 5.349 5.341 5.342 5.347A 5.350 5.351 5.352A 5.354	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.347A 5.351 5.354	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile 5.349 5.341 5.347A 5.351 5.352A 5.354	1525-1535 MOBILE-SATELLITE (space-to-Earth) US315 US380	Satellite Communications (25) Maritime (80)
1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space- to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile 5.341 5.342 5.347A 5.351 5.354	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.347A 5.351 5.354		5.341 5.351	
1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.351A 5.341 5.347A 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A			1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380 5.341 5.351 5.356	Satellite Communications (25) Maritime (80) Aviation (87)
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329A 5.341 5.362B 5.362C 5.363			1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.341 US208 US260	Aviation (87)

1610-1670 MHz (UHF)					Page 45
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 US380 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208		Satellite Communications (25) Aviation (87)
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION 5.149 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.149 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.149 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 US380 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208 US342		
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) 5.347A 5.341 5.355 5.359 5.363 5.364 5.365 5.366 5.367 5.368 5.369 5.371 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.347A 5.341 5.364 5.365 5.366 5.367 5.368 5.370 5.372	1613 8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) 5.347A Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.365 5.366 5.367 5.368 5.369 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 US380 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.372 US208		

1626.5-1660 MOBILE-SATELLITE (Earth-to-space) 5.351A 5.341 5.351 5.353A 5.354 5.355 5.357A 5.359 5.362A 5.374 5.375 5.376	1626.5-1660 MOBILE-SATELLITE (Earth-to-space) US308 US309 US315 US380 5.341 5.351 5.375	Satellite Communications (25) Maritime (80) Aviation (87)
1660-1660.5 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY 5.149 5.341 5.351 5.354 5.362A 5.376A	1660-1660.5 MOBILE-SATELLITE (Earth-to-space) US308 US309 US380 RADIO ASTRONOMY 5.341 5.351 US342	Satellite Communications (25) Aviation (87)
1660.5-1668 RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.341 5.379 5.379A	1660.5-1668.4 RADIO ASTRONOMY US74 SPACE RESEARCH (passive)	
1668-1668.4 MOBILE-SATELLITE (Earth-to-space) 5.348C 5.379B 5.379C RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.341 5.379 5.379A 5.379D	5.341 US246	
1668.4-1670 METEOROLOGICAL AIDS FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) 5.348C 5.379B 5.379C RADIO ASTRONOMY 5.149 5.341 5.379D 5.379E	1668.4-1670 METEOROLOGICAL AIDS (radiosonde) RADIO ASTRONOMY US74 5.341 US99 US342	

1670-2110 MHz (UHF)					
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE 5.380 MOBILE-SATELLITE (Earth-to-space) 5.348C 5.379B 5.341 5.379D 5.379E 5.380A			1670-1675 5.341 US211 US362	1670-1675 FIXED MOBILE except aeronautical mobile 5.341 US211 US362	Wireless Communications (27)
1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.341			1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth) 5.289 5.341 US211		
1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile 5.289 5.341 5.382	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) 5.289 5.341 5.381				
1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341		1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341 5.384	1700-1710 FIXED G118 METEOROLOGICAL-SATELLITE (space-to-Earth) 5.289 5.341	1700-1710 METEOROLOGICAL-SATELLITE (space-to-Earth) Fixed 5.289 5.341	
1710-1930 FIXED MOBILE 5.380 5.384A 5.388A			1710-1755 5.341 US311 US378	1710-1755 FIXED MOBILE 5.341 US311 US378	Wireless Communications (27)

5.149 5.341 5.385 5.386 5.387 5.388			1755-1850 FIXED MOBILE G42	1755-1850	
1930-1970 FIXED MOBILE 5.388A 5.388	1930-1970 FIXED MOBILE 5.388A Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388	1850-2025	1850-2000 FIXED MOBILE	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1970-1980 FIXED MOBILE 5.388A 5.388				NG177 2000-2020 MOBILE-SATELLITE (Earth-to-space) US380	Satellite Communications (25)
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F				NG156 2020-2025 FIXED MOBILE	
2010-2025 FIXED MOBILE 5.388A 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E 5.390	2010-2025 FIXED MOBILE 5.388A 5.388		NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space)	2025-2110 FIXED NG118 MOBILE 5.391	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
5.392			5.391 5.392 US90 US222 US346 US347	5.392 US90 US222 US346 US347	

2110-2345 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space)			2110-2120 US252	2110-2155 FIXED MOBILE US252	Domestic Public Fixed (21) Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
5.388					
2120-2160 FIXED MOBILE 5.388A	2120-2160 FIXED MOBILE 5.388A Mobile-satellite (space-to-Earth)	2120-2170 FIXED MOBILE 5.388A	2120-2200	2155-2160 FIXED	Domestic Public Fixed (21) Fixed Microwave (101)
5.388	5.388				
2160-2170 FIXED MOBILE 5.388A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)			2160-2180 FIXED NG153 MOBILE	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
5.388 5.392A	5.388 5.389C 5.389E 5.390	5.388		NG178	
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A				2180-2200 MOBILE-SATELLITE (space-to-Earth) US380 NG168	Satellite Communications (25)
5.388 5.389A 5.389F 5.392A					
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation 5.150 5.371 5.397 5.398 5.399 5.400 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.405 5.407 5.412 5.414	2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.404 5.407 5.414 5.415A		2500-2655	2500-2655 FIXED US205 MOBILE except aeronautical mobile	Domestic Public Fixed (21) Instructional TV Fixed (74)
2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416	2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416	2520-2535 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.415A			
		2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416			
5.339 5.403 5.405 5.412 5.418AC 5.418AD 5.418B 5.418C	5.339 5.403 5.418AC 5.418AD 5.418B 5.418C	5.339 5.418 5.418AA 5.418AB 5.418AC 5.418AD 5.418A 5.418B 5.418C	5.339 US205	5.339	

2655-4200 MHz (UHF/SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.347A 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.412 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.347A 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.347A 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy US269 Space research (passive) US205	2655-2690 FIXED US205 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Radio astronomy Space research (passive) US269	Domestic Public Fixed (21) Instructional TV Fixed (74)
2670-2690 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.412 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.347A 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) 5.351A Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420 5.420A			
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation 5.423 5.424			2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 METEOROLOGICAL AIDS Radiolocation G2 5.423 US18 G15	2700-2900 5.423 US18	

2900-3100 RADIOLOCATION 5.424A RADIONAVIGATION 5.426 5.425 5.427			2900-3100 RADIOLOCATION 5.424A G56 MARITIME RADIONAVIGATION 5.427 US44 US316	2900-3100 MARITIME RADIONAVIGATION Radiolocation US44 5.5427 US316	Maritime (80) Private Land Mobile (90)
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) 5.149 5.428			3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active) US342	3100-3300 Radiolocation Earth exploration-satellite (active) Space research (active) US342	Private Land Mobile (90)
3300-3400 RADIOLOCATION 5.149 5.429 5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149 5.430	3300-3400 RADIOLOCATION Amateur 5.149 5.429	3300-3500 RADIOLOCATION US108 G31 US342	3300-3500 Amateur Radiolocation US108 5.282 US342	Private Land Mobile (90) Amateur (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation 5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.433 5.282 5.432				
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433		3500-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245	3500-3600 Radiolocation 3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation	Private Land Mobile (90)
	5.435		3650-3700 US245 US348 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 MOBILE except aeronautical mobile NG170 US245 US348 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth)	International Fixed (23) Satellite Communi. (25) Fixed Microwave (101)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.437 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.442 Radio astronomy			4800-4940 FIXED MOBILE US203 US342	4800-4940 US203 US342	
			4940-4990	4940-4990 FIXED MOBILE except aeronautical mobile	Private Land Mobile (90) Fixed Microwave (101)
5.149 5.339 5.443			5.339 US311 US342 G122	5.339 US311 US342	
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		
5000-5010 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (Earth-to-space) 5.367			5000-5010 AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (Earth-to-space) 5.367 US211 US344		Satellite Communications (25) Aviation (87)
5010-5030 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.443B 5.367			5010-5030 AERONAUTICAL RADIONAVIGATION US260 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.443B 5.367 US211 US344		
5030-5150 AERONAUTICAL RADIONAVIGATION 5.367 5.444 5.444A			5030-5250 AERONAUTICAL RADIO-NAVIGATION US260	5030-5150 AERONAUTICAL RADIO-NAVIGATION US260 5.367 5.444 5.444A US211 US344	

5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) 5.447A MOBILE except aeronautical mobile 5.446A 5.446B 5.446 5.447 5.447B 5.447C	5.367 5.444 US211 US307 US344	5150-5250 AERONAUTICAL RADIO- NAVIGATION US260 FIXED-SATELLITE (Earth- to-space) 5.447A US344 5.447C US211 US307	RF Devices (15) Satellite Communications (25) Aviation (87)
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.447D MOBILE except aeronautical mobile 5.446A 5.447F 5.447E 5.448 5.448A	5250-5255 EARTH EXPLORATION- SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.447D 5.448A	5250-5255 Earth exploration-satellite (active) Radiolocation Space research 5.558A	RF Devices (15) Private Land Mobile (90)
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) MOBILE except aeronautical mobile 5.446A 5.447F 5.447E 5.448 5.448A	5255-5350 EARTH EXPLORATION- SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.448A	5255-5350 Earth exploration-satellite (active) Radiolocation Space research (active) 5.448A	
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B SPACE RESEARCH (active) 5.448C AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION 5.448D US390 G130	5350-5460 EARTH EXPLORATION- SATELLITE (active) 5.448B SPACE RESEARCH (active) AERONAUTICAL RADIO- NAVIGATION 5.449 RADIOLOCATION G56 US390	5350-5460 AERONAUTICAL RADIO- NAVIGATION 5.449 Earth exploration-satellite (active) 5.448B Space research (active) Radiolocation US390	Aviation (87) Private Land Mobile (90)
5460-5470 RADIONAVIGATION 5.449 EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION 5.448D 5.448B	5460-5470 RADIONAVIGATION 5.449 US65 EARTH EXPLORATION- SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION G56 5.448B US49 G130	5460-5470 RADIONAVIGATION 5.449 US65 Earth exploration-satellite (active) Space research (active) Radiolocation 5.448B US49	Private Land Mobile (90)
5470-5570 MARITIME RADIONAVIGATION MOBILE except aeronautical mobile 5.446A 5.450A EARTH EXPLORATION-SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION 5.450B 5.448B 5.450 5.451 5.452	5470-5570 MARITIME RADIONAVIGATION US65 EARTH EXPLORATION- SATELLITE (active) SPACE RESEARCH (active) RADIOLOCATION G56 5.448B US50 G131	5470-5570 MARITIME RADIONAVIGATION US65 RADIOLOCATION Earth exploration-satellite (active) Space research (active) US50	RF Devices (15) Maritime (80) Private Land Mobile (90)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5570-5650 MARITIME RADIONAVIGATION MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B			5570-5600 MARITIME RADIONAVIGATION US65 RADIOLOCATION G56 US50 G131	5570-5600 MARITIME RADIONAVIGATION US65 RADIOLOCATION US50	RF Devices (15) Maritime (80) Private Land Mobile (90)
			5600-5650 MARITIME RADIONAVIGATION US65 METEOROLOGICAL AIDS RADIOLOCATION G56	5600-5650 MARITIME RADIONAVIGATION US65 METEOROLOGICAL AIDS RADIOLOCATION	
5.450 5.451 5.452			5.452 US50 G131	5.452 US50	
5650-5725 RADIOLOCATION MOBILE except aeronautical mobile 5.446A 5.450A Amateur Space research (deep space) 5.282 5.451 5.453 5.454 5.455			5650-5925 RADIOLOCATION G2	5650-5830 Amateur	RF Devices (15) ISM Equipment (18) Amateur (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur	5725-5830 RADIOLOCATION Amateur				
5.150 5.451 5.453 5.455 5.456	5.150 5.453 5.455			5.150 5.282	
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth)	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth)			5830-5850 Amateur Amateur-satellite (space-to-Earth)	ISM Equipment (18) Amateur (97)
5.150 5.451 5.453 5.455 5.456	5.150 5.453 5.455			5.150	
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation		5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur	ISM Equipment (18) Private Land Mobile (90) Personal Radio (95) Amateur (97)
5.150	5.150	5.150	5.150 US245	5.150	
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE			5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space)	International Fixed (23) Satellite Commun. (25) Fixed Microwave (101)

	6425-6525 5.440 5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
5.149 5.440 5.458	6525-6700 5.458 US342	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.458 US342	Satellite Communications (25) Fixed Microwave (101)
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE	6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 5.458 5.458A 5.458B	
		6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171 5.458 5.458A 5.458B	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78)
5.458 5.458A 5.458B 5.458C		7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 5.458 5.458A 5.458B	
7075-7145 FIXED MOBILE	5.458	7075-7125 FIXED NG118 MOBILE NG171 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78)
5.458 5.459	7125-7145 FIXED 5.458 G116	7125-7190	
7145-7235 FIXED MOBILE SPACE RESEARCH (Earth-to-space) 5.460	7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262 5.458 G116	5.458 US262	
5.458 5.459	See next page for 7190-7235 MHz	See next page for 7190-7250	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 7145-7235 MHz			7190-7235 FIXED SPACE RESEARCH (Earth-to-space) Gyyy 5.458	7190-7250	
7235-7250 FIXED MOBILE 5.458			7235-7250 FIXED 5.458	5.458	
7250-7300 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 5.461			7250-7300 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Fixed G117	7250-8025	
7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461			7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461A			7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SAT- ELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G104 G117		
7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile			7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		

7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B MOBILE except aeronautical mobile	7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B		
7850-7900 FIXED MOBILE except aeronautical mobile	7850-7900 FIXED		
7900-8025 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.461	7900-8025 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Fixed G117		
8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G117	8025-8215	
8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G104 G117	US258	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A			8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G117	8215-8400 US258	
8400-8500 FIXED 5.486 MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) 5.465 5.466			8400-8450 FIXED SPACE RESEARCH (space-to-Earth) (deep space only)	8400-8450 Space research (space-to-Earth) (deep space only)	
			8450-8500 FIXED SPACE RESEARCH (space-to-Earth)	8450-8500 SPACE RESEARCH (space-to-Earth)	
8500-8550 RADIOLOCATION 5.468 5.469			8500-8550 RADIOLOCATION G59	8500-8550 Radiolocation	
8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.468 5.469 5.469A			8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	8550-8650 Earth exploration-satellite (active) Radiolocation Space research (active)	
8650-8750 RADIOLOCATION 5.468 5.469			8650-9000 RADIOLOCATION G59	8650-9000 Radiolocation	
8750-8850 RADIOLOCATION AERONAUTICAL RADIONAVIGATION 5.470 5.471					

10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile		10.7-11.7 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US211 NG104 US355	Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A Mobile except aeronautical mobile 5.485 5.488	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	11.7-12.1 5.486	11.7-12.2 FIXED-SATELLITE (space-to-Earth) NG143 NG145 Mobile except aeronautical mobile	
	12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.485 5.488 5.489	5.487 5.487A 5.492	12.1-12.2	5.486 5.488	
5.487 5.487A 5.492	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	12.2-12.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487	12.2-12.7	12.2-12.7 FIXED BROADCASTING-SATELLITE	
12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space)		12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493	5.490	5.487A 5.488 5.490	
5.494 5.495 5.496	5.487A 5.488 5.490 5.492 See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 12.5-12.75 GHz	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	See previous page for 12.5-12.75 GHz	12.7-12.75	12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) MOBILE NG53	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to-space) 5.441 NG104 MOBILE US251 NG53	
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A 5.499			13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIO-NAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	13.25-13.4 AERONAUTICAL RADIO-NAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)
13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.500 5.501 5.501B			13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.501B	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Earth exploration-satellite Standard frequency and time signal-satellite (Earth-to-space) Space research 5.499 5.500 5.501 5.502 5.503			13.75-14 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337 US356 US357	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Radiolocation Standard frequency and time signal-satellite (Earth-to-space) Space research US356 US357	Satellite Communications (25) Private Land Mobile (90)

14-14.25 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504C 5.506A Space research 5.504A 5.505			14-14.2 RADIONAVIGATION US292 Space research	14-14.2 FIXED-SATELLITE (Earth-to-space) RADIONAVIGATION US292 Mobile-satellite (Earth-to-space) Space research	Satellite Communications (25) Maritime (80) Aviation (87)
14.25-14.3 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.506A 5.508A Space research 5.504A 5.505 5.508 5.509			14.2-14.4	14.2-14.4 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) Mobile except aeronautical mobile	Satellite Communications (25) Fixed Microwave (101)
14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.506A 5.509A Radionavigation-satellite 5.504A	14.3-14.4 FIXED-SATELLITE (Earth-to-space) 5.457A 5.484A 5.506 5.506B Mobile-satellite (Earth-to-space) 5.506A Radionavigation-satellite 5.504A	14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.506A 5.509A Radionavigation-satellite 5.504A			
14.4-14.47 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.506A 5.509A Space research (space-to-Earth) 5.504A			14.4-14.47 Fixed Mobile	14.4-14.47 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space)	Satellite Communications (25)
14.47-14.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radio astronomy 5.149 5.504A			14.47-14.5 Fixed Mobile US203 US342	14.47-14.5 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) US203 US342	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
14.5-14.8 FIXED FIXED-SATELLITE (Earth-to-space) 5.510 MOBILE Space research			14.5-14.7145 FIXED Mobile Space research	14.5-14.8	
			14.7145-14.8 MOBILE Fixed Space research		
14.8-15.35 FIXED MOBILE Space research			14.8-15.1365 MOBILE SPACE RESEARCH Fixed US310	14.8-15.1365 US310	
5.339			15.1365-15.35 FIXED SPACE RESEARCH Mobile 5.339 US211	15.1365-15.35 5.339 US211	
15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.511			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
15.4-15.43 AERONAUTICAL RADIONAVIGATION 5.511D			15.4-15.43 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.43-15.63 FIXED SATELLITE (Earth-to-space) 5.511A AERONAUTICAL RADIONAVIGATION 5.511C			15.43-15.63 AERONAUTICAL RADIO-NAVIGATION US260 5.511C US211 US359	15.43-15.63 FIXED SATELLITE (Earth-to-space) AERONAUTICAL RADIO-NAVIGATION US260 5.511C US211 US359	Satellite Communications (25) Aviation (87)
15.63-15.7 AERONAUTICAL RADIONAVIGATION 5.511D			15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)

16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) 5.512 5.513			16.6-17.1 RADIOLOCATION G59 Space research (deep Space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.512 5.513 5.513A			17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	17 2-17.3 Radiolocation Earth exploration-satellite (active) Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 (space-to-Earth) 5.516A 5.516B Radiolocation 5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation 5.514 5.515 5.517	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 Radiolocation US259 G59	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE NG163 NG167 US259	Satellite Communications (25)
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.518 5.515 5.517	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 NG144	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE		17.8-18.3 FIXED-SATELLITE (space-to-Earth) US334 G117 5.519	17.8-18.3 FIXED 5.519 US334 NG144	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			See next page for 18.3-18.6 GHz	See next page for 18.3-18.58 GHz	See next page for 18.3-18.58 GHz

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 18 1-18.4 GHz			18.3-18.6 FIXED-SATELLITE (space-to-Earth) US334 G117	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE					
18 6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 US334 G117 SPACE RESEARCH (passive) US254	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) US334 G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast. (74) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524		19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334	Satellite Communications (25)

20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528				20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 US334	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) 5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263		Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.347A 5.530	21.4-22 FIXED MOBILE	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.347A 5.530 5.531	21.4-22 FIXED MOBILE		
22-22.21 FIXED MOBILE except aeronautical mobile 5.149			22-22.21 FIXED MOBILE except aeronautical mobile US342		
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) 5.149 5.532			22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US342 US263		

24.45-24.75 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION 5.533	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533		Satellite Communications (25)
	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATEL- LITE (Earth-to-space)	24.65-24.75 FIXED INTER-SATELLITE MOBILE 5.533	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)		
24.75-25.25 FIXED	24.75-25.25 FIXED-SATELLITE (Earth-to-space) 5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE	24.75-25.05 RADIONAVIGATION	24.75-25.05 FIXED-SATELLITE (Earth-to-space) NG167 RADIONAVIGATION	Satellite Communications (25) Aviation (87)
			25.05-25.25	25.05-25.25 FIXED-SATELLITE (Earth-to-space) NG167 FIXED	Satellite Communications (25) Fixed Microwave (101)
25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)	
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space) 5.536A			25.5-27 EARTH EXPLORATION- SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	25.5-27 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	
27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE 5.536 5.537 MOBILE		27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 Inter-satellite 5.536	

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE 5.538 5.540			27.5-30	27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	Satellite Communications (25) Fixed Microwave (101)
28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540					
29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540					
29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.525 5.526 5.527 5.529 5 540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542		29.5-29.9 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) 5.525 5.526 5.527 5.529	Satellite Communications (25)
29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.543 5.525 5.526 5.527 5.538 5.540 5.542				29.9-30 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) 5.525 5 526 5.527 5.543	

32-40 GHz (EHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
32-32.3 FIXED 5.547A RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth) 5.547 5.547C 5.548			32-32.3 RADIONAVIGATION US69 SPACE RESEARCH (deep space) (space-to-Earth) US262 US386	32-32.3 SPACE RESEARCH (deep space) (space-to-Earth) US262 US386	
32.3-33 FIXED 5.547A INTER-SATELLITE RADIONAVIGATION 5.547 5.547D 5.548			32.3-33 INTER-SATELLITE US278 RADIONAVIGATION US69 US386		Aviation (87)
33-33.4 FIXED 5.547A RADIONAVIGATION 5.547 5.547E			33-33.4 RADIONAVIGATION US69 US360 G117		
33.4-34.2 RADIOLOCATION 5.549			33.4-34.2 RADIOLOCATION US360 G117	33.4-34.2 Radiolocation US360	Private Land Mobile (90)
34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) 5.549			34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) US262 US360 G34 G117	34.2-34.7 Radiolocation Space research (deep space) (Earth-to-space) US262 US360	
34.7-35.2 RADIOLOCATION Space research 5.550 5.549			34.7-35.5 RADIOLOCATION	34.7-35.5 Radiolocation	
35.2-35.5 METEOROLOGICAL AIDS RADIOLOCATION 5.549			 US360 G117	 US360	
35.5-36 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.549 5.549A			35.5-36 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) US360 G117	35.5-36 Earth exploration-satellite (active) Radiolocation Space research (active) US360	

		45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE 5.554		RF Devices (15)
		46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE 5.554	46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE FIXED 5.554	
5.554				
47-47.2 AMATEUR AMATEUR-SATELLITE		47-48.2	47-47.2 AMATEUR AMATEUR-SATELLITE	Amateur (97)
47.2-47.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.552A			47.2-48.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE	Satellite Communications (25)
47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A MOBILE	47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE			
47.9-48.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.552A				
48.2-48.54 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A MOBILE 5.555B	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.552 MOBILE	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264		
48.54-49.44 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.149 5.340 5.555 5.555B				
See next page	5.149 5.340 5.555 5.555B	5.555 US342		

50.2-65 GHz (EHF)					FCC Rule Part(s)
International Table			United States Table		
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
49.44-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A MOBILE	See previous page for 48.2-50.2 GHz		See previous page for 48.2-50.2 GHz		See previous page for 47.2-50.2 GHz
5.555B					
50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)			50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)		
5.340			US246		
50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Mobile-satellite (Earth-to-space)			50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) G117	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space)	
51.4-52.6 FIXED MOBILE			51.4-52.6 FIXED MOBILE		
5 547 5.556					
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)			52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)		
5.340 5 556			US246		
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)			54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)		
5 556B					
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED 5.557A INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive)			55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US263 US353		
5.547 5.557					
56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.558A MOBILE 5.558 SPACE RESEARCH (passive)			56 9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE G128 MOBILE 5.558	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 SPACE RESEARCH	

BILLING CODE 6712-01-C

INTERNATIONAL FOOTNOTES

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5.56 The stations of services to which the bands 14–19.95 kHz and 20.05–70 kHz and in Region 1 also the bands 72–84 kHz and 86–90 kHz are allocated may transmit standard frequency and time signals. Such stations shall be afforded protection from harmful interference. In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Kazakhstan, Mongolia, Kyrgyzstan, Slovakia, the Czech Rep., Tajikistan and Turkmenistan, the frequencies 25 kHz and 50 kHz will be used for this purpose under the same conditions.

* * * * *

5.68 *Alternative allocation:* In Angola, Burundi, Congo (Rep. of the), Malawi, Dem. Rep. of the Congo, Rwanda and South Africa, the band 160–200 kHz is allocated to the fixed service on a primary basis.

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5.70 *Alternative allocation:* In Angola, Botswana, Burundi, Cameroon, the Central African Rep., Congo (Rep. of the), Ethiopia, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Nigeria, Oman, Dem. Rep. of the Congo, Rwanda, South Africa, Swaziland, Tanzania, Chad, Zambia and Zimbabwe, the band 200–283.5 kHz is allocated to the aeronautical radionavigation service on a primary basis.

* * * * *

5.87 *Additional allocation:* In Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland and Zimbabwe, the band 526.5–535 kHz is also allocated to the mobile service on a secondary basis.

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5.96 In Germany, Armenia, Austria, Azerbaijan, Belarus, Denmark, Estonia, the Russian Federation, Finland, Georgia, Hungary, Ireland, Iceland, Israel, Kazakhstan, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Norway, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., the United Kingdom, Sweden, Switzerland, Tajikistan, Turkmenistan and Ukraine, administrations may allocate up to 200 kHz to their amateur service in the bands 1715–1800 kHz and 1850–2000 kHz. However, when allocating the bands within this range to their amateur service, administrations shall, after prior consultation with administrations of neighbouring countries, take such steps as may be necessary to prevent harmful interference from their amateur service to the fixed and mobile services of other countries. The mean power of any amateur station shall not exceed 10 W.

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5.98 *Alternative allocation:* In Angola, Armenia, Azerbaijan, Belarus, Belgium, Bulgaria, Cameroon, Congo (Rep. of the), Denmark, Egypt, Eritrea, Spain, Ethiopia, the Russian Federation, Georgia, Greece, Italy, Kazakhstan, Lebanon, Lithuania, Moldova, Syrian Arab Republic, Kyrgyzstan, Somalia, Tajikistan, Tunisia, Turkmenistan, Turkey and Ukraine, the band 1810–1830 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

5.99 *Additional allocation:* In Saudi Arabia, Austria, Bosnia and Herzegovina, Iraq, Libyan Arab Jamahiriya, Uzbekistan, Slovakia, Romania, Serbia and Montenegro, Slovenia, Chad, and Togo, the band 1810–1830 kHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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5.107 *Additional allocation:* In Saudi Arabia, Eritrea, Ethiopia, Iraq, Lesotho, Libyan Arab Jamahiriya, Somalia and Swaziland, the band 2160–2170 kHz is also allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis. The mean power of stations in these services shall not exceed 50 W.

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5.112 *Alternative allocation:* I Bosnia and Herzegovina, Denmark, Malta, Serbia and Montenegro, and Sri Lanka, the band 2194–2300 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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5.114 *Alternative allocation:* In Bosnia and Herzegovina, Denmark, Iraq, Malta, and Serbia and Montenegro, the band 2502–2625 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

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5.117 *Alternative allocation:* In Bosnia and Herzegovina, Côte d'Ivoire, Denmark, Egypt, Liberia, Malta, Serbia and Montenegro, Sri Lanka and Togo, the band 3155–3200 kHz is allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

5.118 *Additional allocation:* In the United States, Mexico, Peru and Uruguay, the band 3230–3400 kHz is also allocated to the radiolocation service on a secondary basis.

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5.134 The use of the bands 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz and 18900–19020 kHz by the broadcasting service as from 1 April 2007 is subject to the application of the procedure of Article 12. Administrations are urged to use these bands to facilitate the introduction of digitally modulated emissions in accordance with the provisions of Resolution 517 (Rev. WRC–03).

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5.138A Until 29 March 2009, the band 6765–7000 kHz is allocated to the fixed service on a primary basis and to the land mobile service on a secondary basis. After this date, this band is allocated to the fixed and the mobile except aeronautical mobile (R) services on a primary basis.

5.139 *Different category of service:* until 29 March 2009, in Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the allocation of the band 6765–7000 kHz to the land mobile service is on a primary basis (see No. 5.33).

5.140 *Additional allocation:* In Angola, Iraq, Kenya, Rwanda, Somalia and Togo, the band 7000–7050 kHz is also allocated to the fixed service on a primary basis.

5.141A *Additional allocation:* In Uzbekistan and Kyrgyzstan, the bands 7000–7100 kHz and 7100–7200 kHz are also allocated to the fixed and land mobile services on a secondary basis.

5.141B *Additional allocation:* After 29 March 2009, in Algeria, Saudi Arabia, Australia, Bahrain, Botswana, Brunei Darussalam, China, Comoros, Korea (Rep. of), Diego Garcia, Djibouti, Egypt, United Arab Emirates, Eritrea, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Mauritania, New Zealand, Oman, Papua New Guinea, Qatar, Syrian Arab Republic, Singapore, Sudan, Tunisia, Viet Nam and Yemen, the band 7100–7200 kHz is also allocated to the fixed and the mobile, except aeronautical mobile (R), services on a primary basis.

5.141C In Regions 1 and 3, the band 7100–7200 kHz is allocated to the broadcasting service until 29 March 2009 on a primary basis.

5.142 Until 29 March 2009, the use of the band 7100–7300 kHz in Region 2 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3. After 29 March 2009 the use of the band 7200–7300 kHz in Region 2 by the amateur service shall not impose constraints on the broadcasting service intended for use within Region 1 and Region 3.

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5.143A In Region 3, the band 7350–7450 kHz is allocated, until 29 March 2009, to the fixed service on a primary basis and to the land mobile service on a secondary basis. After 29 March 2009, frequencies in this band may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

5.143B In Region 1, the band 7350–7450 kHz is allocated, until 29 March 2009, to the fixed service on a primary basis and to the land mobile service on a secondary basis. After 29 March 2009, on condition that harmful interference is not caused to the broadcasting service, frequencies in the band 7350–7450 kHz may be used by stations in the fixed and land mobile services communicating only within the boundary of the country in which they are located, each station using a total radiated power that shall not exceed 24 dBW.

5.143C *Additional allocation:* After 29 March 2009 in Algeria, Saudi Arabia, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Iran (Islamic Republic of), Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Mauritania, Oman, Qatar, Syrian Arab Republic, Sudan, Tunisia and Yemen, the bands 7350–7400 kHz and 7400–7450 kHz are also allocated to the fixed service on a primary basis.

5.143D In Region 2, the band 7350–7400 kHz is allocated, until 29 March 2009, to the

fixed service on a primary basis and to the land mobile service on a secondary basis. After 29 March 2009, frequencies in this band may be used by stations in the above-mentioned services, communicating only within the boundary of the country in which they are located, on condition that harmful interference is not caused to the broadcasting service. When using frequencies for these services, administrations are urged to use the minimum power required and to take account of the seasonal use of frequencies by the broadcasting service published in accordance with the Radio Regulations.

5.143E Until 29 March 2009, the band 7450–8100 kHz is allocated to the fixed service on a primary basis and to the land mobile service on a secondary basis.

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5.152 *Additional allocation:* In Armenia, Azerbaijan, China, Côte d'Ivoire, the Russian Federation, Georgia, Iran (Islamic Republic of), Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 14250–14350 kHz is also allocated to the fixed service on a primary basis. Stations of the fixed service shall not use a radiated power exceeding 24 dBW.

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5.154 *Additional allocation:* In Armenia, Azerbaijan, the Russian Federation, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 18068–18168 kHz is also allocated to the fixed service on a primary basis for use within their boundaries, with a peak envelope power not exceeding 1 kW.

5.155 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Kazakhstan, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Rep., Tajikistan, Turkmenistan and Ukraine, the band 21850–21870 kHz is also allocated to the aeronautical mobile (R) services on a primary basis.

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5.163 *Additional allocation:* In Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Slovakia, the Czech Rep., Tajikistan, Turkmenistan and Ukraine, the bands 47–48.5 MHz and 56.5–58 MHz are also allocated to the fixed and land mobile services on a secondary basis.

5.164 *Additional allocation:* In Albania, Germany, Austria, Belgium, Bosnia and Herzegovina, Botswana, Bulgaria, Côte d'Ivoire, Denmark, Spain, Estonia, Finland, France, Gabon, Greece, Ireland, Israel, Italy, Jordan, Lebanon, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Monaco, Nigeria, Norway, the Netherlands, Poland, Syrian Arab Republic, the United Kingdom, Serbia and Montenegro, Slovenia, Sweden, Switzerland, Swaziland, Chad, Togo, Tunisia and Turkey, the band 47–68 MHz, in Romania the band 47–58 MHz, in South Africa the band 47–50 MHz, and in the Czech Rep. the band 66–68 MHz, are also allocated to the land mobile service on a primary basis. However, stations of the land mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations of countries other than those mentioned in connection with the band.

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5.174 *Alternative allocation:* In Bulgaria, Hungary and Romania, the band 68–73 MHz is allocated to the broadcasting service on a primary basis and used in accordance with the decisions in the Final Acts of the Special Regional Conference (Geneva, 1960).

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5.177 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Kazakhstan, Latvia, Moldova, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 73–74 MHz is also allocated to the broadcasting service on a primary basis, subject to agreement obtained under No. 9.21.

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5.179 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, China, the Russian Federation, Georgia, Kazakhstan, Lithuania, Moldova, Mongolia, Kyrgyzstan, Slovakia, Tajikistan, Turkmenistan and Ukraine, the bands 74.6–74.8 MHz and 75.2–75.4 MHz are also allocated to the aeronautical radionavigation service, on a primary basis, for ground-based transmitters only.

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5.181 *Additional allocation:* In Egypt, Israel and Syrian Arab Republic, the band 74.8–75.2 MHz is also allocated to the mobile service on a secondary basis, subject to agreement obtained under No. 9.21. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of the procedure invoked under No. 9.21.

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5.203B *Additional allocation:* In Saudi Arabia, United Arab Emirates, Oman and Syrian Arab Republic, the band 136–137 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis until 1 January 2005.

5.204 *Different category of service:* In Afghanistan, Saudi Arabia, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, China, Cuba, the United Arab Emirates, India, Indonesia, Iran (Islamic Republic of), Iraq, Malaysia, Oman, Pakistan, the Philippines, Qatar, Serbia and Montenegro, Singapore, Thailand and Yemen, the band 137–138 MHz is allocated to the fixed and mobile, except aeronautical mobile (R), services on a primary basis (see No. 5.33).

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5.210 *Additional allocation:* In France, Italy, the Czech Rep. and the United Kingdom, the bands 138–143.6 MHz and 143.65–144 MHz are also allocated to the space research service (space-to-Earth) on a secondary basis.

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5.212 *Alternative allocation:* In Angola, Botswana, Burundi, Cameroon, the Central African Rep., Congo (Rep. of the), Gabon, Gambia, Ghana, Guinea, Iraq, Jordan, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Mozambique, Namibia, Oman, Uganda, Dem. Rep. of the Congo, Rwanda, Sierra Leone, South Africa, Swaziland, Chad, Togo, Zambia and Zimbabwe, the band 138–144 MHz is allocated to the fixed and mobile services on a primary basis.

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5.221 Stations of the mobile-satellite service in the band 148–149.9 MHz shall not cause harmful interference to, or claim protection from, stations of the fixed or mobile services operating in accordance with the Table of Frequency Allocations in the following countries: Albania, Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Cameroon, China, Cyprus, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Croatia, Cuba, Denmark, Egypt, the United Arab Emirates, Eritrea, Spain, Estonia, Ethiopia, the Russian Federation, Finland, France, Gabon, Ghana, Greece, Guinea, Guinea Bissau, Hungary, India, Iran (Islamic Republic of), Ireland, Iceland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lesotho, Latvia, Lebanon, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Malaysia, Mali, Malta, Mauritania, Moldova, Mongolia, Mozambique, Namibia, Norway, New Zealand, Oman, Uganda, Uzbekistan, Pakistan, Panama, Papua New Guinea, Paraguay, the Netherlands, the Philippines, Poland, Portugal, Qatar, Syrian Arab Republic, Kyrgyzstan, Slovakia, Romania, the United Kingdom, Senegal, Serbia and Montenegro, Sierra Leone, Singapore, Slovenia, Sri Lanka, South Africa, Sweden, Switzerland, Swaziland, Tanzania, Chad, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Viet Nam, Yemen, Zambia, and Zimbabwe.

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5.237 *Additional allocation:* In Congo (Rep. of the), Eritrea, Ethiopia, Gambia, Guinea, Libyan Arab Jamahiriya, Malawi, Mali, Sierra Leone, Somali, Chad and Zimbabwe, the band 174–223 MHz is also allocated to the fixed and mobile services on a secondary basis.

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5.254 The bands 235–322 MHz and 335.4–399.9 MHz may be used by the mobile-satellite service, subject to agreement obtained under No. 9.21, on condition that stations in this service do not cause harmful interference to those of other services operating or planned to be operated in accordance with the Table of Frequency Allocations except for the additional allocation made in footnote No. 5.256A.

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5.256A *Additional allocation:* In China, the Russian Federation, Kazakhstan and Ukraine, the band 258–261 MHz is also allocated to the space research service (Earth-to-space) and space operation service (Earth-

to-space) on a primary basis. Stations in the space research service (Earth-to-space) and space operation service (Earth-to-space) shall not cause harmful interference to, nor claim protection from, nor constrain the use and development of the mobile service systems and mobile-satellite service systems operating in the band. Stations in space research service (Earth-to-space) and space operation service (Earth-to-space) shall not constrain the future development of fixed service systems of other countries.

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5.262 *Additional allocation:* In Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Botswana, Bulgaria, Colombia, Costa Rica, Cuba, Egypt, the United Arab Emirates, Ecuador, the Russian Federation, Georgia, Hungary, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Liberia, Malaysia, Moldova, Uzbekistan, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Kyrgyzstan, Romania, Serbia and Montenegro, Singapore, Somalia, Tajikistan, Turkmenistan and Ukraine, the band 400.05–401 MHz is also allocated to the fixed and mobile services on a primary basis.

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5.271 *Additional allocation:* In Azerbaijan, Belarus, China, India, Latvia, Lithuania, Kyrgyzstan and Turkmenistan, the band 420–460 MHz is also allocated to the aeronautical radionavigation service (radio altimeters) on a secondary basis.

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5.273 *Different category of service:* In Libyan Arab Jamahiriya, the allocation of the bands 430–432 MHz and 438–440 MHz to the radiolocation service is on a secondary basis (see No. 5.32).

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5.277 *Additional allocation:* In Angola, Armenia, Azerbaijan, Belarus, Cameroon, Congo (Rep. of the), Djibouti, the Russian Federation, Georgia, Hungary, Israel, Kazakhstan, Mali, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., Romania, Rwanda, Tajikistan, Chad, Turkmenistan and Ukraine, the band 430–440 MHz is also allocated to the fixed service on a primary basis.

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5.279A The use of this band by sensors in the Earth exploration-satellite service (active) shall be in accordance with Recommendation ITU–R SA.1260–1. Additionally, the Earth exploration-satellite service (active) in the band 432–438 MHz shall not cause harmful interference to the aeronautical radionavigation service in China.

The provisions of this footnote in no way diminish the obligation of the Earth exploration-satellite service (active) to operate as a secondary service in accordance with Nos. 5.29 and 5.30.

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5.288 In the territorial waters of the United States and the Philippines, the preferred frequencies for use by on-board communication stations shall be 457.525 MHz, 457.550 MHz, 457.575 MHz and 457.600 MHz paired, respectively, with 467.750 MHz, 467.775 MHz, 467.800 MHz and 467.825 MHz. The characteristics of the equipment used shall conform to those specified in Recommendation ITU–R M.1174–1.

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5.294 *Additional allocation:* In Burundi, Cameroon, Congo (Rep. of the), Côte d'Ivoire, Ethiopia, Israel, Kenya, Lebanon, Libyan Arab Jamahiriya, Malawi, Syrian Arab Republic, Sudan, Chad and Yemen, the band 470–582 MHz is also allocated to the fixed service on a secondary basis.

5.296 *Additional allocation:* In Germany, Austria, Belgium, Côte d'Ivoire, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libyan Arab Jamahiriya, Lithuania, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, Syrian Arab Republic, the United Kingdom, Sweden, Switzerland, Swaziland and Tunisia, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table in countries other than those listed in this footnote.

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5.311 Within the frequency band 620–790 MHz, assignments may be made to television stations using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected (see Resolutions 33 (Rev. WRC–03) and 507 (Rev. WRC–03)). Such stations shall not produce a power flux-density in excess of the value − 129 dB(W/m^2) for angles of arrival less than 20° (see Recommendation 705) within the territories of other countries without the consent of the administrations of those countries. Resolution 545 (WRC–03) applies.

5.312 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Georgia, Hungary, Kazakhstan, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the band 645–862 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

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5.316 *Additional allocation:* In Germany, Saudi Arabia, Bosnia and Herzegovina, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Denmark, Egypt, Finland, Greece, Israel, Jordan, Kenya, The Former Yugoslav Republic of Macedonia, Libyan Arab Jamahiriya, Liechtenstein, Mali, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Syrian Arab Republic, Serbia and Montenegro, Sweden and Switzerland, the band 790–830 MHz, and in these same countries and in Spain, France, Gabon and Malta, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

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5.323 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Bulgaria, the Russian Federation, Hungary, Kazakhstan, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the band 862–960 MHz is also allocated to the aeronautical radionavigation service on a primary basis. Such use is subject to agreement obtained under No. 9.21 with administrations concerned and limited to ground-based radiobeacons in operation on 27 October 1997 until the end of their lifetime.

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5.328A Stations in the radionavigation-satellite service in the band 1164–1215 MHz shall operate in accordance with the provisions of Resolution 609 (WRC–03) and shall not claim protection from stations in the aeronautical radionavigation service in the band 960–1215 MHz. No. 5.43A does not apply. The provisions of No. 21.18 shall apply.

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5.329 Use of the radionavigation-satellite service in the band 1215–1300 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under No. 5.331. Furthermore, the use of the radionavigation-satellite service in the band 1215–1300 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. No. 5.43 shall not apply in respect of the radiolocation service. Resolution 608 (WRC–03) shall apply.

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5.330 *Additional allocation:* In Angola, Saudi Arabia, Bahrain, Bangladesh, Cameroon, China, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mozambique, Nepal, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Somalia, Sudan, Chad, Togo and Yemen, the band 1215–1300 MHz is also allocated to the fixed and mobile services on a primary basis.

5.331 *Additional allocation:* In Algeria, Germany, Saudi Arabia, Australia, Austria, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Cameroon, China, Korea (Rep. of), Croatia, Denmark, Egypt, the United Arab Emirates, Estonia, the Russian Federation, Finland, France, Ghana, Greece, Guinea, Equatorial Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Jordan, Kenya, Kuwait, The Former Yugoslav Republic of Macedonia, Lesotho, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Mauritania, Nigeria, Norway, Oman, the Netherlands, Poland, Portugal, Qatar, Syrian Arab Republic, Slovakia, the United Kingdom, Serbia and Montenegro, Slovenia, Somalia, Sudan, Sri Lanka, South Africa, Sweden, Switzerland, Thailand, Togo, Turkey, Venezuela and Viet Nam, the band 1215–1300 MHz is also

allocated to the radionavigation service on a primary basis. In Canada and the United States, the band 1240–1300 MHz is also allocated to the radionavigation service, and use of the radionavigation service shall be limited to the aeronautical radionavigation service.

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5.334 *Additional allocation:* In Canada and the United States, the band 1350–1370 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

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5.338 In Azerbaijan, Mongolia, Kyrgyzstan, Slovakia, the Czech Rep., Romania and Turkmenistan, existing installations of the radionavigation service may continue to operate in the band 1350–1400 MHz.

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5.339A *Additional allocation:* The band 1390–1392 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a secondary basis and the band 1430–1432 MHz is also allocated to the fixed-satellite service (space-to-Earth) on a secondary basis. These allocations are limited to use for feeder links for non-geostationary-satellite networks in the mobile-satellite service with service links below 1 GHz, and Resolution 745 (WRC–03) applies.

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5.347 *Different category of service:* In Bangladesh, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cuba, Denmark, Egypt, Greece, Ireland, Italy, Mozambique, Portugal, Serbia and Montenegro, Sri Lanka, Swaziland, Yemen and Zimbabwe, the allocation of the band 1452–1492 MHz to the broadcasting-satellite service and the broadcasting service is on a secondary basis until 1 April 2007.

5.347A In the bands: 1452–1492 MHz, 1525–1559 MHz, 1613.8–1626.5 MHz, 2655–2670 MHz, 2670–2690 MHz, 21.4–22 GHz, Resolution 739 (WRC–03) applies.

5.348 The use of the band 1518–1525 MHz by the mobile-satellite service is subject to coordination under No. 9.11A. In the band 1518–1525 MHz stations in the mobile-satellite service shall not claim protection from the stations in the fixed service. No. 5.43A does not apply.

5.348A In the band 1518–1525 MHz, the coordination threshold in terms of the power flux-density levels at the surface of the Earth in application of No. 9.11A for space stations in the mobile-satellite (space-to-Earth) service, with respect to the land mobile service use for specialized mobile radios or used in conjunction with public switched telecommunication networks (PSTN) operating within the territory of Japan, shall be -150 dB(W/m^2) in any 4 kHz band for all angles of arrival, instead of those given in Table 5–2 of Appendix 5. In the band 1518–1525 MHz stations in the mobile-satellite service shall not claim protection from stations in the mobile service in the territory of Japan. No. 5.43A does not apply.

5.348B In the band 1518–1525 MHz, stations in the mobile-satellite service shall not claim protection from aeronautical mobile telemetry stations in the mobile service in the territory of the United States (see Nos. 5.343 and 5.344) and in the countries listed in No. 5.342. No. 5.43A does not apply.

5.348C For the use of the bands 1518–1525 MHz and 1668–1675 MHz by the mobile-satellite service, see Resolution 225 (Rev. WRC–03).

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5.355 *Additional allocation:* In Bahrain, Bangladesh, Congo (Rep. of the), Egypt, Eritrea, Iraq, Israel, Kuwait, Lebanon, Malta, Qatar, Syrian Arab Republic, Somalia, Sudan, Chad, Togo and Yemen, the bands 1540–1559 MHz, 1610–1645.5 MHz and 1646.5–1660 MHz are also allocated to the fixed service on a secondary basis.

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5.359 *Additional allocation:* In Germany, Saudi Arabia, Armenia, Austria, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Bulgaria, Cameroon, Spain, the Russian Federation, France, Gabon, Georgia, Greece, Guinea, Guinea-Bissau, Hungary, Jordan, Kazakhstan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Lithuania, Mauritania, Moldova, Mongolia, Uganda, Uzbekistan, Pakistan, Poland, Syrian Arab Republic, Kyrgyzstan, the Dem. People's Rep. of Korea, Romania, Swaziland, Tajikistan, Tanzania, Tunisia, Turkmenistan and Ukraine, the bands 1550–1559 MHz, 1610–1645.5 MHz and 1646.5–1660 MHz are also allocated to the fixed service on a primary basis. Administrations are urged to make all practicable efforts to avoid the implementation of new fixed-service stations in these bands.

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5.362B *Additional allocation:* The band 1559–1610 MHz is also allocated to the fixed service on a primary basis until 1 January 2005 in Germany, Armenia, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Bulgaria, Spain, the Russian Federation, France, Gabon, Georgia, Greece, Guinea, Guinea-Bissau, Hungary, Kazakhstan, Lithuania, Moldova, Mongolia, Nigeria, Uganda, Uzbekistan, Pakistan, Poland, Kyrgyzstan, the Dem. People's Rep. of Korea, Romania, Senegal, Swaziland, Tajikistan, Tanzania, Turkmenistan and Ukraine, and until 1 January 2010 in Saudi Arabia, Cameroon, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mali, Mauritania, Syrian Arab Republic and Tunisia. After these dates, the fixed service may continue to operate on a secondary basis until 1 January 2015, at which time this allocation shall no longer be valid. Administrations are urged to take all practicable steps to protect the radionavigation-satellite service and the aeronautical radionavigation service and not authorize new frequency assignments to fixed-service systems in this band.

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5.369 *Different category of service:* In Angola, Australia, Burundi, China, Eritrea, Ethiopia, India, Iran (Islamic Republic of), Israel, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Mali, Pakistan, Papua New Guinea, Syrian Arab Republic, Dem. Rep. of the Congo, Sudan, Swaziland, Togo and Zambia, the allocation of the band 1610–1626.5 MHz to the radiodetermination-satellite service (Earth-to-space) is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21 from countries not listed in this provision.

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5.379B The use of the band 1668–1675 MHz by the mobile-satellite service is subject to coordination under No. 9.11A.

5.379C In order to protect the radio astronomy service in the band 1668–1670 MHz, the aggregate power flux-density (pfd) values produced by mobile earth stations in a network of the mobile-satellite service operating in this band shall not exceed -181 dB(W/m^2) in 10 MHz and -194 dB(W/m^2) in any 20 kHz at any radio astronomy station recorded in the Master International Frequency Register, for more than 2% of integration periods of 2000s.

5.379D For sharing of the band 1668–1675 MHz between the mobile-satellite service and the fixed, mobile and space research (passive) services, Resolution 744 (WRC–03) shall apply.

5.379E In the band 1668.4–1675 MHz, stations in the mobile-satellite service shall not cause harmful interference to stations in the meteorological aids service in China, Iran (Islamic Republic of), Japan and Uzbekistan. In the band 1668.4–1675 MHz, administrations are urged not to implement new systems in the meteorological aids service and are encouraged to migrate existing meteorological aids service operations to other bands as soon as practicable.

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5.380A In the band 1670–1675 MHz, stations in the mobile-satellite service shall not cause harmful interference to, nor constrain the development of, existing earth stations in the meteorological-satellite service notified in accordance with Resolution 670 (WRC–03).

5.381 *Additional allocation:* In Afghanistan, Costa Rica, Cuba, India, Iran (Islamic Republic of) and Pakistan, the band 1690–1700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

5.382 *Different category of service:* In Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Bulgaria, Congo (Rep. of the), Egypt, the United Arab Emirates, Eritrea, Ethiopia, the Russian Federation, Guinea, Hungary, Iraq, Israel, Jordan, Kazakhstan, Kuwait, the Former Yugoslav Republic of Macedonia, Lebanon, Mauritania, Moldova, Mongolia, Oman, Uzbekistan, Poland, Qatar, Syrian Arab Republic, Kyrgyzstan, Romania, Serbia and Montenegro, Somalia, Tajikistan, Tanzania, Turkmenistan, Ukraine and Yemen, the allocation of the band 1690–1700 MHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. 5.33), and in the Dem. People's Rep. of Korea, the allocation of the band 1690–1700 MHz to the fixed service is on a primary basis (see No. 5.33) and to the mobile, except aeronautical mobile, service on a secondary basis.

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5.386 *Additional allocation:* The band 1750–1850 MHz is also allocated to the space operation (Earth-to-space) and space research (Earth-to-space) services in Region 2, in Australia, Guam, India, Indonesia and Japan

on a primary basis, subject to agreement obtained under No. 9.21, having particular regard to troposcatter systems.

5.387 *Additional allocation:* In Azerbaijan, Belarus, Georgia, Kazakhstan, Mongolia, Kyrgyzstan, Slovakia, Romania, Tajikistan and Turkmenistan, the band 1770–1790 MHz is also allocated to the meteorological-satellite service on a primary basis, subject to agreement obtained under No. 9.21.

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5.388A In Regions 1 and 3, the bands 1885–1980 MHz, 2010–2025 MHz and 2110–2170 MHz and, in Region 2, the bands 1885–1980 MHz and 2110–2160 MHz may be used by high altitude platform stations as base stations to provide International Mobile Telecommunications-2000 (IMT–2000), in accordance with Resolution 221 (Rev. WRC–03). Their use by IMT–2000 applications using high altitude platform stations as base stations does not preclude the use of these bands by any station in the services to which they are allocated and does not establish priority in the Radio Regulations.

5.388B In Algeria, Saudi Arabia, Bahrain, Benin, Burkina Faso, Cameroon, Comoros, Côte d'Ivoire, China, Cuba, Djibouti, Egypt, United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, India, Iran (Islamic Republic of), Israel, Libyan Arab Jamahiriya, Jordan, Kenya, Kuwait, Mali, Morocco, Mauritania, Nigeria, Oman, Uganda, Qatar, Syrian Arab Republic, Senegal, Singapore, Sudan, Tanzania, Chad, Togo, Tunisia, Yemen, Zambia and Zimbabwe, for the purpose of protecting fixed and mobile services, including IMT–2000 mobile stations, in their territories from co-channel interference, a HAPS operating as an IMT–2000 base station in neighbouring countries, in the bands referred to in No. 5.388A, shall not exceed a co-channel power flux-density of − 127 dB(W/(m² · MHz)) at the Earth's surface outside a country's borders unless explicit agreement of the affected administration is provided at the time of the notification of HAPS.

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5.395 In France and Turkey, the use of the band 2310–2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

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5.400 *Different category of service:* In Angola, Australia, Bangladesh, Burundi, China, Eritrea, Ethiopia, India, Iran (Islamic Republic of), Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Mali, Pakistan, Papua New Guinea, Dem. Rep. of the Congo, Syrian Arab Republic, Sudan, Swaziland, Togo and Zambia, the allocation of the band 2483.5–2500 MHz to the radiodetermination-satellite service (space-to-Earth) is on a primary basis (see No. 5.33), subject to agreement obtained under No. 9.21 from countries not listed in this provision.

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5.416 The use of the band 2520–2670 MHz by the broadcasting satellite service is limited to national and regional systems for community reception, subject to agreement obtained under No. 9.21.

5.418 *Additional allocation:* In Korea (Rep. of), India, Japan, Pakistan and Thailand, the band 2535–2655 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 (Rev. WRC–03). The provisions of No. 5.416 and Table 21–4 of Article 21, do not apply to this additional allocation. Use of non-geostationary-satellite systems in the broadcasting-satellite service (sound) is subject to Resolution 539 (Rev. WRC–03). Geostationary broadcasting-satellite service (sound) systems for which complete Appendix 4 coordination information has been received after 1 June 2005 are limited to systems intended for national coverage. The power flux-density at the Earth's surface produced by emissions from a geostationary broadcasting-satellite service (sound) space station operating in the band 2630–2655 MHz, and for which complete Appendix 4 coordination information has been received after 1 June 2005, shall not exceed the following limits, for all conditions and for all methods of modulation:

− 130 dB(W/(m² · MHz))—for $0° \le \theta \le 5°$

− 130 + 0.4 (θ − 5) dB(W/(m² · MHz))—for $5° < \theta \le 25°$

− 122 dB(W/(m² · MHz))—for $25° < \theta \le 90°$

where θ is the angle of arrival of the incident wave above the horizontal plane, in degrees. These limits may be exceeded on the territory of any country whose administration has so agreed. As an exception to the limits above, the pfd value of − 122 dB(W/(m² · MHz)) shall be used as a threshold for coordination under No. 9.11 in an area of 1500 km around the territory of the administration notifying the broadcasting-satellite service (sound) system. In addition, the pfd value shall not exceed − 100 dB(W/(m2 · MHz)) anywhere on the territory of the Russian Federation.

In addition, an administration listed in this provision shall not have simultaneously two overlapping frequency assignments, one under this provision and the other under No. 5.416 for systems for which complete Appendix 4 coordination information has been received after 1 June 2005.

5.418AA In applying provision No. 5.418, in Korea (Rep. of) and Japan, resolves 3 of Resolution 528 (Rev. WRC–03) is relaxed to allow the broadcasting-satellite service (sound) and the complementary terrestrial broadcasting service to additionally operate on a primary basis in the band 2605–2630 MHz. This use is limited to systems intended for national coverage. An administration listed in this provision shall not have simultaneously two overlapping frequency assignments, one under this provision and the other under No. 5.416. The provisions of No. 5.416 and Table 21–4 of Article 21 do not apply. Use of non-geostationary-satellite systems in the broadcasting-satellite service (sound) in the band 2605–2630 MHz is subject to the provisions of Resolution 539 (Rev. WRC–03). The power flux-density at the Earth's surface produced by emissions from a geostationary broadcasting-satellite service (sound) space station operating in the band 2605–2630 MHz for which complete Appendix 4 coordination information, or notification information, has been received after 4 July 2003, for all conditions and for all methods of modulation, shall not exceed the following limits:

− 130 dB(W/(m² · MHz))—for $0° \le \theta \le 5°$

− 130 + 0.4 (θ − 5) dB(W/(m² · MHz))—for $5° < \theta \le 25°$

− 122 dB(W/(m² · MHz))—for $25° < \theta \le 90°$

where θ is the angle of arrival of the incident wave above the horizontal plane, in degrees. These limits may be exceeded on the territory of any country whose administration has so agreed. In the case of the broadcasting-satellite service (sound) networks of Korea (Rep. of), as an exception to the limits above, the pfd value of − 122 dB(W/(m² · MHz)) shall be used as a threshold for coordination under No. 9.11 in an area of 1000 km around the territory of the administration notifying the BSS (sound) system, for angles of arrival greater than 35°.

5.418AB In Korea (Rep. of) and Japan, use of the band 2605–2630 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.418AA, for which complete Appendix 4 coordination information, or notification information, has been received after 4 July 2003, is subject to the application of the provisions of No. 9.12A, in respect of geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received after 4 July 2003, and No. 22.2 does not apply. No. 22.2 shall continue to apply with respect to geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received before 5 July 2003.

5.418AC Use of the band 2605–2630 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.418AA, for which complete Appendix 4 coordination information, or notification information, has been received after 4 July 2003, is subject to the application of the provisions of No. 9.12.

5.418AD Use of the band 2605–2630 MHz by geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, has been received after 4 July 2003 is subject to the application of the provisions of No. 9.13 with respect to non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.418AA, and No. 22.2 does not apply.

5.418A In certain Region 3 countries listed in No. 5.418, use of the band 2630–2655 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound) for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000, is subject to the application of the provisions of No. 9.12A, in respect of geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received after 2 June 2000, and No. 22.2 does not apply. No. 22.2 shall continue to apply with respect to geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, is considered to have been received before 3 June 2000.

5.418B Use of the band 2630–2655 MHz by non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.418, for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000, is subject to the application of the provisions of No. 9.12.

5.418C Use of the band 2630–2655 MHz by geostationary-satellite networks for which complete Appendix 4 coordination information, or notification information, has been received after 2 June 2000 is subject to the application of the provisions of No. 9.13 with respect to non-geostationary-satellite systems in the broadcasting-satellite service (sound), pursuant to No. 5.418 and No. 22.2 does not apply.

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5.422 *Additional allocation:* In Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, Brunei Darussalam, Congo (Rep. of the), Côte d'Ivoire, Cuba, Egypt, the United Arab Emirates, Eritrea, Ethiopia, the Russian Federation, Gabon, Georgia, Guinea, Guinea-Bissau, Iran (Islamic Republic of), Iraq, Israel, Jordan, Lebanon, Mauritania, Moldova, Mongolia, Nigeria, Oman, Uzbekistan, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Kyrgyzstan, the Dem. Rep. of the Congo, Romania, Serbia and Montenegro, Somalia, Tajikistan, Tunisia, Turkmenistan, Ukraine and Yemen, the band 2690–2700 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

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5.424A In the band 2900–3100 MHz, stations in the radiolocation service shall not cause harmful interference to, nor claim protection from, radar systems in the radionavigation service.

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5.428 *Additional allocation:* in Azerbaijan, Cuba, Mongolia, Kyrgyzstan, Romania and Turkmenistan, the band 3100–3300 MHz is also allocated to the radionavigation service on a primary basis.

5.429 *Additional allocation:* In Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, China, Congo (Rep. of the), Korea (Rep. of), the United Arab Emirates, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Oman, Pakistan, Qatar, Syrian Arab Republic, Dem. People's Rep. of Korea and Yemen, the band 3300–3400 MHz is also allocated to the fixed and mobile services on a primary basis. The countries bordering the Mediterranean shall not claim protection for their fixed and mobile services from the radiolocation service.

5.430 *Additional allocation:* In Azerbaijan, Cuba, Mongolia, Kyrgyzstan, Romania and Turkmenistan, the band 3300–3400 MHz is also allocated to the radionavigation service on a primary basis.

5.431 *Additional allocation:* In Germany, Israel and the United Kingdom, the band 3400–3475 MHz is also allocated to the amateur service on a secondary basis.

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5.443B In order not to cause harmful interference to the microwave landing system operating above 5030 MHz, the aggregate power flux-density produced at the Earth's surface in the band 5030–5150 MHz by all the space stations within any radionavigation-satellite service system (space-to-Earth) operating in the band 5010–5030 MHz shall not exceed −124.5 dB(W/m²) in a 150 kHz band. In order not to cause harmful interference to the radio astronomy service in the band 4990–5000 MHz, radionavigation-satellite service systems operating in the band 5010–5030 MHz shall comply with the limits in the band 4990–5000 MHz defined in Resolution 741 (WRC–03).

5.444 The band 5030–5150 MHz is to be used for the operation of the international standard system (microwave landing system) for precision approach and landing. The requirements of this system shall take precedence over other uses of this band. For the use of this band, No. 5.444A and Resolution 114 (Rev.WRC–03) apply.

5.444A *Additional allocation:* The band 5091–5150 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a primary basis. This allocation is limited to feeder links of non-geostationary mobile-satellite systems in the mobile-satellite service and is subject to coordination under No. 9.11A.

In the band 5091–5150 MHz, the following conditions also apply:

—Prior to 1 January 2018, the use of the band 5091–5150 MHz by feeder links of non-geostationary-satellite systems in the mobile-satellite service shall be made in accordance with Resolution 114 (Rev.WRC–03);

—Prior to 1 January 2018, the requirements of existing and planned international standard systems for the aeronautical radionavigation service which cannot be met in the 5000–5091 MHz band, shall take precedence over other uses of this band;

—After 1 January 2012, no new assignments shall be made to earth stations providing feeder links of non-geostationary mobile-satellite systems;

—After 1 January 2018, the fixed-satellite service will become secondary to the aeronautical radionavigation service.

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5.447E *Additional allocation:* The band 5250–5350 MHz is also allocated to the fixed service on a primary basis in the following countries in Region 3: Australia, Korea (Rep. of), India, Indonesia, Iran (Islamic Republic of), Japan, Malaysia, Papua New Guinea, Philippines, Sri Lanka, Thailand and Viet Nam. The use of this band by the fixed service is intended for the implementation of fixed wireless access systems and shall comply with Recommendation ITU–R F.1613. In addition, the fixed service shall not claim protection from the radiodetermination, Earth exploration-satellite (active) and space research (active) services, but the provisions of No. 5.43A do not apply to the fixed service with respect to the Earth exploration-satellite (active) and space research (active) services. After implementation of fixed wireless access systems in the fixed service with protection for the existing radiodetermination systems, no more stringent constraints should be imposed on the fixed wireless access systems by future radiodetermination implementations.

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5.453 *Additional allocation:* In Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Côte d'Ivoire, Egypt, the United Arab Emirates, Gabon, Guinea, Equatorial Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Madagascar, Malaysia, Nigeria, Oman, Pakistan, the Philippines, Qatar, the Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Sri Lanka, Swaziland, Tanzania, Chad, Thailand, Togo, Viet Nam and Yemen, the band 5650–5850 MHz is also allocated to the fixed and mobile services on a primary basis. In this case, the provisions of Resolution 229 (WRC–03) do not apply.

5.454 *Different category of service:* In Azerbaijan, the Russian Federation, Georgia, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 5670–5725 MHz to the space research service is on a primary basis (see No. 5.33).

5.455 *Additional allocation:* In Armenia, Azerbaijan, Belarus, Cuba, the Russian Federation, Georgia, Hungary, Kazakhstan, Latvia, Moldova, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan, Turkmenistan and Ukraine, the band 5670–5850 MHz is also allocated to the fixed service on a primary basis.

5.456 *Additional allocation:* In Cameroon, the band 5755–5850 MHz is also allocated to the fixed service on a primary basis.

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5.460 The use of the band 7145–7190 MHz by the space research service (Earth-to-space) is restricted to deep space; no emissions to deep space shall be effected in the band 7190–7235 MHz. Geostationary satellites in the space research service operating in the band 7190–7235 MHz shall not claim protection from existing and future stations of the fixed and mobile services and No. 5.43A does not apply.

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5.466 *Different category of service:* In Israel, Singapore and Sri Lanka, the allocation of the band 8400–8500 MHz to the space research service is on a secondary basis (see No. 5.32).

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5.468 *Additional allocation:* In Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Burundi, Cameroon, China, Congo (Rep. of the), Costa Rica, Egypt, the United Arab Emirates, Gabon, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mali, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, Qatar, Syrian Arab Republic, Dem. People's Rep. of Korea, Senegal, Singapore, Somalia, Swaziland, Tanzania, Chad, Togo, Tunisia and Yemen, the band 8500–8750 MHz is also allocated to the fixed and mobile services on a primary basis.

5.469 *Additional allocation:* In Armenia, Azerbaijan, Belarus, the Russian Federation,

Georgia, Hungary, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, the Czech Rep., Romania, Tajikistan, Turkmenistan and Ukraine, the band 8500–8750 MHz is also allocated to the land mobile and radionavigation services on a primary basis.

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5.473 *Additional allocation:* In Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Cuba, the Russian Federation, Georgia, Hungary, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Romania, Tajikistan, Turkmenistan and Ukraine, the bands 8850–9000 MHz and 9200–9300 MHz are also allocated to the radionavigation service on a primary basis.

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5.477 *Different category of service:* In Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Liberia, Malaysia, Nigeria, Oman, Pakistan, Qatar, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, Trinidad and Tobago, and Yemen, the allocation of the band 9800–10000 MHz to the fixed service is on a primary basis (see No. 5.33).

5.478 *Additional allocation:* In Azerbaijan, Bulgaria, Mongolia, Kyrgyzstan, Romania, Turkmenistan and Ukraine, the band 9800–10000 MHz is also allocated to the radionavigation service on a primary basis.

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5.481 *Additional allocation:* In Germany, Angola, Brazil, China, Costa Rica, Côte d'Ivoire, El Salvador, Ecuador, Spain, Guatemala, Hungary, Japan, Kenya, Morocco, Nigeria, Oman, Uzbekistan, Paraguay, Peru, the Dem. People's Rep. of Korea, Tanzania, Thailand and Uruguay, the band 10.45–10.5 GHz is also allocated to the fixed and mobile services on a primary basis.

5.482 In the band 10.6–10.68 GHz, stations of the fixed and mobile, except aeronautical mobile, services shall be limited to a maximum equivalent isotropically radiated power of 40 dBW and the power delivered to the antenna shall not exceed −3 dBW. These limits may be exceeded subject to agreement obtained under No. 9.21. However, in Saudi Arabia, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, China, the United Arab Emirates, Georgia, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kazakhstan, Kuwait, Latvia, Lebanon, Moldova, Nigeria, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Tajikistan and Turkmenistan, the restrictions on the fixed and mobile, except aeronautical mobile, services are not applicable.

5.483 *Additional allocation:* In Saudi Arabia, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, China, Colombia, Korea (Rep. of), Costa Rica, Egypt, the United Arab Emirates, Georgia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Lebanon, Mongolia, Uzbekistan, Qatar, Kyrgyzstan, the Dem. People's Rep. of Korea, Romania, Serbia and Montenegro, Tajikistan, Turkmenistan and Yemen, the band 10.68–10.7 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis. Such use is limited to equipment in operation by 1 January 1985.

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5.487 In the band 11.7–12.5 GHz in Regions 1 and 3, the fixed, fixed-satellite, mobile, except aeronautical mobile, and broadcasting services, in accordance with their respective allocations, shall not cause harmful interference to, or claim protection from, broadcasting-satellite stations operating in accordance with the Regions 1 and 3 Plan in Appendix 30.

5.487A *Additional allocation:* In Region 1, the band 11.7–12.5 GHz, in Region 2, the band 12.2–12.7 GHz and, in Region 3, the band 11.7–12.2 GHz, are also allocated to the fixed-satellite service (space-to-Earth) on a primary basis, limited to non-geostationary systems and subject to application of the provisions of No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service shall not claim protection from geostationary-satellite networks in the broadcasting-satellite service operating in accordance with the Radio Regulations, irrespective of the dates of receipt by the Bureau of the complete coordination or notification information, as appropriate, for the non-geostationary-satellite systems in the fixed-satellite service and of the complete coordination or notification information, as appropriate, for the geostationary-satellite networks, and No. 5.43A does not apply. Non-geostationary-satellite systems in the fixed-satellite service in the above bands shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

5.488 The use of the band 11.7–12.2 GHz by geostationary-satellite networks in the fixed-satellite service in Region 2 is subject to application of the provisions of No. 9.14 for coordination with stations of terrestrial services in Regions 1, 2 and 3. For the use of the band 12.2–12.7 GHz by the broadcasting-satellite service in Region 2, see Appendix 30.

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5.494 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Bahrain, Cameroon, the Central African Rep., Congo (Rep. of the), Côte d'Ivoire, Egypt, the United Arab Emirates, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Iraq, Israel, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Madagascar, Mali, Morocco, Mongolia, Nigeria, Qatar, Syrian Arab Republic, Dem. Rep. of the Congo, Somalia, Sudan, Chad, Togo and Yemen, the band 12.5–12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a primary basis.

5.495 *Additional allocation:* In Bosnia and Herzegovina, Croatia, France, Greece, Liechtenstein, Monaco, Uganda, Portugal, Romania, Serbia and Montenegro, Slovenia, Switzerland, Tanzania and Tunisia, the band 12.5–12.75 GHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

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5.500 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Bahrain, Brunei Darussalam, Cameroon, Egypt, the United Arab Emirates, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Madagascar, Malaysia, Mali, Malta, Morocco, Mauritania, Nigeria, Pakistan, Qatar, Syrian Arab Republic, Singapore, Sudan, Chad and Tunisia, the band 13.4–14 GHz is also allocated to the fixed and mobile services on a primary basis.

5.501 *Additional allocation:* In Azerbaijan, Hungary, Japan, Mongolia, Kyrgyzstan, Romania, the United Kingdom and Turkmenistan, the band 13.4–14 GHz is also allocated to the radionavigation service on a primary basis.

5.502 In the band 13.75–14 GHz, an earth station of a geostationary fixed-satellite service network shall have a minimum antenna diameter of 1.2 m and an earth station of a non-geostationary fixed-satellite service system shall have a minimum antenna diameter of 4.5 m. In addition, the e.i.r.p., averaged over one second, radiated by a station in the radiolocation or radionavigation services shall not exceed 59 dBW for elevation angles above 2§ and 65 dBW at lower angles. Before an administration brings into use an earth station in a geostationary-satellite network in the fixed-satellite service in this band with an antenna size smaller than 4.5 m, it shall ensure that the power flux-density produced by this earth station does not exceed:

− 115 dB(W/(m² × 10 MHz)) for more than 1% of the time produced at 36 m above sea level at the low water mark, as officially recognized by the coastal state;

− 115 dB(W/(m² × 10 MHz)) for more than 1% of the time produced 3 m above ground at the border of the territory of an administration deploying or planning to deploy land mobile radars in this band, unless prior agreement has been obtained.

For earth stations within the fixed-satellite service having an antenna diameter greater than or equal to 4.5 m, the e.i.r.p. of any emission should be at least 68 dBW and should not exceed 85 dBW.

5.503 In the band 13.75–14 GHz, geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 shall operate on an equal basis with stations in the fixed-satellite service; after that date, new geostationary space stations in the space research service will operate on a secondary basis. Until those geostationary space stations in the space research service for which information for advance publication has been received by the Bureau prior to 31 January 1992 cease to operate in this band:

—In the band 13.77–13.78 GHz, the e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in geostationary-satellite orbit shall not exceed:

(1) $4.7D + 28$ dB(W/40 kHz), where D is the fixed-satellite service earth station antenna diameter (m) for antenna diameters equal to or greater than 1.2 m and less than 4.5 m;

(2) $49.2 + 20 \log(D/4.5)$ dB(W/40 kHz), where D is the fixed-satellite service earth

station antenna diameter (m) for antenna diameters equal to or greater than 4.5 m and less than 31.9 m;

(3) 66.2 dB(W/40 kHz) for any fixed-satellite service earth station for antenna diameters (m) equal to or greater than 31.9 m;

(4) 56.2 dB(W/4 kHz) for narrow-band (less than 40 kHz of necessary bandwidth) fixed-satellite service earth station emissions from any fixed-satellite service earth station having an antenna diameter of 4.5 m or greater;

The e.i.r.p. density of emissions from any earth station in the fixed-satellite service operating with a space station in non-geostationary-satellite orbit shall not exceed 51 dBW in the 6 MHz band from 13.772 to 13.778 GHz.

Automatic power control may be used to increase the e.i.r.p. density in these frequency ranges to compensate for rain attenuation, to the extent that the power flux-density at the fixed-satellite service space station does not exceed the value resulting from use by an earth station of an e.i.r.p. meeting the above limits in clear-sky conditions.

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5.504C In the band 14–14.25 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, Côte d'Ivoire, Egypt, Guinea, India, Iran (Islamic Republic of), Kuwait, Lesotho, Nigeria, Oman, Syrian Arab Republic and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

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5.505 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Bahrain, Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Congo (Rep. of the), Korea (Rep. of), Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lesotho, Lebanon, Malaysia, Mali, Morocco, Mauritania, Oman, Pakistan, the Philippines, Qatar, Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, Swaziland, Tanzania, Chad and Yemen, the band 14–14.3 GHz is also allocated to the fixed service on a primary basis.

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5.506A In the band 14–14.5 GHz, ship earth stations with an e.i.r.p. greater than 21 dBW shall operate under the same conditions as earth stations located on board vessels, as provided in Resolution 902 (WRC–03). This footnote shall not apply to ship earth stations for which the complete Appendix 4 information has been received by the Bureau prior to 5 July 2003.

5.506B Earth stations located on board vessels communicating with space stations in the fixed-satellite service may operate in the frequency band 14–14.5 GHz without the need for prior agreement from Cyprus, Greece and Malta, within the minimum distance given in Resolution 902 (WRC–03) from these countries.

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5.508 *Additional allocation:* In Germany, Bosnia and Herzegovina, France, Italy, The Former Yugoslav Rep. of Macedonia, Libyan Arab Jamahiriya, the United Kingdom, Serbia and Montenegro and Slovenia, the band 14.25–14.3 GHz is also allocated to the fixed service on a primary basis.

5.508A In the band 14.25–14.3 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, China, Côte d'Ivoire, Egypt, France, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait, Lesotho, Nigeria, Oman, Syrian Arab Republic, the United Kingdom and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

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5.509A In the band 14.3–14.5 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, Cameroon, China, Côte d'Ivoire, Egypt, France, Gabon, Guinea, India, Iran (Islamic Republic of), Italy, Kuwait, Lesotho, Morocco, Nigeria, Oman, Syrian Arab Republic, the United Kingdom, Sri Lanka, Tunisia and Viet Nam by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

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5.512 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Austria, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Cameroon, Congo (Rep. of the), Costa Rica, Egypt, El Salvador, the United Arab Emirates, Eritrea, Finland, Guatemala, India, Indonesia, Iran (Islamic Republic of), Jordan, Kenya, Kuwait, Libyan Arab Jamahiriya, Malaysia, Mali, Morocco, Mauritania, Mozambique, Nepal, Nicaragua, Oman, Pakistan, Qatar, Serbia and Montenegro, Singapore, Slovenia, Somalia, Sudan, Swaziland, Tanzania, Chad, Togo and Yemen, the band 15.7–17.3 GHz is also allocated to the fixed and mobile services on a primary basis.

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5.514 *Additional allocation:* In Algeria, Angola, Saudi Arabia, Austria, Bahrain, Bangladesh, Bosnia and Herzegovina, Cameroon, Costa Rica, El Salvador, the United Arab Emirates, Finland, Guatemala, India, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Jordan, Kuwait, Libyan Arab Jamahiriya, Lithuania, Nepal, Nicaragua, Nigeria, Oman, Uzbekistan, Pakistan, Qatar, Kyrgyzstan, Serbia and Montenegro, Slovenia and Sudan; the band 17.3–17.7 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits given in Nos. 21.3 and 21.5 shall apply.

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5.516A In the band 17.3–17.7 GHz, earth stations of the fixed-satellite service (space-to-Earth) in Region 1 shall not claim protection from the broadcasting-satellite service feeder-link earth stations operating under Appendix 30A, nor put any limitations or restrictions on the locations of the broadcasting-satellite service feeder-link earth stations anywhere within the service area of the feeder link.

5.516B The following bands are identified for use by high-density applications in the fixed-satellite service:

17.3–17.7 GHz—(space-to-Earth) in Region 1,
18.3–19.3 GHz—(space-to-Earth) in Region 2,
19.7–20.2 GHz—(space-to-Earth) in all Regions,
39.5–40 GHz—(space-to-Earth) in Region 1,
40–40.5 GHz—(space-to-Earth) in all Regions,
40.5–42 GHz—(space-to-Earth) in Region 2,
47.5–47.9 GHz—(space-to-Earth) in Region 1,
48.2–48.54 GHz—(space-to-Earth) in Region 1,
49.44–50.2 GHz—(space-to-Earth) in Region 1, and
27.5–27.82 GHz—(Earth-to-space) in Region 1,
28.35–28.45 GHz—(Earth-to-space) in Region 2,
28.45–28.94 GHz—(Earth-to-space) in all Regions,
28.94–29.1 GHz—(Earth-to-space) in Region 2 and 3,
29.25–29.46 GHz—(Earth-to-space) in Region 2,
29.46–30 GHz—(Earth-to-space) in all Regions,
48.2–50.2 GHz—(Earth-to-space) in Region 2.

This identification does not preclude the use of these bands by other fixed-satellite service applications or by other services to which these bands are allocated on a co-primary basis and does not establish priority in these Regulations among users of the bands. Administrations should take this into account when considering regulatory provisions in relation to these bands. See Resolution 143 (WRC–03).

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5.521 *Alternative allocation:* In Germany, Denmark, the United Arab Emirates and Greece, the band 18.1–18.4 GHz is allocated to the fixed, fixed-satellite (space-to-Earth) and mobile services on a primary basis (see No. 5.33). The provisions of No. 5.519 also apply.

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5.536A Administrations operating earth stations in the Earth exploration-satellite service or the space research service shall not claim protection from stations in the fixed and mobile services operated by other administrations. In addition, earth stations in the Earth exploration-satellite service or in the space research service should be operated taking into account Recommendations ITU–R SA.1278 and ITU–R SA.1625, respectively.

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5.536C In Algeria, Saudi Arabia, Bahrain, Botswana, Brazil, Cameroon, Comoros, Cuba, Djibouti, Egypt, United Arab Emirates, Estonia, Finland, Iran (Islamic Republic of), Israel, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Morocco, Nigeria, Oman, Qatar, Syrian Arab Republic, Somalia, Sudan, Tanzania, Tunisia, Uruguay, Zambia and Zimbabwe, earth stations operating in the space research service in the band 25.5–27 GHz shall not claim protection from, or constrain the use and deployment of, stations of the fixed and mobile services.

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5.537A In Bhutan, Korea (Rep. of), the Russian Federation, Indonesia, Iran (Islamic Republic of), Japan, Kazakhstan, Lesotho, Malaysia, Maldives, Mongolia, Myanmar, Uzbekistan, Pakistan, Philippines, Kyrgyzstan, the Dem. People's Rep. of Korea, Sri Lanka, Thailand and Viet Nam, the allocation to the fixed service in the band 27.5–28.35 GHz may also be used by high altitude platform stations (HAPS). The use of HAPS within the band 27.5–28.35 GHz is limited, within the territory of the countries listed above, to a single 300 MHz sub-band. Such use of 300 MHz of the fixed-service allocation by HAPS in the above countries is further limited to operation in the HAPS-to-ground direction and shall not cause harmful interference to, nor claim protection from, other types of fixed-service systems or other co-primary services. Furthermore, the development of these other services shall not be constrained by HAPS. See Resolution 145 (WRC–03).

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5.543A In Bhutan, Korea (Rep. of), the Russian Federation, Indonesia, Iran (Islamic Republic of), Japan, Kazakhstan, Lesotho, Malaysia, Maldives, Mongolia, Myanmar, Uzbekistan, Pakistan, Philippines, Kyrgyzstan, the Dem. People's Rep. of Korea, Sri Lanka, Thailand and Viet Nam, the allocation to the fixed service in the band 31–31.3 GHz may also be used by systems using high altitude platform stations (HAPS) in the ground-to-HAPS direction. The use of the band 31–31.3 GHz by systems using HAPS is limited to the territory of the countries listed above and shall not cause harmful interference to, nor claim protection from, other types of fixed-service systems, systems in the mobile service and systems operated under No. 5.545. Furthermore, the development of these services shall not be constrained by HAPS. Systems using HAPS in the band 31–31.3 GHz shall not cause harmful interference to the radio astronomy service having a primary allocation in the band 31.3–31.8 GHz, taking into account the protection criterion as given in Recommendation ITU–R RA.769. In order to ensure the protection of satellite passive services, the level of unwanted power density into a HAPS ground station antenna in the band 31.3–31.8 GHz shall be limited to − 106 dB(W/MHz) under clear-sky conditions, and may be increased up to − 100 dB(W/MHz) under rainy conditions to take account of rain attenuation, provided the effective impact on the passive satellite does not exceed the impact under clear-sky conditions as given above. See Resolution 145 (WRC–03).

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5.545 *Different category of service:* In Armenia, Azerbaijan, Georgia, Mongolia, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 31–31.3 GHz to the space research service is on a primary basis (see No. 5.33).

5.546 *Different category of service:* In Saudi Arabia, Armenia, Azerbaijan, Belarus, Egypt, the United Arab Emirates, Spain, Estonia, the Russian Federation, Finland, Georgia, Hungary, Iran (Islamic Republic of), Israel, Jordan, Latvia, Lebanon, Moldova, Mongolia, Uzbekistan, Poland, Syrian Arab Republic, Kyrgyzstan, Romania, the United Kingdom, South Africa, Tajikistan, Turkmenistan and Turkey, the allocation of the band 31.5–31.8 GHz to the fixed and mobile, except aeronautical mobile, services is on a primary basis (see No. 5.33).

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5.547C *Alternative allocation:* In the United States, the band 32–32.3 GHz is allocated to the radionavigation and space research (deep space) (space-to-Earth) services on a primary basis.

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5.548 In designing systems for the inter-satellite service in the band 32.3–33 GHz, for the radionavigation service in the band 32–33 GHz, and for the space research service (deep space) in the band 31.8–32.3 GHz, administrations shall take all necessary measures to prevent harmful interference between these services, bearing in mind the safety aspects of the radionavigation service (see Recommendation 707).

5.549 *Additional allocation:* In Saudi Arabia, Bahrain, Bangladesh, Egypt, the United Arab Emirates, Gabon, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mali, Malta, Morocco, Mauritania, Nepal, Nigeria, Oman, Pakistan, the Philippines, Qatar, Syrian Arab Republic, Dem. Rep. of the Congo, Singapore, Somalia, Sudan, Sri Lanka, Togo, Tunisia and Yemen, the band 33.4–36 GHz is also allocated to the fixed and mobile services on a primary basis.

5.549A In the band 35.5–36.0 GHz, the mean power flux-density at the Earth's surface, generated by any spaceborne sensor in the Earth exploration-satellite service (active) or space research service (active), for any angle greater than 0.8° from the beam centre shall not exceed − 73.3 dB(W/m²) in this band.

5.550 *Different category of service:* In Armenia, Azerbaijan, Belarus, the Russian Federation, Georgia, Mongolia, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan, the allocation of the band 34.7–35.2 GHz to the space research service is on a primary basis (see No. 5.33).

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5.551I The power flux-density in the band 42.5–43.5 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth), or the broadcasting-satellite service (space-to-Earth) operating in the 42–42.5 GHz band, shall not exceed the following values at the site of any radio astronomy station:

—137 dB(W/m²) in 1 GHz and − 153 dB(W/m²) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a single-dish telescope; and

—116 dB(W/m²) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a very long baseline interferometry station.

These values shall apply at the site of any radio astronomy station that either:

—Was in operation prior to 5 July 2003 and has been notified to the Bureau before 4 January 2004; or

—Was notified before the date of receipt of the complete Appendix 4 information for coordination or notification, as appropriate, for the space station to which the limits apply.

Other radio astronomy stations notified after these dates may seek an agreement with administrations that have authorized the space stations. In Region 2, Resolution 743 (WRC–03) shall apply. The limits in this footnote may be exceeded at the site of a radio astronomy station of any country whose administration so agreed.

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5.555B The power flux-density in the band 48.94–49.04 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth) operating in the bands 48.2–48.54 GHz and 49.44–50.2 GHz shall not exceed − 151.8 dB(W/m²) in any 500 kHz band at the site of any radio astronomy station.

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UNITED STATES (US) FOOTNOTES

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US252 The band 2110–2120 MHz is also allocated to the space research service (deep space) (Earth-to-space) on a primary basis at Goldstone, California.

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US258 In the bands 8025–8400 MHz and 25.5–27 GHz, the Earth exploration-satellite service (space-to-Earth) is allocated on a primary basis for non-Federal Government use. Authorizations are subject to a case-by-case electromagnetic compatibility analysis.

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US262 The band 7145–7,190 MHz is also allocated to the space research service (deep space) (Earth-to-space) on a secondary basis for non-Federal Government use. The use of the bands 7145–7190 MHz and 34.2–34.7 GHz by the space research service (deep space) (Earth-to-space) and of the band 31.8–32.3 GHz by the space research service (deep space) (space-to-Earth) is limited to Goldstone, California.

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US310 In the band 14.896–15.121 GHz, non-Federal Government space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal Government stations. The power flux-density produced by such non-Federal Government stations at the Earth's surface in

any 1 MHz band for all conditions and methods of modulation shall not exceed:

-124 dB(W/m^2) for $0° < \theta \leq 5°$

$-124 + (\theta - 5)/2$ dB(W/m^2) for $5° < \theta \leq 25°$

-114 dB(W/m^2) for $25° < \theta \leq 90°$

where θ is the angle of arrival of the radio-frequency wave (degrees above the horizontal). These limits relate to the power flux-density and angles of arrival which would be obtained under free-space propagation conditions.

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US352 In the band 1427–1432 MHz, Federal Government operations, except for medical telemetry and medical telecommand operations, are on a non-interference basis to authorized non-Federal Government operations and shall not hinder the implementation of any non-Federal Government operations.

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US366 On April 1, 2007, the bands 5900–5950 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz, and 18900–19020 kHz shall be allocated exclusively to the broadcasting service. After April 1, 2007, frequencies in these bands may be used by stations in the fixed and mobile services, communicating only within the United States and its insular areas, on the condition that harmful interference is not caused to the broadcasting service. When using frequencies for fixed and mobile services, licensees shall be limited to the minimum power needed to achieve communications and shall take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU Radio Regulations.

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US368 The use of the bands 1390–1392 MHz and 1430–1432 MHz by the fixed-satellite service is limited to feeder links for the Non-Voice Non-Geostationary Mobile-Satellite Service and is contingent on (1) the completion of ITU–R studies on all identified compatibility issues as shown in Annex 1 of Resolution 745 (WRC–2003); (2) measurement of emissions from equipment that would be employed in operational systems and demonstrations to validate the studies as called for in Resolution 745 (WRC–2003); and (3) compliance with any technical and operational requirements that may be imposed at WRC–07 to protect other services in these bands and passive services in the band 1400–1427 MHz from unwanted emissions. Individual assignments shall be coordinated with the Interdepartment Radio Advisory Committee's (IRAC) Frequency Assignment Subcommittee (FAS) (see, for example, Recommendations ITU–R RA.769–1 and ITU–R SA.1029–1) to ensure the protection of passive services in the band 1400–1427 MHz. Coordination shall not be completed until the feeder uplink and downlink systems are tested and certified to be in conformance with the technical and operational requirements for the protection of passive services in the band 1400–1427 MHz. Certification and all supporting documentation shall be submitted to the Commission and the FAS prior to launch.

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USxxx Until 29 March 2009, the band 6765–7000 kHz is allocated to the fixed service on a primary basis and to the mobile service on a secondary basis. After this date, this band is allocated to the fixed and the mobile except aeronautical mobile (R) services on a primary basis.

USyyy The band 7300–7350 kHz is allocated, until April 1, 2007, to the fixed service on a primary basis and to the mobile service on a secondary basis. After April 1, 2007, frequencies in that band may be used by stations in the fixed and mobile services, communicating only within the United States and its insular areas, on the condition that harmful interference is not caused to the broadcasting service. When using frequencies for fixed and mobile services, licensees shall be limited to the minimum power needed to achieve communications and shall take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU Radio Regulations.

USzzz In the band 432–438 MHz, the Earth exploration-satellite service (active) is allocated on a secondary basis for Federal Government use. Stations in the Earth exploration-satellite service (active) shall not be operated within line-of-sight of United States except for the purpose of short duration pre-operational testing. Operations under this allocation shall not cause harmful interference to, nor claim protection from, any other services allocated in the band 432–438 MHz in the United States, including secondary services and the amateur-satellite service.

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FEDERAL GOVERNMENT (G) FOOTNOTES

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Gxxx Use of the radionavigation-satellite service in the band 1215–1240 MHz shall be subject to the condition that no harmful interference is caused to, and no protection is claimed from, the radionavigation service authorized under ITU Radio Regulation No. 5.331. Furthermore, the use of the radionavigation-satellite service in the band 1215–1240 MHz shall be subject to the condition that no harmful interference is caused to the radiolocation service. ITU Radio Regulation No. 5.43 shall not apply in respect of the radiolocation service. ITU Resolution 608 (WRC–03) shall apply.

Gyyy No emissions to deep space shall be effected in the band 7190–7235 MHz. Geostationary satellites in the space research service operating in the band 7190–7235 MHz shall not claim protection from existing and future stations of the fixed and mobile services and No. 5.43A does not apply.

PART 25—SATELLITE COMMUNICATIONS

4. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

5. Section 25.208 is amended by adding paragraph (p) to read as follows:

§ 25.208 Power flux density limits

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(p) The power flux-density at the Earth's surface produced by emissions from a space station in either the Earth exploration-satellite service in the band 25.5–27 GHz or the inter-satellite service in the band 25.25–27.5 GHz for all conditions and for all methods of modulation shall not exceed the following values:

-115 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

$-115 + 0.5(\delta - 5)$ dB(W/m^2) in any 1 MHz band for angles of arrival between 5 and 25 degrees above the horizontal plane;

-105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

These limits relate to the power flux-density which would be obtained under assumed free-space propagation conditions.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.220 [Amended]

7. Remove and reserve paragraph (b) in § 73.220.

§ 73.603 [Amended]

8. Remove and reserve paragraph (b) in § 73.603.

9. Section 73.701 is amended by revising paragraph (e) to read as follows:

§ 73.701 Definitions.

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(e) *Coordinated Universal Time (UTC).* Time scale, based on the second (SI), as defined in Recommendation ITU–R TF.460–6.

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10. Section 73.702 is amended by revising paragraphs (f)(2) and (f)(3) and by adding paragraph (f)(4) to read as follows:

§ 73.702 Assignment and use of frequencies.

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(f) * * *

(2) *Regional allocation.* (i) Until March 29, 2009, the band 7100–7300 kHz is allocated on an exclusive basis to the broadcasting service in International Telecommunication Union (ITU) Regions 1 and 3 as defined in 47 CFR 2.104(b). Assignments in the band

7100–7300 kHz shall be limited to international broadcast stations located in ITU Region 3 insular areas (as defined in 47 CFR 2.105(a), note 4) that transmit to zones and areas of reception in ITU Region 1 or 3.

(ii) After March 29, 2009, the bands 7200–7300 kHz and 7400–7450 kHz are allocated on an exclusive basis to the broadcasting service in ITU Regions 1 and 3 and the band 7100–7200 kHz is not allocated to the broadcasting service. Assignments in the bands 7200–7300 kHz and 7400–7450 kHz shall be limited to international broadcast stations located in ITU Region 3 insular areas that transmit to zones and areas of reception in ITU Region 1 or 3.

(iii) During the hours of 0800–1600 UTC (Coordinated Universal Time) antenna gain with reference to an isotropic radiator in any easterly direction that would intersect any area in Region 2 shall not exceed 2.15 dBi, except in the case where a transmitter power of less than 100 kW is used. In this case, antenna gain on restricted azimuths shall not exceed that which is determined in accordance with equation below. Stations desiring to operate in this band must submit sufficient antenna performance information to ensure compliance with these restrictions. Permitted gain for transmitter powers less than 100 kW:

$$Gi = 2.15 + 10 \log\left(\frac{100}{Pa}\right) dBi$$

Where:

Gi = maximum gain permitted with reference to an isotropic radiator.

Pa = Transmitter power employed in kW.

(3) Until April 1, 2007, frequencies within the following bands are assignable to the broadcasting service on a co-primary basis with the fixed service: 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz, and 18900–19020 kHz (WARC–92 HFBC bands). In addition, the band 5900–5950 kHz is allocated to the land mobile service on a primary basis in Region 1 and to the mobile except aeronautical mobile (R) service on a primary basis in Region 2 until April 1, 2007. After April 1, 2007, the WARC–92 HFBC bands are assignable to the broadcasting service on an exclusive basis.

(4) Until March 29, 2009, frequencies within the band 7350–7400 MHz are assignable to the broadcasting service on a co-primary basis with the fixed service. After March 29, 2009, frequencies within the band 7350–7400 MHz are assignable to the broadcasting service on an exclusive basis.

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11. Section 73.751 is revised to read as follows:

§ 73.751 Operating power.

No international broadcast station shall be authorized to install, or be licensed for operation of, transmitter equipment with (a) a rated carrier power of less than 50 kilowatts (kW) if Double Sideband (DSB) modulation is used, (b) a peak envelope power of less than 50 kW if Single Sideband (SSB) modulation is used, or (c) an average power of less than 20 kW if digital modulation is used.

12. Section 73.756 is revised to read as follows:

§ 73.756 System specifications for double-sideband (DBS), single-sideband (SSB) and digitally modulated emissions in the HF broadcasting service.

(a) *System specifications applicable to all international broadcast stations.* (1) *Carrier frequencies.* Carrier frequencies shall be integral multiples of 5 kHz.

(2) *Channel spacing.* Channel spacing shall be 10 kHz. However, interleaved channels with a separation of 5 kHz may be used in accordance with the appropriate ITU protection criteria, provided that the interleaved emission is not to the same geographical area as either of the emissions between which it is interleaved. Additionally, in an all-inclusive SSB environment, the channel spacing shall be 5 kHz.

(3) *Frequency tolerance.* The frequency tolerance shall be 10 hertz.

(4) *Maximum permitted spurious emission power levels.* (i) Any emission appearing on a frequency removed from the carrier frequency by between 6.4 kHz and 10 kHz, inclusive, shall be attenuated at least 25 dB below the level of the unmodulated carrier. Compliance with the specification will be deemed to show the occupied bandwidth to be 10 kHz or less.

(ii) Any emission appearing on a frequency removed from the carrier frequency by more than 10 kHz and up to and including 25 kHz shall be attenuated at least 35 dB below the level of the unmodulated carrier.

(iii) Any emission appearing on a frequency removed from the carrier frequency by more than 25 kHz shall be attenuated at least 80 dB below the level of the unmodulated carrier.

(iv) In the event spurious emissions cause harmful interference to other stations or services, such additional steps as may be necessary to eliminate the interference must be taken immediately by the licensee.

(b) *System specifications applicable to DSB and SSB systems.* If audio-frequency signal processing is used, the dynamic range of the modulating signal shall be not less than 20 dB.

(c) *System specifications applicable only to a DSB system.* (1) The upper limit of the audio-frequency band (at −3 dB) of the transmitter shall not exceed 4.5 kHz and the lower limit shall be 150 Hz, with lower frequencies attenuated at a slope of 6 dB per octave.

(2) The necessary bandwidth shall not exceed 9 kHz.

(d) *System specifications applicable to only a SSB system.* (1) *Equivalent sideband power.* When the carrier reduction relative to peak envelope power is 6 dB, an equivalent SSB emission is one giving the same audio-frequency signal-to-noise ratio at the receiver output as the corresponding DSB emission, when it is received by a DSB receiver with envelope detection. This is achieved when the sideband power of the SSB emission is 3 dB larger than the total sideband power of the DSB emission. (The peak envelope power of the equivalent SSB emission and the carrier power are the same as that of the DSB emission.)

(2) *Emission characteristics.* (i) *Audio-frequency band.* The upper limit of the audio-frequency band (at −3 dB) of the transmitter shall not exceed 4.5 kHz with a further slope of attenuation of 35 dB/kHz and the lower limit shall be 150 Hz with lower frequencies attenuated at a slope of 6 dB per octave.

(ii) *Necessary bandwidth.* The necessary bandwidth shall not exceed 4.5 kHz.

(iii) *Carrier reduction (relative to peak envelope power).* In a mixed DSB, SSB and digital environment, the carrier reduction shall be 6 dB to allow SSB emissions to be received by conventional DSB receivers with envelope detection without significant deterioration of the reception quality.

(iv) *Sideband to be emitted.* Only the upper sideband shall be used.

(v) *Attenuation of the unwanted sideband.* The attenuation of the unwanted sideband (lower sideband) and of intermodulation products in that part of the emission spectrum shall be at least 35 dB relative to the wanted sideband signal level. However, since there is in practice a large difference between signal amplitudes in adjacent channels, a greater attenuation is recommended.

(e) *System specifications applicable to only a digital system.* (1) *Channel utilization.* Channels using digitally modulated emissions may share the same spectrum or be interleaved with analog emissions in the same HFBC

band, provided the protection afforded to the analog emissions is at least as great as that which is currently in force for analog-to-analog protection. Accomplishing this may require that the digital spectral power density (and total power) be lower by several dB than is currently used for either DSB or SSB emissions.

(2) *Emission characteristics.* (i) *Bandwidth and center frequency.* A full digitally modulated emission will have a 10 kHz bandwidth with its center frequency at any of the 5 kHz center frequency locations in the channel raster currently in use within the HFBC bands. Among several possible "simulcast" modes are those having a combination of analog and digital emissions of the same program in the same channel, that may use a digital emission of 5 kHz or 10 kHz bandwidth, next to either a 5 kHz or 10 kHz analog emission. In all cases of this type, the 5 kHz interleaved raster used in HFBC shall be adhered to in placing the emission within these bands.

(ii) *Audio-frequency band.* The quality of service, using digital source coding within a 10 kHz bandwidth, taking into account the need to adapt the emission coding for various levels of error avoidance, detection and correction, can range from the equivalent of monophonic FM (approximately 15 kHz) to the low-level performance of a speech codec (of the order of 3 kHz). The choice of audio quality is connected to the needs of the broadcaster and listener, and includes the consideration of such characteristics as the propagation conditions expected. There is no single specification, only the upper and lower bounds noted in this paragraph.

(iii) *Modulation.* Quadrature amplitude modulation (QAM) with orthogonal frequency division multiplexing (OFDM) shall be used. 64–QAM is feasible under many propagation conditions; others such as 32–, 16– and 8–QAM are specified for use when needed.

(iv) *RF protection ratio values.* The protection ratio values for analog and digital emissions for co-channel and adjacent channel conditions shall be in accordance with Resolution 543 (WRC–03) as provisional RF protection ratio values subject to revision or confirmation by a future competent conference.

§ 73.766 [Remove and reserve]

13. Remove and reserve § 73.766.

[FR Doc. 04–12167 Filed 6–15–04; 8:45 am]
BILLING CODE 6712–01–U

Federal Register

Wednesday,
June 16, 2004

Part III

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Interim Final Rule

Revocation of OFAC Specific Licenses To Engage in Travel-Related Transactions Incident to Visiting Close Relatives in Cuba; Notice

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury

ACTION: Interim final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Cuban Assets Control Regulations, part 515 of chapter V of 31 CFR, to implement the President's May 6, 2004 direction with respect to certain recommendations in the May 2004 Report to the President from the Commission for Assistance to a Free Cuba. This rule also contains additional substantive amendments consistent with the President's policy as well as technical and clarifying amendments.

DATES: *Effective Date:* June 30, 2004.

Comments: Written comments must be received no later than August 16, 2004.

ADDRESSES: Comments may be submitted in the English language by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.treas.gov/offices/enforcement/ofac/comment.html*.
- Fax: Chief of Records, 202/622–1657.
- Mail: Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Instructions: All submissions received must include "Office of Foreign Assets Control, Treasury" and the FR Doc. number that appears at the end of this document. Comments received will be posted without change to *http://www.treas.gov/ofac*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" subsection of the **SUPPLEMENTARY INFORMATION** section of this document. To read background documents or comments received, go to *http://www.treas.gov/ofac*.

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622–2480 or Chief of Policy Planning and Program Management, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel, tel.: 202/622–2410, Office of Chief Counsel (Foreign Assets Control), Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at *GPO Access. GPO Access* supports HTTP, FTP, and Telnet at *fedbbs.access.gpo.gov*. It may also be accessed by modem dialup at 202/512–1387 followed by typing "/GO/FAC." Paper copies of this document can be obtained by calling the Government Printing Office at 202/512–1530. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac*, or via FTP at *ofacftp.treas.gov*. Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On October 10, 2003, the President announced the establishment of a Commission for Assistance to a Free Cuba (the "Commission"), an interagency commission tasked with identifying ways to hasten Cuba's transition to a free and open society and identifying U.S. Government programs that could assist the Cuban people during such a transition. On May 1, 2004, the Commission delivered its Report to the President, recommending, among other things, a number of proposed changes to the U.S. sanctions with respect to Cuba. On May 6, 2004, the President directed the implementation of certain of the Report's recommendations. In this interim final rule, the Office of Foreign Assets Control ("OFAC") is amending the Cuban Assets Control Regulations, 31 CFR part 515 (the "CACR"), to implement these recommendations, to make additional changes consistent with the President's policy with respect to Cuba, and to make certain technical and clarifying changes.

Fully-hosted travel. Section 515.420, the note to paragraph (c) and paragraph (f) of § 515.560, and paragraph (c)(4)(i) of § 515.572 are amended to remove discussion of and references to fully-hosted travel and the presumption that travelers to Cuba pay expenses for Cuba travel-related transactions. The term "fully-hosted travel" refers to travel to, from, or within Cuba for which all costs and fees either are paid for by a third-country national who is not subject to U.S. jurisdiction or are covered or waived by Cuba or a national of Cuba. The term was first introduced into the CACR on July 22, 1982, in § 515.560 of the "Licenses, Authorizations, and Statements of Licensing Policy" subpart. *See* 47 FR 32060. Paragraph (j) of § 515.560 provided that all transactions incident to fully-hosted travel were authorized. On May 13, 1999, OFAC removed this provision from § 515.560, amended it, and placed it in a new § 515.420, which is in the "Interpretations" subpart of the CACR. *See* 64 FR 24808.

In the years since the May 13, 1999 amendments, it has been found that persons who claimed their travel was fully-hosted in fact routinely engaged in prohibited money transactions (*e.g.*, payment of entry and exit and docking fees). It has also been determined that even a person who accepts goods or services in Cuba without paying for them is in fact engaging in a prohibited dealing in property in which Cuba or a Cuban national has an interest. Therefore, language regarding fully-hosted travel is removed from the CACR and any authorization of fully-hosted travel is thereby eliminated. Amended § 515.420 now explains that the prohibition in § 515.201(b)(1) on dealing in property includes a prohibition on the receipt of goods or services in Cuba when those goods or services are provided free-of-charge, whether received as a gift from the Government of Cuba, a national of Cuba, or a third-country national, unless otherwise authorized by an OFAC general or specific license. *See, e.g.*, § 515.560(a) of the CACR. Amended § 515.420 also explains that payment for air travel to Cuba on a third-country carrier, which involves property in which Cuba has an interest (for example, because the carrier will pass a portion of the payment on to Cuba), is now prohibited unless the travel is pursuant to an OFAC general or specific license.

Along with the references to fully-hosted travel, the companion language in § 515.420, which states that any person who travels to Cuba without OFAC authorization is presumed to have engaged in prohibited travel-related transactions there, is also removed. Notwithstanding the removal of this language, it is OFAC's position that the receipt of services or other dealings in property in which Cuba has an interest, such as a stay at a Cuban hotel or the purchase of food in Cuba, can be inferred from evidence of multi-day travel in Cuba.

Importation of Cuban merchandise. Paragraph (c)(3) of § 515.560 is amended to eliminate the general license authorizing licensed travelers to Cuba to purchase in Cuba and return to the United States with up to $100 worth of Cuban merchandise for personal consumption. The amended paragraph (c) now explains that, with the exception noted below, no merchandise may be purchased or otherwise acquired in Cuba and then brought back to the United States. OFAC has added a note to paragraph (c) explaining that this rule does not apply to the purchase in Cuba and importation into the United States of informational materials, which continue to be exempt from the prohibitions of the CACR, as described in § 515.206.

Exportation of accompanied baggage. Former paragraph (f) of § 515.560, which discussed the carrying of currency by fully-hosted travelers, is replaced with a new paragraph (f) limiting the amount of accompanied baggage carried by authorized travelers to Cuba to 44 pounds per traveler, unless a higher amount is authorized by the Bureau of Industry and Security of the Department of Commerce or, for exportations of non-U.S. origin accompanied baggage from third countries to Cuba, by a specific license from OFAC.

Travel to visit relatives in Cuba. Sections 515.560 and 515.561 are amended to make a number of changes to the rules regarding travel-related transactions incident to visiting relatives in Cuba.

Prior to these amendments, a person with a Cuban national close relative (defined to include second cousins) in Cuba could engage in travel-related transactions incident to visiting that relative once every 12 months under a general license and more often pursuant to specific licenses if requested. There was no stated limit to the duration of the first visit, and the traveler could spend up to the State Department per diem (currently $167) for living expenses in Cuba plus any additional funds needed for transactions that were directly incident to visiting that relative.

These amendments narrow the category of relatives who can be visited in Cuba. The definition of "close relative" set forth in former paragraph (d) of § 515.561, is replaced by the term "member of a person's immediate family," which is defined in new paragraph (c). Under the new rule, a member of a person's immediate family is defined as a spouse, child, grandchild, parent, grandparent, or sibling of that person or that person's spouse, as well as any spouse, widow, or widower of any of the foregoing. Relevant portions of § 515.561 also are amended to eliminate the policy of authorizing those who share a common dwelling as a family with the traveler to accompany the traveler, unless they are themselves members of the immediate family of the person to be visited.

The once-per-twelve-months general license contained in former paragraph (a) of § 515.561 is eliminated. In its place, new paragraph (a) states that OFAC will issue specific licenses authorizing travel-related transactions incident to visits to members of a person's immediate family who are nationals of Cuba once per three-year period and for no more than 14 days. A person subject to U.S. jurisdiction who wishes to engage in travel-related transactions to visit a member of his or her immediate family who is a national of Cuba will need to request and receive specific permission from OFAC before engaging in those transactions. For those who emigrated to the United States from Cuba and have not since that time visited a family member in Cuba, the three-year period will be counted from the date they left Cuba. For all others, the three year period will be counted from the date they last left Cuba pursuant to the pre-existing family visit general license or, if they traveled under a family visit specific license, the date that license was issued. Former paragraph (b), under which OFAC issued specific licenses for additional visits, is eliminated. No additional visits will be authorized.

Former paragraph (c) of § 515.561 stated a different rule for travelers wishing to visit relatives who are not nationals of Cuba but who instead are in Cuba pursuant to an OFAC authorization (such as a student who is in Cuba under her university's educational activities license). This rule has been moved to paragraph (b) and modified to provide for the issuance of a specific license to visit a member of a person's immediate family in exigent circumstances provided the person to be visited is in Cuba pursuant to an OFAC authorization, the particular exigency has been reported to the U.S. Interests Section in Havana, and issuance of the license would support the mission of the U.S. Interests Section in Havana. Licenses would be issued under this paragraph, after consultation with the Department of State, in true emergent situations, such as serious illness accompanied by an inability to travel, and in order to support services normally provided in such circumstances by the U.S. Interests Section in Havana.

A number of individuals have outstanding specific licenses that were issued pursuant to former § 515.561(b) and (c). Those licenses will remain valid only until June 30, 2004, after which they are revoked. Accordingly, individuals who have such specific licenses may not use them to engage in any Cuba travel-related transaction occurring on or after June 30, 2004.

These amendments also reduce the amount of money travelers visiting members of their immediate family may spend for their living expenses in Cuba. The new limit, set forth in amended paragraph (c)(2) of § 515.560, is $50 per day plus up to an additional $50 per trip, if needed, to pay for transportation-related expenses in Cuba that exceed the $50 per day limit. For example, a traveler whose five-day trip to visit her father in Camaguey includes roundtrip ground transportation between Havana and Camaguey may expend $50 per day for her living expenses in Cuba plus up to an additional $50, if needed, to pay for the costs of transportation between Havana and Camaguey, for a total of $300 of in-Cuba costs (airfare to and from Cuba is not included in this limit). The per diem amount for all other categories of OFAC-authorized travel-related transactions in Cuba remains unchanged.

Attendance at certain professional meetings in Cuba. A note is added to paragraph (a)(1) of § 515.564 to clarify that the general license in paragraph (a) authorizing travel-related transactions incident to certain professional research in Cuba does not extend to transactions incident to attendance at professional meetings or conferences in Cuba. Attendance at certain professional meetings and conferences in Cuba already is addressed by a separate general license set forth in paragraph (a)(2). To the extent a professional researcher believes that attendance at a particular meeting or conference in Cuba is important to his or her research and the meeting or conference does not qualify under the general license set forth in paragraph (a)(2), the researcher may request a specific license from OFAC under paragraph (b).

Educational activities in Cuba. OFAC is amending § 515.565 to reflect new policy with respect to specific licensing of certain educational activities in Cuba. These amendments restrict the availability under paragraph (a) of specific licenses to institutions to undergraduate and graduate institutions. Accordingly, former paragraph (a)(2)(vi), which covered certain activities by secondary schools, has been eliminated. The duration of

these institutional licenses is shortened from two years to one year.

Paragraph (a) of § 515.565 is further amended by adding a requirement that any students who use an institution's license must be enrolled in an undergraduate or graduate degree program at that licensed institution. Students may no longer engage in Cuba travel-related transactions under the license of an educational institution other than their own even if their own institution will accept the licensed institution's program for credit toward the student's degree. Paragraph (a) also is amended to clarify that employees who travel under an institution's license must be full-time permanent employees of the licensed institution. Temporary employees and contractors do not qualify as full-time permanent employees of an institution.

Three of the six educational activities listed in paragraph (a) of § 515.565 that are available to licensed educational institutions and their students and staff are subject to a new requirement that those educational activities in Cuba be no shorter than 10 weeks. The three affected activities are: structured educational programs in Cuba offered as part of a course at the licensed institution; formal courses of study at a Cuban academic institution; and teaching at a Cuban academic institution. The remaining three educational activities may still be engaged in for a period of less than 10 weeks. These activities are: graduate research in Cuba; sponsorship of a Cuban national to teach or engage in other scholarly activities in the United States; and organization of and preparation for licensed educational activities. OFAC is also amending the requirements in paragraph (a) with respect to letters from the licensed institution that must be carried by each authorized traveler.

Some current holders of educational institution licenses may have already planned Cuba travel-related activities that would not be authorized under amended paragraph (a) of § 515.565. Those licensed institutions that, prior to the effective date of this Notice, have already planned Cuba trips that will not meet the new requirements may still engage in all transactions incident to such trips provided that the trips and all associated transactions are completed by August 15, 2004.

Paragraph (b) of § 515.565 is amended to clarify that its statement of specific licensing policy applies only to individuals seeking to engage in certain educational activities in Cuba if their educational institution does not have an institutional license under paragraph (a). The licensing policies set forth in paragraphs (a) and (b) are not available to individuals or entities that purport to arrange, facilitate, or coordinate educational programs in Cuba for U.S. academic institutions.

Participation in international sports federation competitions; clinics and workshops licensing policy. OFAC is eliminating the general license set forth in paragraph (a) of § 515.567 for travel-related transactions incident to participation in amateur and semi-professional athletic competitions that take place in Cuba under the auspices of an international sports federation. In its place, revised paragraph (a) states a specific licensing policy under which OFAC will authorize those same activities on a case-by-case basis. OFAC also in amending paragraph (b) of the same section to eliminate the policy of specifically licensing travel-related transactions incident to participation in clinics and workshops, whether sports-related or otherwise, in Cuba.

Quarterly remittances to nationals of Cuba. OFAC is amending the general license in paragraph (a) of § 515.570 to eliminate the authorization of quarterly $300 remittances sent from any person subject to U.S. jurisdiction who is 18 years of age or older to any household of a national of Cuba. The amended general license authorizes such remittances only when they are sent to members of the remitter's immediate family. The term "member of the remitter's immediate family" is defined to include only a spouse, child, grandchild, parent, grandparent, or sibling of the remitter or that remitter's spouse, as well as any spouse, widow, or widower of any of the foregoing. Paragraph (a) is further amended to provide that the quarterly $300 remittance cannot be remitted to certain government officials and certain members of the Cuban Communist Party.

Paragraph (c)(4)(i) of § 515.560 is also amended to reduce the total amount of quarterly $300 remittances that an authorized traveler may carry to Cuba from $3,000 to $300.

NGO remittances to Cuba. Paragraph (d)(1) of § 515.570 is revised to clarify the specific licensing policy of authorizing remittances from nongovernmental organizations and individuals subject to U.S. jurisdiction to Cuban pro-democracy groups, independent civil society groups, and religious organizations as well as to individual members of such Cuban groups and organizations.

Remittance-related transactions by banks and other depository institutions. Paragraph (a)(3) of § 515.572 is amended to eliminate the general license authorizing depository institutions to act as forwarders for the quarterly family household remittances or emigration-related remittances authorized in paragraphs (a), (b), and (c) of § 515.570. Depository institutions, as defined in § 515.333, are now required to apply to OFAC and receive specific authorization as remittance forwarders before providing such services. Depository institutions continue to be authorized by general license, however, to provide services related to other authorized financial transactions. For example, a banking institution does not need separate authorization from OFAC to transfer to Cuba funds covered by a specific license allowing overflight payments or remittances other than quarterly family or emigration-related remittances.

Technical and conforming amendments. OFAC is making a number of technical and conforming amendments to various sections of the CACR to amend wording, cross-references, and paragraph structure.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, because of the importance of the issues addressed in these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the amendments on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the CACR. All comments must be submitted in the English language.

The period for submission of comments will close August 16, 2004. The Department will consider all comments postmarked before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary

nature or for any other reason. The Department will return such submission to the originator without considering them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these Regulations will be a matter of public record. Copies of the public record concerning these Regulations will be made available not sooner than September 14, 2004, and will be obtainable from OFAC's Web site (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Chief, Records Division.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the CACR are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banks, Banking, Blocking of assets, Cuba, Currency, Foreign trade, Imports, Reporting and recordkeeping requirements, Securities, Travel restrictions.

■ For the reasons set forth in the preamble, part 515 of 31 CFR chapter V is amended as follows:

■ 1. The authority citation for 31 CFR part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart D—Interpretations

■ 1. Revise § 515.420 to read as follows:

§ 515.420 Travel to Cuba.

The prohibition on dealing in property in which Cuba or a Cuban national has an interest set forth in § 515.201(b)(1) includes a prohibition on the receipt of goods or services in Cuba, even if provided free-of-charge by the Government of Cuba or a national of Cuba or paid for by a third-country national who is not subject to U.S. jurisdiction. The prohibition set forth in § 515.201(b)(1) also prohibits payment for air travel to Cuba on a third-country carrier unless the travel is pursuant to an OFAC general or specific license.

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

■ 2. Amend § 515.560 by removing the note to paragraph (c) and revising paragraphs (a) introductory text, (a)(1), (a)(7), (c) introductory text, (c)(2), (c)(3), (c)(4) introductory text, (c)(4)(i), and (f) to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

(a) The travel-related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case-by-case basis by a specific license for travel related to the following activities (see the referenced sections for the applicable general and specific licensing criteria):

(1) Visits to members of a person's immediate family (specific licenses) (see § 515.561);

* * * * *

(7) Public performances, athletic and other competitions, and exhibitions (specific licenses) (see § 515.567);

* * * * *

(c) Persons generally or specifically licensed under this part to engage in transactions in connection with travel to, from, and within Cuba may engage in the following transactions:

* * * * *

(2) *Living expenses in Cuba.* All transactions ordinarily incident to travel anywhere within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, are authorized, provided that, unless otherwise authorized, the total for such expenses does not exceed:

(i) For visits to members of a person's immediate family pursuant to § 515.561, $50 per day plus up to an additional $50 per trip, if needed, to cover within-Cuba transportation-related expenses.

(ii) For all other authorized activities, the "maximum per diem rate" for Havana, Cuba, in effect during the period that the travel takes place. The maximum per diem rate is published in the State Department's "Maximum Travel Per Diem Allowances for Foreign Areas," a supplement to section 925, Department of State Standardized Regulations (Government Civilians, Foreign Areas), which is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371945, Pittsburgh, PA 15250–7954 and on the Internet at *http://www.state.gov/m/a/als/prdm.*

(3) *Importation of Cuban merchandise prohibited.* Nothing in this section authorizes the importation into the United States of any merchandise purchased or otherwise acquired in Cuba, including but not limited to any importation of such merchandise as accompanied baggage. The importation of Cuban-origin information and informational materials is exempt from the prohibitions of this part, as described in § 515.206.

(4) *Carrying remittances to Cuba.* The carrying to Cuba of any remittances that the licensed traveler is authorized to remit pursuant to § 515.570 is authorized, provided that:

(i) The total of all family household remittances authorized by § 515.570(a) does not exceed $300, and

* * * * *

(f) *Carrying accompanied baggage to Cuba.* The carrying to Cuba of accompanied baggage, as described in 15 CFR 740.14, provided that no more than 44 pounds of accompanied baggage per traveler may be carried unless otherwise authorized by the Bureau of Industry and Security of the Department of Commerce or, for exportations of non-U.S. origin accompanied baggage from third countries to Cuba, by a specific license from OFAC.

* * * * *

■ 3. Revise § 515.561 to read as follows:

§ 515.561 Persons visiting members of their immediate family in Cuba.

(a) *Visiting a family member who is a national of Cuba.* Specific licenses may be issued on a case-by-case basis to persons subject to U.S. jurisdiction to engage in the travel-related transactions set forth in § 515.560(c) for the purpose of visiting a member of the person's immediate family who is a national of Cuba, as that term is defined in § 515.302 of this part, in Cuba for a period not to exceed 14 days in duration, provided it has been at least three years since the most recent of the following three dates:

(1) If the applicant emigrated from Cuba, the date of emigration;

(2) The date the applicant left Cuba after the applicant's most recent trip to

visit family there pursuant to a general license from OFAC;

(3) The date of issuance of the applicant's most recent specific license to visit family in Cuba.

(b) *Visiting a family member who is not a national of Cuba.* Specific licenses may be issued on a case-by-case basis authorizing persons subject to U.S. jurisdiction to engage in the travel-related transactions set forth in § 515.560(c) and additional travel-related transactions that are directly incident to the purpose of visiting a member of the person's immediate family who is not a national of Cuba, as that term is defined in § 515.302 of this part, in Cuba in exigent circumstances, provided the person to be visited is in Cuba pursuant to an OFAC authorization, the particular exigency has been reported to the U.S. Interests Section in Havana, and issuance of the license would support the mission of the U.S. Interests Section in Havana.

(c) For the purpose of this section, the term "member of a person's immediate family" means any spouse, child, grandchild, parent, grandparent, or sibling of that person or that person's spouse, as well as any spouse, widow, or widower of any of the foregoing.

■ 4. Amend § 515.564 by adding a note to paragraph (a)(1) to read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

* * * * *

Note to paragraph (a)(1): This general license does not authorize as professional research any travel-related transactions incident to attendance at professional meetings or conferences. Such transactions must either qualify under the general license set forth in paragraph (a)(2) of this section or be the subject of a request for a specific license under paragraph (b) of this section.

■ 5. Amend § 515.565 by revising paragraphs (a) and (b) to read as follows:

§ 515.565 Educational activities.

(a) *Specific institutional licenses.* Specific licenses for up to one year in duration may be issued to an accredited U.S. undergraduate or graduate degree-granting academic institution authorizing the institution, its students enrolled in an undergraduate or graduate degree program at the institution, and its full-time permanent employees to engage, under the auspices of the institution, in the travel-related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to:

(1) Participation in a structured educational program in Cuba as part of a course offered at the licensed institution, provided the program includes a full term, and in no instance includes fewer than 10 weeks, of study in Cuba. An individual planning to engage in such transactions must carry a letter from the licensed institution stating that the individual is a student currently enrolled in an undergraduate or graduate degree program at the institution or is a full-time permanent employee of the institution, stating that the Cuba-related travel is part of a structured educational program of the institution that will be no shorter than 10 weeks in duration, and citing the number of the institution's license;

(2) Noncommercial academic research in Cuba specifically related to Cuba and for the purpose of obtaining a graduate degree. A student planning to engage in such transactions must carry a letter from the licensed institution stating that the individual is a student currently enrolled in a graduate degree program at the institution, stating that the research in Cuba will be accepted for credit toward that degree, and citing the number of the institution's license;

(3) Participation in a formal course of study at a Cuban academic institution, provided the formal course of study in Cuba will be accepted for credit toward the student's undergraduate or graduate degree at the licensed U.S. institution and provided the course of study is no shorter than 10 weeks in duration. An individual planning to engage in such transactions must carry a letter from the licensed U.S. institution stating that the individual is a student currently enrolled in an undergraduate or graduate degree program at the U.S. institution, stating that the study in Cuba will be accepted for credit toward that degree and will be no shorter than 10 weeks in duration, and citing the number of the U.S. institution's license;

(4) Teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at the licensed institution, provided the teaching activities are related to an academic program at the Cuban institution and provided that the duration of the teaching will be no shorter than 10 weeks. An individual planning to engage in such transactions must carry a written letter from the licensed U.S. institution stating that the individual is a full-time permanent employee regularly employed in a teaching capacity at the U.S. institution and citing the number of the U.S. institution's license;

(5) Sponsorship, including the payment of a stipend or salary, of a Cuban scholar to teach or engage in other scholarly activity at the licensed institution (in addition to those transactions authorized by the general license contained in § 515.571). Such earnings may be remitted to Cuba as provided in § 515.570 or carried on the person of the Cuban scholar returning to Cuba as provided in § 515.560(d)(3); or

(6) The organization of and preparation for activities described in paragraphs (a)(1) through (a)(5) of this section by a full-time permanent employee of the licensed institution. An individual engaging in such transactions must carry a written letter from the licensed institution stating that the individual is a full-time permanent employee of that institution and citing the number of the institution's license.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons ("deemed exportation"), may require separate authorization from the Department of Commerce.

(b) *Other specific licenses.* Specific licenses may be issued to individuals on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions directly incident to the educational activities described in paragraphs (a)(2) and (a)(3) of this section but not engaged in pursuant to a specific license issued to an institution pursuant to paragraph (a) of this section.

* * * * *

■ 6. Revise § 515.567 to read as follows:

§ 515.567 Public performances, athletic and other competitions, and exhibitions.

(a) *Amateur and semi-professional international sports federation competitions.* Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to athletic competition by amateur or semi-professional athletes or athletic teams wishing to travel to participate in athletic competition in Cuba, provided that:

(1) The athletic competition in Cuba is held under the auspices of the international sports federation for the relevant sport;

(2) The U.S. participants in the athletic competition are selected by the U.S. federation for the relevant sport; and

(3) The competition is open for attendance, and in relevant situations participation, by the Cuban public.

(b) *Public performances, other athletic or other non-athletic competitions, and exhibitions.* Specific licenses, including

for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to participation in a public performance, athletic competition not covered by paragraph (a) of this section, non-athletic competition, or exhibition in Cuba by participants in such activities, provided that:

(1) The event is open for attendance, and in relevant situations participation, by the Cuban public; and

(2) All U.S. profits from the event after costs are donated to an independent nongovernmental organization in Cuba or a U.S.-based charity, with the objective, to the extent possible, of benefiting the Cuban people.

(c) Specific licenses will not be issued pursuant to this section authorizing any debit to a blocked account.

Note to § 515.567: See § 515.571 for the authorization of certain transactions related to the activities of nationals of Cuba traveling in the United States.

■ 7. Amend § 515.570 by revising paragraphs (a), (d) introductory text, and (d)(1) and the note to the section to read as follows:

§ 515.570 Remittances to nationals of Cuba.

(a) *Periodic $300 family household remittances authorized.* Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to nationals of Cuba who are members of the remitter's immediate family, provided that:

(1) The remitter's total remittances do not exceed $300 per recipient household in any consecutive 3-month period, regardless of the number of members of the remitter's immediate family comprising that household;

(2) The remittances are not made from a blocked source unless:

(i) The remittances are authorized pursuant to paragraph (c) of this section; or

(ii) The remittances are made to a recipient in a third country and are made from a blocked account in a banking institution in the United States held in the name of, or in which the beneficial interest is held by, the recipient; and

(3) The recipient is not a prohibited official of the Government of Cuba or a prohibited member of the Cuban Communist Party. For the purposes of this paragraph, the term "prohibited official of the Government of Cuba" means: Ministers and Vice-ministers, members of the Council of State, and the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional). For purposes of this paragraph, the term "prohibited members of the Cuban Communist Party" means: members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and secretary and first secretary of the provincial Party central committees.

(4) For the purposes of this paragraph (a), the term "member of the remitter's immediate family" means a spouse, child, grandchild, parent, grandparent, or sibling of the remitter or the remitter's spouse, as well as any spouse, widow, or widower of any of the foregoing.

Note to paragraph (a): The maximum amount set forth in this paragraph does not apply to remittances to a Cuban individual who has been unblocked or whose current transactions are otherwise authorized pursuant to § 515.505, because remittances to such persons do not require separate authorization.

* * * * *

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction, including but not limited to nongovernmental organizations and individuals, to independent non-governmental entities in Cuba, including but not limited to pro-democracy groups, civil society groups, and religious organizations, and to members of such groups or organizations.

* * * * *

Note to § 515.570: For the rules relating to the carrying of remittances to Cuba, see paragraph (c)(4) of § 515.560. Persons subject to U.S. jurisdiction are prohibited from engaging in the collection or forwarding of remittances to Cuba unless authorized pursuant to § 515.572. For a list of authorized U.S. remittance service providers, see the following Web site: *http://www.treas.gov/offices/eotffc/ofac/sanctions/cuba_tsp.pdf.*

■ 8. Amend § 515.572 by revising paragraphs (a)(3) and (c)(4)(i) to read as follows:

§ 515.572 Authorization of transactions incident to the provision of travel services, carrier services, and remittance forwarding services.

(a) * * *

(3) *Authorization of remittance forwarders.* Persons subject to U.S. jurisdiction, including persons who provide remittance forwarding services and noncommercial organizations acting on behalf of donors, who wish to provide services in connection with the collection or forwarding of remittances authorized pursuant to this part must obtain a license from the Office of Foreign Assets Control. Depository institutions, as defined in § 515.533, must obtain a license pursuant to this section only for the provision of services in connection with the collection and forwarding of remittances authorized pursuant to paragraphs (a), (b), and (c) of § 515.570. Depository institutions do not need a license pursuant to this section to provide such services with respect to any other remittances authorized pursuant to this part.

* * * * *

(c) * * *

(4)(i) In the case of applications for authorization to serve as travel or carrier service providers, a report on the forms and other procedures used to establish that each customer is in full compliance with U.S. law implementing the Cuban embargo and either qualifies for one of the general licenses contained in this part authorizing travel-related transactions in connection with travel to Cuba or has received a specific license from the Office of Foreign Assets Control issued pursuant to this part. In the case of a customer traveling pursuant to a general license, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his or her qualification for the particular general license claimed. The statement must provide facts supporting the customer's belief that he or she qualifies for the general license claimed. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant.

* * * * *

■ 9. Remove the reference to "§ 515.565(a)(2)(v)" each place it

appears in part 515 and add in its place "§ 515.565(a)(5)".

Dated: June 10, 2004.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 10, 2004.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 04–13630 Filed 6–14–04; 9:51 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Revocation of OFAC Specific Licenses To Engage in Travel-Related Transactions Incident to Visiting Close Relatives in Cuba

ACTION: Notice.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury is amending the terms of current licenses issued pursuant to the Cuban Assets Control Regulations in effect prior to June 30, 2004 (the effective date of the interim final rule published elsewhere in this issue) so that they terminate no later than 12:01 a.m. eastern standard time on June 30, 2004.

DATES: *Effective Date:* June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622–2480 or Chief of Policy Planning and Program Management, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel, tel.: 202/622–2410, Office of Chief Counsel (Foreign Assets Control), Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION: Concurrent with this notice, OFAC is publishing separately in the **Federal Register** an interim final rule, effective June 30, 2004, amending the Cuban Assets Control Regulations, 31 CFR part 515 (the "CACR"), to implement a number of proposed changes to the U.S. embargo of Cuba pursuant to a May 6, 2004 direction from the President. These changes include the elimination of the general license contained in § 515.561(a), which authorized travel-related transactions incident to visiting close family in Cuba once per 12-month period, as well as the specific licensing policy contained in § 515.561(b), pursuant to which additional family visits within the same 12-month period were authorized on a case-by-case basis. In their place, OFAC has issued new § 515.561, which contains a specific licensing policy for case-by-case licensing of family visits once per three-year period.

A significant number of persons subject to U.S. jurisdiction have outstanding specific licenses issued by OFAC pursuant to paragraph (b) of § 515.561. These licenses authorize Cuba travel-related transactions incident to an additional family visit not to exceed two or three weeks in duration. These licenses are valid for 100 days from the date of issuance. Many of the outstanding licenses will not expire, by their own terms, until on or after June 30, 2004.

Consistent with the President's May 6, 2004 direction and the new amendments to the CACR, any license issued pursuant to paragraph (a) of § 515.561 on or before June 16, 2004, and that expires according to its own terms on or after June 30, 2004, is hereby amended to expire at 12:01 a.m. Eastern Standard Time on June 30, 2004. Accordingly, all persons who hold such licenses may not use them to engage in any Cuba travel-related transactions on or after June 30, 2004.

Dated: June 10, 2004.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 10, 2004.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 04–13631 Filed 6–14–04; 9:51 am]

BILLING CODE 4810–25–P

Federal Register

Wednesday,
June 16, 2004

Part IV

Department of Transportation

Federal Aviation Administration

Environmental Impacts: Policies and Procedures; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29797; FAA Order 1050.1E]

Environmental Impacts: Policies and Procedures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of adoption; notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) has revised its procedures for implementing the National Environmental Policy Act by replacing Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, with Order 1050.1E Environmental Impact: Policies and Procedures. The revisions include: consolidating the FAA categorical exclusions in the appendixes to Order 1050.1D into the body of the order (including those in Order 5050.4A); adding new and modified categorical exclusions; incorporating new procedures for preparing environmental documents; consolidating Order 1050.1D appendixes, which describe procedures for each program office, into the body of the order; and adding new appendixes, such as on third-party contracting. Revisions incorporated into Order 1050.1E are consistent with FAA efforts to streamline the NEPA process that were announced by the Administrator in January 2001. Order 1050.1E also includes an appendix covering the environmental stewardship and streamlining provisions in "Vision 100—Century of Aviation Reauthorization Act." This notice also provides the public with information on how to access Order 1050.1E on the Web site of the FAA's Office of Environment and Energy.

DATES: Order 1050.1E was effective June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew McMillen, Environment, Energy, and Employee Safety Division (AEE–200), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4018.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) and implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) establish a broad national policy to protect the quality of the human environment and provide policies and goals to ensure that environmental considerations and associated public concerns are given careful attention and appropriate weight in all decisions of the Federal Government. Section 102(2) of NEPA and 40 CFR 1505.1 require Federal agencies to develop and, as needed, revise implementing procedures consistent with the CEQ regulations.

The FAA's previous NEPA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, provided FAA's policy and procedures for complying with the requirements of: (a) The CEQ regulations for implementing the procedural provisions of NEPA; (b) Department of Transportation Order DOT 5610.1C, Procedures for Considering Environmental Impacts, and (c) other applicable environmental laws, regulations, and executive orders and policies. The FAA proposed to replace Order 1050.1D with Order 1050.1E and incorporate certain changes based on notice and request for comment published in the **Federal Register** (64 FR 55526, October 13, 1999). All comments received were considered in the issuance of the final Order 1050.1E.

This notice provides a synopsis of the changes adopted, including those additional changes resulting from comments received in response to the request for comments placed in the **Federal Register** (64 FR 55526, October 13, 1999). The Order is distributed throughout the FAA by electronic means only. The order will be initially located for viewing and downloading by all interested persons at *http://www.aee.faa.gov.* If the public does not have access to the internet, they may obtain a computer disk containing the order by contacting the Office of Environment & Energy, 800 Independence Avenue SW., Washington DC 20591. If the public is not able to use an electronic version, they may obtain a photocopy of the order, for a fee, by contacting the FAA's rulemaking docket at Federal Aviation Administration, Office of the Chief Council, Attn: Rules Docket (AGC–200)—Docket No. 29797, 800 Independence Avenue SW., Washington DC 20591.

Synopsis of the Changes: The FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, includes additions or changes to the previous version of the order that may be of interest to the public and other government agencies and organizations.

The revised Order 1050.1E:

a. Reorganizes to consolidate all FAA categorical exclusions, including new and modified categorical exclusions for all FAA programs, into chapter 3 while eliminating the separate appendices and their respective categorical exclusions for each program. Categorical exclusions are those types of Federal actions that meet the criteria contained in 40 CFR 1508.4 of the NEPA regulations promulgated by the Council on Environmental Quality. Categorical exclusions represent actions that, based on the FAA's past experience with similar actions, do not normally require an EA or EIS because they do not individually or cumulatively have a significant effect on the human environment.

b. Reorganizes to place the types of actions that normally require preparation of EA's and EIS's for all programs into Chapters 4 and 5, respectively. Appendix 6 (Airports) of Order 1050.1D (which references FAA Order 5050.4A, Airport Environmental Handbook, October 8, 1985) is now incorporated under paragraph 214 of this order. Except for the procedures for internal FAA coordination and review of environmental documents in FAA Order 5050.4A (paragraphs 63, 64, and 95), if there is a conflict between Order 1050.1E and supplemental program guidance, Order 1050.1E takes precedence.

c. Adds Tribes to the list of government agencies consulted in extraordinary circumstances determinations when actions are likely to be highly controversial on environmental grounds based on concerns raised by a Federal, State, or local government agency, Tribe, or by a substantial number of the persons affected by the action (see paragraph 304i); likely to violate Tribal water quality standards under the Clean Water Act and Safe Drinking Water Act (see paragraph 304h), or air quality standards established under the Clean Air Act Amendments of 1990 (see paragraph 304g); or likely to be inconsistent with any Tribal law relating to environmental aspects of the proposed action or Federal responsibilities toward Tribal trust resources. Includes new guidance on government-to-government consultation with Tribes, in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000 (65 FR 67249, November 9, 2000), and Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, dated April 29, 1994 (59 FR 22951, May 4, 1994) (see paragraph 213). Incorporates references to Tribal consultation into appendix A, section 11 on cultural resources, in accordance with regulations governing section 106 consultation under the National Historic Preservation Act (36 CFR part 800) and compliance with the Native American

Graves Protection and Repatriation Act (43 CFR part 10), the American Indian Religious Freedom Act of 1978 (Pub. L. 95–341), and E.O. 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996).

d. Provides guidance on intergovernmental review of agency actions that may affect State and local governments, in accordance with E.O. 12372, Intergovernmental Review of Federal programs (July 14, 1982), and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities (see paragraph 213).

e. Deletes from the characteristics for extraordinary circumstances those actions that are likely to be highly controversial with respect to availability of adequate relocation housing.

f. Provides guidance for the option of documenting that a project qualifies for categorical exclusion (see paragraph 305).

g. Adds new categorical exclusions and revises existing categorical exclusions to accommodate actions that do not significantly affect the environment. The new and revised categorical exclusions are the result of the accumulated environmental experience of the FAA's actions subsequent to the original issuance of FAA's categorical exclusions between 1973 and 1986. The new categorical exclusions are: paragraphs 307c, 307e, 307f, 307h, 307p, 307u, 310c, 310d, 310u, 310w, 310z, 311c, 311d, 311e, 311g, 311k, 311m, 311n and 312b. Categorical exclusions that were substantively amended are: paragraphs 307i, 307k, 307m, 307o, 309a, 309d, 309e, 310a, 310b, 310h, 310i, 310k and 310p. Some of the amended categorical exclusions are formed by combining two or more categorical exclusions from Order 1050.1D. Applicable actions of the Associate Administrator for Commercial Space Transportation were added to the categorical exclusions under paragraphs 308b, 309c, 309d, 309g, 309h, 310h, 310l, 310q, 310t and 311n. Previous categorical exclusions from Order 1050.1D that were determined to be no longer relevant (outdated; redundant) were not carried forward into Order 1050.1E. The deleted categorical exclusions were (as identified in Order 1050.1D): Appendix 1, paragraphs 5i, 5o, and 5s; Appendix 3, paragraphs 4b and 4h; Appendix 4, paragraph 4e and 4m; Appendix 5, paragraphs 4a, 4b, 4c, 4e and 4f; and Appendix 7, paragraph 4b. Two previously-listed categorical exclusions, one in Order 1050.1D (Appendix 3, paragraph 4a) and the other in Order 5050.4A (paragraph 23b(9)), were determined to be "advisory actions." These are removed from the list of categorical exclusions and are now properly identified as advisory actions in paragraph 301.

h. Provides formal procedures for adopting draft and final EA's prepared by other agencies (see paragraph 404d), as recommended by CEQ in its Memorandum: Guidance Regarding NEPA Regulations (48 FR 34263, July 28, 1983).

i. Provides a new optional procedure for preparing joint decision documents that meet the requirements of NEPA and the Federal Aviation Act of 1958, as amended (see paragraph 408).

j. Provides a new optional procedure for preparing scoping documents (see paragraph 505).

k. Provides a new optional procedure for publishing records of decisions (ROD's) in the **Federal Register** (see paragraph 512e).

l. Adds a requirement, pursuant to EPA filing guidance, to notify the EPA if the FAA adopts an EIS prepared by another agency (see paragraph 518h).

m. Adds a new appendix A, Analyses of Environmental Impact Categories. Appendix A contains an overview of procedures for implementing other applicable environmental laws, regulations, and executive orders in the course of NEPA compliance. Appendix A incorporates and updates Attachment 2 of Change 4 to Order 1050.1D, and amends each impact category to include a significant threshold paragraph where thresholds have been established.

n. Adds a new subject, "Supplemental Noise Guidance." to the Noise section of Appendix A (see section 14). Although the yearly day/night average sound level (DNL) is FAA's metric for determining significant noise impacts for NEPA purposes, supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise-sensitive locations or situations and to assist in the public's understanding of the noise impact. Accordingly, the description should be tailored to enhance understanding of the pertinent facts surrounding the changes. The FAA's selection of supplemental analyses will depend upon the circumstances of each particular case. In some cases, this may be accomplished with a more complete narrative description of the noise events contributing to the yearly day/night average sound level (DNL) contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL. Use of supplemental metrics selected should fit the circumstances. There is no single supplemental methodology that is preferable for all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study.

o. Adds a reference to the use of demographic information of the geographic area of potentially significant impacts for purposes of anticipating and responding to public concerns about environmental justice and children in accordance with applicable Executive Orders, directives, and guidance issued by the CEQ and EPA. (see section 16 of Appendix A)

p. Provides a new procedure for integrating Clean Water Act section 404 permitting requirements and NEPA (see section 18, Appendix A, Analysis of Environmental Impact Categories).

q. Adds a new Appendix B, FAA Guidance on Third-Party Contracting, with a brief cross-reference in paragraph 204d. This appendix provides guidance on the use of third-party contractors in the preparation of NEPA documents consistent with 40 CFR 1506.5(c). Third-party contracting refers to the preparation of an EIS by a contractor selected by the FAA and under contract to, and paid for by, an applicant.

r. Adds a new Appendix D that describes Environmental Stewardship and Streamlining pursuant to provisions in "Vision100—Century of Aviation Reauthorization Act" that give review priority to certain projects, require the establishment and management of review timelines, improve and expedite interagency coordination, reduce undue delays, emphasize accountability, and otherwise assist in facilitating environmental reviews.

s. Adds guidance that gives special consideration to the evaluation of the significance of noise impacts on noise-sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties, and states that Part 150 land use guidelines and the DNL 65 dB threshold of significance for noise do not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

The new and amended categorical exclusions, and paragraph 211 on reducing paperwork and paragraph 212 on reducing delays are consistent with the FAA's initiative to streamline the NEPA process that was announced by the Administrator in January 2001. The new appendix on environmental stewardship and streamlining describes provisions enacted into law in December 2003 and provides information on FAA responsibilities under these provisions. The provisions

do not change the requirements in Order 1050.1E or FAA responsibilities for complying with NEPA and other environmental laws, as described in the Order.

Disposition of Comments

Additional changes and clarifications were added to the final order in response to comments received as a result of the **Federal Register** notice and are discussed in the forthcoming paragraphs describing the disposition of comments. Comments were received from three primary sources: (1) Agencies of the Federal government and State and local governments; (2) organizations and special interest groups; and (3) individual members of the public. The term "comment" used in this notice refers to each individual issue raised by a commenter; numerous comments may have been identified within the correspondence forwarded to the FAA docket by a commenter. Although the notice requested comments only on the proposed changes to the FAA's NEPA procedures, the FAA determined that the public interest was better served by considering all comments submitted. Also discussed are any substantive changes to the order resulting from deliberative discussions with the Environmental Protection Agency, the Office of the Secretary of Transportation, the Council on Environmental Quality, and internal elements of the FAA.

Comments received can be classified into two categories: (1) Those comments that broadly cover a given chapter (chapter-wide), appendix (appendix-wide), or the order as a whole; and (2) those comments that specifically relate to a given paragraph or component of a paragraph. Also, certain issues were identified during the commenting process that are of substantial interest to the commenters. Such issues (issues of special interest) are treated with a more extensive discussion in this preamble commensurate with the level of interest expressed in the public comments. The order in which comments will be discussed is as follows: (1) Issues of special interest; (2) general subject matter; and (3) for each chapter and appendix in succession, first chapter- or appendix-wide comments followed by comments relating to individual paragraphs. As a consequence of changes made to the order in response to comments, some of the paragraph and subparagraph numbering have changed. References to specific paragraphs in this preamble are made to the revised paragraph and subparagraph numbering of the final Order.

Issues of Special Interest

There were a number of general comments regarding the applicability of DNL 65 dB, both as the preferred noise metric and as the sound level generally identified as the "significant" threshold level of aviation noise. The FAA's responses are addressed in the topic areas DNL Metric; Relationship between DNL and Annoyance (Schultz Curve); and 65 dB Level.

DNL Metric: The Aviation Safety and Noise Abatement Act of 1979 directed FAA to establish by regulation a single system for measuring noise exposure at airports and surrounding areas which would provide a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise. The FAA adopted DNL. The EPA Guidelines for Noise Impact Analysis (U.S. Environmental Protection Agency 1982) also used DNL as the primary measure of general audible noise. All Federal agencies have now adopted DNL as the metric for airport noise analysis in NEPA (EIS/EA) documents. DNL takes into account the magnitude of the sound levels of all individual events that occur during the 24-hour period, the number of events, and an increased sensitivity to noise during typical sleeping hours. DNL is an average in that it accumulates all the noise exposure over a 24-hour period and divides the total by the number of seconds in a day. As described in the FICON Technical Report, the logarithmic nature of the decibel (dB) unit on which DNL is based causes sound levels of the loudest events to control the 24-hour average. The FICON technical subgroup focused extensively on the question of the applicability of the DNL metric (see Federal Interagency Committee on Noise (FICON), Federal Agency Review of Selected Airport Noise Analysis Issues, August 1992. After reviewing all noise exposure metrics, the FICON technical subgroup concluded that no other metrics are of sufficient scientific standing to replace DNL. The available evidence indicates that DNL continues to be the superior metric to account for variations in the noise environment, including such factors as numbers of flights, loudness of individual aircraft, and percentage of night flights.

Relationship between DNL and Annoyance (Schultz Curve): The Schultz (1978) curve relating DNL to the percent of people highly annoyed (see Schultz, T.J. 1978, Synthesis of Social Surveys on Noise Annoyance, Journal of the Acoustical Society of America 64(2): 377–405.) is generally accepted as a valid criterion for noise impact and has been revalidated by subsequent analyses over the years (see Fidell, S., D. Barber, Updating a Dosage-Effect Relationship for the Prevalence of Annoyance Due to General Transportation Noise, Journal of the Acoustical Society of America, 89, January 1991, pp. 221–233; also see Finegold, L.S., C.S. Harris, and H.E. von Gierke, 1992, Applied Acoustical Report: Criteria for Assessment of Noise Impacts on People, Journal of the Acoustical Society of America, June 1992; also see Finegold, L.S., C.S. Harris, and H.E. von Gierke, 1994, Community Annoyance and Sleep Disturbance: Updated Criteria for Assessing the Impacts of General Transportation Noise on People, Noise Control Engineering Journal, Volume 42, Number 1, January–February 1994, pp. 25–30). In this regard, the Schultz dosage-effect relationship provides the best tool available to predict noise-induced chronic annoyance. As stated in the 1992 FICON report, "The relationship is an invaluable aid in assessing community response as it relates the response to increases in both sound intensity and frequency of occurrence. Although the predicted annoyance, in terms of absolute levels, may vary among different communities, the Schultz curve can reliably indicate changes in the level of annoyance for defined ranges of sound exposure for any given community."

65 dB Level: Federal agencies have adopted certain guidelines for compatible land uses and environmental sound levels. Land use is normally determined by property zoning, such as residential, industrial, or commercial. Noise levels that are unacceptable for homes may be quite acceptable for stores or factories. The FAA has issued these guidelines as part of its Airport Noise Compatibility Program, found in Part 150 of the Federal Aviation Regulations. In general, most land uses are considered to be compatible with DNL's that do not exceed 65 dB. Part 150 notes that responsibility for determining the "acceptable" and permissive land uses based on needs and values and the relationship between specific properties and specific noise contours rests with the local authorities. For properties protected under section 4(f) of the Department of Transportation Act, the FAA recognizes that in certain circumstances the Part 150 guidelines may not be sufficient, and some instances, are not sufficient, to determine noise compatibility or the threshold of significance (see sections 4.3, 6.2, and 14.3 of Appendix A of Order 1050.1E). A DNL of 65 dB is

generally identified as the threshold level of aviation noise, and other sources of community noise, which are "significant".

Some criticism of DNL stems from beliefs that the levels identified with land-use compatibility are too high. Any compatibility guideline, such as a DNL of 65 dB, must represent a balance between that level which is most desirable to protect communities and that which can be achieved with cost-effective mitigation measures and available technology. Local communities may choose to adopt guidelines based on locally determined needs and values under which residential land uses are non-compatible with noise at levels below a DNL of 65 dB.

In addition, the Federal Interagency Committee on Aviation Noise (FICAN) continues to support the use of DNL 65 dB as the level of aircraft noise that indicates a threshold incompatibility with residential land use as stated in their most current Annual Report, dated October 1998.

Definition of Significant: Several comments were received requesting that a clear definition of the term "significant" as it pertains to aircraft noise exposure be included in FAA Order 1050.1E. The FAA's response: General guidelines for noise compatibility identify day-night average sound levels between 55 and 65 dB as "moderate exposure" and as generally acceptable for residential use. Above a DNL of 65 dB, these guidelines identify the noise impact as "significant". For the purpose of defining a significant impact threshold for assessing the impact of a proposed FAA action, a significant noise impact would occur if analysis shows that the proposed action will cause noise sensitive areas to experience an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure when compared to the no action alternative for the same timeframe. For example, an increase from 63.5 dB to 65 dB is considered a significant impact. This Order provides additional guidance for special consideration where the land use compatibility guidelines under 14 CFR part 150 and the DNL 65 dB threshold either may not be or are not relevant. See sections 4, 6, and 14 of appendix A of Order 1050.1E.

A-Weighting: There were a number of comments that objected to the use of A-weighting. The FAA's response: When measuring community response to noise, it is common to adjust the frequency content of the measured sound to correspond to the frequency sensitivity of the human ear. This adjustment is called A-weighting (American National Standards Institute, 1988). Sound levels that have been so adjusted are referred to as A-weighted sound levels. The A-weighted sound level is used extensively in the U.S. for measuring community and transportation noises. In 14 CFR part 150 the FAA adopted the A-weighted sound level as the single system of measuring noise that has a highly reliable relationship between projected noise impacts and surveyed reactions of individuals to noise to apply uniformly in measuring noise at airports and the surrounding area pursuant to the Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. § 47501 *et seq.* Note: A-weighting emphasizes sound components in the frequency range where most speech information resides, and thus yields higher readings (A-weighted levels) for sound in the 2,000 to 6,000 Hz range, but considerably lower readings for low-frequency noise, than does the overall sound pressure level. The normal human ear can hear frequencies from about 20 Hz to about 15,000 or 20,000 Hz. It is most sensitive to sounds in the 1,000 to 4,000 Hz range.

Area Equivalent Method (AEM): There were a number of general comments that suggested AEM 3.0 is outdated. The FAA's response: The FAA concurs. However, the FAA has updated AEM to Version 6.0c subsequent to the October 13, 1999 **Federal Register** Notice and will continue to do so with each future update of the Integrated Noise Model (INM). The Office of Environment and Energy (AEE) has released seven versions of the Area Equivalent Method (AEM).

(1) February 1984, which required VISICALC software package and an Apple IIe personal computer.

(2) July 1984, which required the LOTUS 1–2–3 software and an IBM compatible personal computer.

(3) November 1989, Version 2, a LOTUS 1–2–3 spreadsheet converted into an executable BASIC program that functioned similar to a LOTUS spreadsheet.

(4) September 1996, Version 3, a very early DOS-based C++ program utilizing text graphics windows.

(5) September 2000, Version 5.2a, a Microsoft EXCEL 97 worksheet.

(6) February 2001, Version 6.0b, a Microsoft EXCEL 97/2000 worksheet.

(7) September 2001, Version 6.0c, a Microsoft EXCEL 97/2000 worksheet.

The AEM algorithm has not changed since 1984. Updates to AEM involve the software used and/or expansion of the aircraft type database. AEM Version 6.0c's database was produced using INM 6.0c, the current version of that model. Note: The AEM is a screening procedure used to simplify the assessment step in determining the need for further analysis with the Integrated Noise Model (INM) as part of Environmental Assessments and Impact Statements (EA/EIS) and Federal Aviation Regulations Part 150 studies. AEM is a mathematical procedure that provides an estimated noise contour area of a specific airport given the types of aircraft and number of operations for each aircraft. The noise contour area is a measure of the size of the landmass enclosed within a level of noise as produced by a given set of aircraft operations. The AEM produces contour area (in square miles) for the DNL 65 dB noise level and any other whole DNL value between 45 and 90 dB. The AEM is used to develop insights into potential increase or decrease of noise resulting from a change in aircraft operations. Further information on, and the current status of, AEM and other environmental models may be obtained by visiting the Web site of the Office of Environment and Energy at *http://www.aee.faa.gov.*

Heliport Noise Model (HNM): There were a number of general comments that suggested HNM 2.2 is outdated. The FAA's response: The Heliport Noise Model (HNM) Version 2.2, released March 1994, is the best tool available to analyze heliport noise impacts; and it is part of FAA's ongoing commitment to help resolve aircraft noise issues. HNM is a computer program used for determining the impact of helicopter noise in the vicinity of terminal operations. HNM Version 2.2 is based upon FAA's Integrated Noise Model (INM) Version 4.0, a similar computer program for assessing the impact of fixed-wing aircraft noise. The HNM differs from the INM in its ability to accommodate the greater complexity of helicopter flight activities compared to the activities of fixed-wing aircraft. An updated version of HNM integrated with INM is currently under development and is expected to be released with INM 7.0.

Corporate Jets: There were a number of general comments concerning the exclusion of corporate jets (<75,000 lbs.) from Stage 3 rules. The FAA's response: The newest set of standards, known as Stage 3 standards, apply to all aircraft weighing more than 75,000 pounds and to newly manufactured aircraft weighing 75,000 pounds or less. The Airport Noise and Capacity Act of 1990 mandated the retirement of heavier aircraft not meeting Stage 3 standards, but not aircraft weighing 75,000 pounds or less. These lighter aircraft also did

not have to be retired under earlier noise standards because the FAA concluded that it was questionable whether the technology existed to modify those aircraft in a cost-effective manner. (U.S. General Accounting Office, Report to Congressional Requesters, Aviation and the Environment: FAA's Role in Major Airport Noise Programs, April 2000, p. 6)

14 CFR Part 150: There were a number of general comments requesting that all references to 14 CFR part 150 be deleted, especially "Table 1, Land Use Compatibility With Yearly Day-Night Average Sound Levels," presented in section 4 of appendix A. The FAA's response: The FAA does not concur with the commenters' recommendations. The table in question continues to provide a standard reference for land uses compatible with various levels of airport noise. As such, the table continues to play a vital role in assessing the compatibility of aircraft noise. However, the FAA recognizes that the Part 150 guidelines may not be sufficient in some instances, and are not sufficient in other instances, to determine noise compatibility or the threshold of significance (see sections 4.3, 6.2, and 14.3 of Appendix A of Order 1050.1E. Federal Aviation Regulation, 14 CFR part 150, Airport Noise Compatibility Planning, is the primary Federal regulation guiding and controlling planning for aviation noise compatibility on and around airports. Part 150 was issued as an interim regulation (46 FR 8316; January 19, 1981) under the authority of the Aviation Safety and Noise Abatement Act of 1979 [49 U.S.C. 7501 *et seq.*] (ASNA Act) and 49 U.S.C. § 44715. Implementation of noise compatibility planning under the ASNA Act was delegated to the FAA. Part 150 established procedures, standards, and methodologies to be used by airport operators for the preparation of Airport Noise Exposure Maps (NEM's) and Airport Noise Compatibility Programs (NCP's) which they may submit to the FAA under Part 150 and the ASNA Act. The final rule was issued on January 18, 1985 (49 FR 49260) and, on March 16, 1988, was amended to include freestanding heliports (53 FR 8722).

The FAA believes that the Part 150 process is a balanced approach for mitigating the noise impacts of airports upon their neighbors while protecting or increasing both airport access and capacity, as well as maintaining the efficiency of the national aviation system. Part 150 provides for the following:

(1) Establishes standard noise methodologies and units.

(2) Establishes the Integrated Noise Model (INM) as the standard noise modeling methodology.

(3) Identifies the land uses that normally are compatible or incompatible with various levels of airport noise.

(4) Provides voluntary development of NEM's and NCP's by airport operators.

(5) Provides for review of NEM's to insure compliance with the Part 150 regulations.

(6) Provides for review and approval or disapproval of Part 150 NCP's submitted to the FAA by airport operators.

(7) Establishes procedures and criteria for making projects eligible for funding under the Airport Improvement Program.

The regulations contained in Part 150 are voluntary and airport operators are not required to participate. However, an approved Part 150 NCP is the primary vehicle for gaining approval of applications for Federal grants for noise compatibility projects.

A standard table of land uses normally compatible (or incompatible) with various exposures of individuals to airport-related noise is essential to assure uniform treatment of both airport operations and noise-sensitive land uses or activities. This is the only noise and land use compatibility table currently in the Code of Federal Regulations (14 CFR part 150)." (Report to Congress: Part 150 Airport Noise Compatibility Planning, November 1989)

3000 Foot Categorical Exclusion: The comments received indicate considerable public interest in one of the categorical exclusions provided in Chapter 3. The categorical exclusion at issue is identified under paragraph 311j, which provides in part; "Establishment of new or revised air traffic control procedures conducted at 3000 feet or more above ground level, * * *." The two environmental concerns identified in the public comments were aircraft noise and air quality (aircraft emissions). Given the level of public interest, the FAA determined it was in the public interest to re-verify the technical basis for the categorical exclusion and is using this opportunity to notify the public of the re-verification results below:

Noise: A technical study was conducted based on the Integrated Noise Model (INM) Version 6.0a, to demonstrate the noise exposure effects of aircraft flights at or above 3,000 ft AGL, and specifically to demonstrate the degree to which these actions could contribute to significant impact of DNL 65 dBA.

The study focused on the same types of parameters that can be input into the Air Traffic Noise Screening Model (ATNS) Version 2.0 including: (1) The number of annual operations; (2) the type of operations (arrival/departure); and (3) the percent daytime/nighttime operations.

The technical study utilized INM 6.0a (the most current technology in noise modeling) to identify the number of aircraft operations required to produce DNL 65 dBA under various noise exposure conditions. To conduct the study the following steps were followed:

(Step 1). Selection of four aircraft to represent different categories of commercial aircraft. The following aircraft were selected to provide conservative estimates (estimates that would tend to over-protect, rather than under-protect people from noise impacts): (a) Boeing B747–400, for wide-body aircraft; (b) Boeing B757–200, for large aircraft; (c) Fokker F100, for medium size jets; and (d) Embraer 145, for small jets, regional jets, and props.

(Step 2). Selection of aircraft climb/power settings and speeds to reflect full power conditions which is the same assumption used to build the tables of the ATNS.

(Step 3). Conduct INM 6.0a runs for level fly-over, using the selected climb/power settings and speeds for each aircraft at the corresponding altitudes of 3,000, 3,500, 4,000, 4,500, and 5,000 feet.

(Step 4). Development of an Excel spreadsheet (CATEX Tool) that predicts the number of flight operations necessary to increase to DNL 65 dBA.

(Step 5). Analysis of the year 2000 Official Airline Guide (OAG) data for twelve U.S. airports (representative of large, medium and small operational capacities) and develop representative (composite) aircraft fleet mix and percent nighttime operations.

The study addressed the number of operations required to create a significant impact (*i.e.* creation or enlargement of a 65 dB DNL noise contour or for areas already within the 65 dB DNL noise contour, a 1.5 decibel increase in noise). Two scenarios were analyzed for: (1) Areas currently exposed to aviation noise (Existing Noise); and (2) areas not currently exposed to aviation noise (No Preexisting Noise). The results are shown in Table 1 for the composite fleet.

TABLE 1.—"NO PREEXISTING NOISE" VERSUS "EXISTING NOISE" FOR THE COMPOSITE FLEET[1]

Airport noise exposure environment	Night operations (percent)	Day operations (percent)	Operations @ 3000 ft. CATEX tool
No Preexisting Noise to DNL 65 dBA	16	84	900
Existing Noise (DNL 63.5) to DNL 65 dBA	16	84	263

[1] The composite fleet is the average of twelve airport fleets and night/day operations.

The final column, "Operations @ 3000 ft. CATEX Tool", represents the number of new operations, flying over the same point, at 3,000 feet AGL during a single day which would produce a significant impact by either creating a DNL 65 dBA noise contour where previously there was no aviation noise, or for areas already experiencing DNL 63.5 dBA from aviation noise, a 1.5 decibel increase in noise. In other words, modifications to air traffic procedures at 3,000 feet AGL would have to route 900 new operations over noise sensitive areas not currently exposed to aviation noise or 263 new operations over noise sensitive areas currently exposed to aviation noise in a single day.

In the FAA's experience, the likelihood that changes to air traffic procedure would direct numbers of operations exceeding this level over a single noise sensitive area around any airport is remote. Therefore, changes to air traffic procedures at or above 3,000 feet AGL in normal circumstances (*i.e.* absent extraordinary circumstances) qualifies for categorical exclusion in accordance with CEQ regulations.

A copy of the paper "Order 1050.1E 3000 ft. AGL Categorical Exclusion Validation Study", which fully describes the re-validation effort, has been placed in the docket. A copy of the report will be available from FAA's Office of Environment and Energy Web site at *http://www.aee.faa.gov* for 120 days following publication of this notice in the **Federal Register**.

Air Quality: For this categorical exclusion, the effects on local air quality resulting from aircraft operating at or above 3000 feet above ground level (AGL) have been studied to a limited extent (FAA Report: FAA–AEE–00–01, "Consideration of Air Quality Impacts by Airplane Operations At or Above 3000 Feet AGL"). It has been concluded that aircraft operating at such altitudes, generally termed overflights, do not impact local air quality, even with worst case assumptions.

Local air quality impacts are defined by the National Ambient Air Quality Standards (NAAQS) which include exceedance levels for concentrations of six pollutants. Potential impacts on local air quality are evaluated by predicting local concentrations and reporting total mass emitted for a particular pollutant. When determining local air quality impacts the location of the source is of primary importance. For aircraft overflights, the aircraft are at considerable altitude.

At most major U.S. airports, safety dictates that overflights be at least 7000 feet above field elevation. However, for U.S. airspace in general, the minimum overflight altitude may be as low as 3000 feet, and, as such, is the figure used in this analysis. Of most importance is the relationship between the minimum overflight altitude and the mixing height, defined as the vertical region of the atmosphere where pollutant mixing occurs. The EPA default value for mixing height is 3000 feet, inasmuch as that value is close to the annual average mixing height in the contiguous United States. Above this height, pollutants that are released generally do not mix with ground level emissions and do not have an effect on ground level concentrations in the local area.

It can be demonstrated by dispersion modeling that by the time aircraft exhaust gases released above 3000 feet mix with the ambient air and reach the ground, the increase in ground level concentration is negligible, even for very large commercial jet aircraft. This occurs even if the mixing height is greater than 3000 feet. As for local air quality impacts when the aircraft are at 3000 feet and the mixing height is at a greater altitude, the effect on ground level concentration for the NAAQS criteria pollutants is so miniscule as to be negligible.

Based on the dearth of scientifically verifiable data on the local air quality impacts resulting from air emissions at altitudes at or above 3000 feet AGL, exploratory studies in this area continue. However, based on the current state of scientific understanding and EPA guidance on local air quality issues, a categorical exclusion is the appropriate procedural measure for this specified set of aircraft operations. A copy of the report FAA–AEE–00–01, "Consideration of Air Quality Impacts by Airplane Operations At or Above 3000 Feet AGL", which describes the re-validation effort, has been placed in the docket. A copy of the report will be available from FAA's Office of Environment and Energy Web site at *http://www.aee.faa.gov* for 120 days following publication of this notice in the **Federal Register**.

Comments on General Subject Matter

Presentation of Guidance in Order 1050.1E. Commenters from two Federal agencies noted that the Order contains guidance that is not appropriate in an order. They recommend that the order contain an outline of the CEQ regulations and the guidance put in a reference manual. FAA's response: FAA has determined that due to the need to update its NEPA procedures to aid users, the agency will not change the format for Order 1050.1E, but will consider changing the format for subsequent versions.

Health Effects: General. Several commenters expressed the view that aviation noise and aviation effects in general cause a variety of human ailments such as stress, aggravation, sleep deprivation, changes to personality, loss of technical abilities, changes in character, and mental and emotional harm. The same commenters also expressed concern over physical effects of aviation such as vibration and traffic congestion. FAA's response: The physical effects of aviation on the environment are addressed in Order 1050.1E. Even if a given action is otherwise categorically excluded from review under NEPA, extraordinary circumstances, such as increased traffic congestion, may be sufficient to trigger the preparation of an EA, and if significant environmental impacts were identified that could not be mitigated, possibly an EIS. Although it has yet to be scientifically demonstrated that aircraft noise, as typically experienced in communities surrounding airports, has a causal relationship with human physical and psychological ailments as described by the commenters, the FAA and other Federal agencies, including the EPA, through their participation in the Federal Interagency Committee On Aviation Noise (FICAN), continue to promote and monitor research in the field of aviation noise effects on the

human and ecological environment. See *http://www.fican.org* for further information on FICAN activities. Federal and state environmental regulations, coupled with the environmental review procedures mandated under NEPA, provide a means to assess and protect human health and welfare and the environment.

Health: Air Quality and Emissions. Several commenters expressed their concerns for the health impacts on the residents living near airports from toxic (air) emissions from the operation of aircraft. They believe that data from environmental studies conducted near airports show increased incidence of cancer and heart and respiratory diseases. FAA's response: The FAA has reviewed the studies cited by the commenters. Some specific studies of the health effects of aviation emissions have been conducted in Chicago. In one of the analytical reports, the southeast and southwest sides of Chicago were studied for cancer risk from air pollution. The southwest Chicago air toxics study explicitly included estimated impacts from Midway Airport. In southwest Chicago, mobile sources (including road vehicles, non-road engines, and aircraft engines) were estimated to contribute about 25 percent of the air toxic emissions. The risks of cancer from air toxics in southwest Chicago were estimated at approximately 2 in 10,000. This risk estimate is typical, consistent with studies of other urban areas, and falls well within the range of from 1 in 100,000 to 1 in 10,000 which was determined in other EPA studies to be a rough estimate of the combined health risks due to all sources of pollution in urban areas.

In an analytical report (KM Chng Environmental Inc., "Findings Regarding Aircraft Emissions O'Hare International Airport and Surrounding Communities," KMC Report No. 991101; December 1999), it was again concluded that sources other than aircraft using O'Hare International Airport (O'Hare) emit the vast majority of the air pollutants of concern near the airport and that, in fact, emissions from aircraft using O'Hare were lower in 1998 than reported by the Illinois Environmental Protection Agency for 1990. It was stated that the study's findings indicate that aircraft using O'Hare play only a very minor role in regional ozone formation and contributions to air toxics near O'Hare.

In addition, the FAA has evaluated air toxics at Seattle-Tacoma International Airport (Sea-Tac) at the special request of local citizens groups. These studies indicated that automobile exhaust emissions appeared to be the primary source of air toxics within the region. (Sea-Tac Airport Master Plan Update Final EIS.) Such conclusions seem to be consistent with those in the EPA studies.

However, airports are by no means being overlooked or unmitigated as important sources of air emissions. When an airport owner proposes significant airport expansion involving Federal approval or funding, the FAA is responsible for evaluating the impact on national air quality standards. If the airport project is located in a nonattainment area, the FAA is required to determine that the type of emissions for which the area is in nonattainment and which are caused by the project would conform with the purposes of the applicable EPA State Implementation Plan. If *de minimis* levels are exceeded, the FAA must complete an air quality analysis for a determination of conformity, which is subject to public review and comment. In addition, effective control measures are currently available, particularly to reduce mobile source emissions associated with airport operations.

Airborne Emissions of Toilet Waste. A commenter believes that an example of the hazards caused by aircraft toxic emissions comes from the National Transportation Safety Board, which has determined that toilet valves on 727's and other jets leak. Descending aircraft routinely leak raw, untreated toilet waste over communities. FAA's response: The FAA strongly disagrees with the commenter's assertion that aircraft routinely leak toilet waste over communities. A leaking external liquid waste valve is a serious safety hazard to the operation of an aircraft. When leakage occurs, the liquid freezes into a block of ice on the exterior of the aircraft (the "blue ice" as popularized in the media). When the ice eventually separates from the aircraft in flight, the ice poses a hazard to turbojet engines mounted at the rear of the aircraft. In one instance, the ingestion of such a block of ice destroyed an engine of a 727 in flight, causing the engine to separate from the aircraft. Where the FAA has determined that the design of waste-handling components of a particular model of aircraft are not sufficiently robust to preclude incidents of leakage, the FAA has issued Airworthiness Directives to immediately force the operators of that model of aircraft to re-design the components in question.

Streamlining 1050.1E Procedures. One commenter believes that the currently proposed new and modified CATEX's, and the new procedures for preparing environmental documents will facilitate the approval of aviation-related programs and petitions by airport operator/user petitions, and it will further increase the burden imposed on the communities surrounding the airports. The commenter believes this is not an equitable proposal, therefore, it needs to be rethought, amended to achieve a fair balance, and then resubmitted. While not opposed to the general reduction of bureaucratic red tape, the commenter believes that such streamlining is warranted only for cases that have withstood the test of time, have reached an indisputable maturity level, and enjoy a broad based acceptance and support. Some of the current FAA procedures and standards associated with Aviation Noise Exposure have been and continue to be challenged as outdated or deficient, and they are at best controversial. Under the circumstances, the commenter believes it is premature to consider the order changes, some of which are based on currently disputed premises. Prior to contemplating implementation of the changes, the commenter believes that the FAA must define and establish a number of measures that automatically safeguard communities near airports, as much as facilitate the approval (through CATEX's) of petitions by airport operators and users. FAA's response: The new and modified CATEX's do not lower environmental protection requirements. Consistent with CEQ regulations, these CATEX's have been determined normally not to result in significant impacts. Safeguards have been built into the categorical exclusion list through the application of extraordinary circumstances (see paragraph 304).

Storm Water Runoff Effects. According to one commenter, the damage to the environment from airports has been so severe that several groups (among them the NRDC and the U.S. Humane Society) filed legal actions against Chicago's O'Hare and Baltimore Washington airports under storm water laws for polluting waterways with toxic chemicals which caused massive fish kills, among other effects. It is probable that similar conditions exist at other airports. For example, San Francisco International Airport is under a mandate to clean up its toxic, solvent-polluted soils under a storm water law. The commenter believes that further airport expansion without strict environmental review of toxic emissions, water and ground impacts, really sanctions violence against innocent citizens in favor of highly profitable airline

operations. FAA's response: The FAA and airport proprietors must comply with a variety of environmental laws and regulations that are aimed at protecting the environment from the effects of releases of pollutants. In the case of storm water, the principal means for protecting the environment is through the use of National Pollutant Discharge Elimination System (NPDES) permits. The NPDES regulatory program (40 CFR part 122) is administered pursuant to section 318, 402, and 405 of the Clean Water Act (33 U.S.C. 1251 *et seq.*). Runoff from airports, including runoff from deicing operations, is specifically covered under the NPDES program. Pollutant limits established for each permit ensure that applicable water quality standards of the receiving waters will not be exceeded. NPDES permits issued to FAA facility and airport operators (*e.g.*, new or modified permits associated with expansion projects) would require discharges to be monitored and reported to demonstrate permit compliance. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action (civil and criminal penalties); for permit termination, revocation and re-issuance, or modification; or denial of a permit renewal application. The enforcement of NPDES permits ensures that pollution of the environment from storm water runoff is not sanctioned.

Air Quality Conformity Requirements. A commenter (ATA) remains concerned that the air quality conformity requirements are unduly rigorous as applied to airport projects and have submitted joint comments to EPA calling for revisions and clarifications. They are encouraged by FAA's statement in Appendix A that it will publish a list of actions presumed to conform sometime in the future. ATA urges the FAA to develop this list as expeditiously as possible and would be glad to work with the FAA in this regard. FAA's response: Order 1050.1E reflects current air quality conformity requirements. FAA is continuing to pursue progress on a "presumed to conform" list and other suggested changes to general conformity requirements.

FAA Regulatory Authority. A commenter believes the revised order may not adequately emphasize the role of the FAA as the principal federal agency regulating commercial aviation in this country. Congress has vested responsibility for regulating airline safety and operations in the FAA. As such, its policies for assessing the environmental impacts of its actions directly affect airports and the commercial carriers that serve them. Consistent with this, the commenter believes that the revised order should fully explain and appropriately emphasize the Congressional statutory enactments and associated body of federal case law that have established a plenary federal jurisdiction over matters relating to aviation, and in particular, aircraft and airport operations, airport development, aircraft engine emissions, noise regulation and safety. This regulatory predicate is unique to the airline industry and, as a critical aspect of the regulatory regime governing aviation-related federal actions, it should be recognized and clearly explained in the revised order. In particular, such a discussion should emphasize the relevant aviation-related statutes and specific regulatory requirements for matters that may affect aircraft and airport operations and safety. As a source of information for state and local governments, and individuals, and as guidance for FAA consultants preparing EA's and EIS's, the revised order should be clear about the federal government's exclusive authority in matters related to the regulation of aviation and underscore the importance of substantive regulatory provisions relating to aircraft and airport operations and passenger safety in all aspects of regulatory decision-making. FAA's response: Comment noted. However, this discussion is outside the scope of Order 1050.1E.

Invasive Species. Hawaii DOT comments that the definition of invasive species as alien species whose introduction is likely to cause economic or environmental harm to human health is not understandable. Order 1050.1D defines invasive species as those likely to cause economic or environmental harm or harm to human health. This definition makes more sense. FAA's response: We concur and have modified the definition as requested (see revision at Appendix A, section 8.1).

Scoping. A commenter notes that their state environmental protection act has long provided a mandatory scoping process. The commenter supports a scoping process for federal actions. FAA's response: Scoping is mandatory for an EIS. See figure 5–1 and paragraph 505 in Chapter 5. Paragraph 505a notes the utility of using scoping documents.

Extraordinary Circumstances. The DOI notes that many in the list of extraordinary circumstances use the word "significant," which DOI believes predetermines the NEPA decision, and allows the use of CATEX's in all but the most severe cases. NPS is concerned that under this wording, most of the airport issues on which NPS has worked with FAA in recent years may be CATEXed under the proposed wording. NPS believes that such exclusion would be improper. The word "significant" should be deleted from the extraordinary circumstances list, which would bring it in conformance with most other agencies and more consistent with NEPA. With the lack of public and agency notice normally provided for CATEXed projects, it is incumbent upon the FAA to ensure that only the most environmentally benign and non-controversial projects are CATEXed. As written, the FAA procedures allow the FAA to decide for the public and other agencies whether they should have an environmental concern about a project. If the FAA determines that the impacts are not "significant" using only FAA criteria, then neither notice nor documentation would be required to other agencies, stakeholders or the public. This power to decide for others without their knowledge must be used very judiciously to meet the requirements of NEPA. The DOI believes that the proposed procedures go too far. FAA's response: According to the CEQ regulations at 40 CFR 1508.4, Federal agencies may categorically exclude actions that do not cause significant individual or cumulative impacts. Consistent with environmental streamlining goals, the FAA intends to use CATEX's to the fullest extent provided for in the CEQ regulations. In so doing, it is not the FAA's intent to improperly substitute CATEX's for EA's or EIS's, or to overlook or foreclose additional considerations that are merited for unique areas. The final Order 1050.1E clarifies FAA's approach to CATEX's by removing the "significant" terminology from the listing of extraordinary circumstances and using the guidance in Appendix A to determine when an extraordinary circumstance triggers an EA or EIS. The guidance in Appendix A includes a high level of detail on how to determine the severity of impacts for each environmental resource. It also provides for special analytical consideration to be given to unique areas such as national parks, national wildlife refuges, and Tribal sacred sites. Prior to finalizing Order 1050.1E, the FAA has extensively reviewed the proposed CATEX's and extraordinary circumstances provisions in Chapter 3 with CEQ to assure conformity with CEQ regulations.

FAA Point of Contact for NEPA Consultants. A commenter notes that the FAA has an internal chain of command by which it operates and can seek clarification when it deems appropriate to do so. The commenter

further notes that a considerable portion of the compliance activities and required documentation identified in the order is conducted by sponsors and consultants who are not afforded this same access to FAA experts. While it may not be readily apparent to FAA, there is a genuine need for a process or point of contact or hotline for project sponsors and/or contractors and maybe even anonymous FAA staff to be able to call for clarification or conflict resolution without going directly through the responsible FAA official or the FAA approving official or the decision maker or their respective designees. There are times and situations more often than we would all like to admit when the direct and immediate clarification of a point or a facilitated review by a staff expert in process or law conducted in a safe setting without repercussions would be beneficial to all. It is difficult to know and implement all of the numerous and unwieldy and varied environmental regulations, policies and processes, etc. Establishing this process will promote understanding and enhance consistency in application of the order, preempt the current hit or miss resolution process of challenging your FAA point of contact. This approach works but is equally riddled with potential for embarrassment, insult, confrontation, the possible escalation of an issue and sometimes the application of political muscle prior to obtaining the necessary clarification. This current method is not productive for anyone involved, does not facilitate the process or working relationships with FAA and can deteriorate the credibility of the process in this order. This needs to be handled in an easily accessible, non-incriminating and non-punitive way that will not undermine anyone's official role or integrity. It can be anonymous or it can be a "safe" exploratory forum. Rather than circumventing anyone's roles and responsibilities, this could be designed and used in a manner to enhance it. It seems appropriate to incorporate such a process in this order. It could provide real insight into the genuine struggles associated with the FAA order and NEPA requirements and clarify needs. FAA's response: Part of the job of the FAA responsible official is to ensure that consultants and project sponsors are aware of the environmental requirements administered by FAA that are applicable to particular projects. It is not FAA's intent in Order 1050.1E to establish an alternative responsible FAA individual or alternative environmental communication channel within FAA for consultants and sponsors. Other knowledgeable FAA staff and responsible FAA management are generally well-known to sponsors and consultants and can be engaged when additional opinions and assistance are requested. Anonymous contacts are seldom useful in resolving questions or disagreements on a project's environmental review.

Land Use Compatibility. The DOI comments that the proposed approach in the notice assumes that the FAA's authority to govern airspace takes precedence over land management agencies' authorities to manage the lands under the airspace. While it may be true in a few isolated cases (*e.g.*, safety or national security in narrowly defined circumstances), DOI is aware of no law specifying that FAA's airspace interest or authority overrides a land management agency's interest or authority. The land management agencies have various authorities to manage the lands irrespective of the FAA's authority to manage the airspace. DOI thinks this applies broadly to other Federal and State land management agencies as well, but it certainly applies to lands managed by the NPS. The NPS, under 16 U.S.C. 1 *et seq.*, possesses broad and sole authority to manage the lands, resources and visitors in the areas under its charge. In NEPA terms, this includes "special expertise" and "jurisdiction" concerning any actions affecting units of the national park system. This authority cannot be ceded to or superceded by another agency. This authority includes the responsibility to determine the nature, extent, and acceptability of impacts on park resources and visitors, as broadly defined, consistent with the body of management decisions the NPS makes concerning a park. Therefore, the DOI believes the agencies are obligated to work with each other to assess the impacts of any airspace proposals and to resolve any differences and that any conflicts between an FAA airspace proposal and the land use plans or policies of a land management agency must be clearly considered in a NEPA document. FAA's response: The FAA disagrees that Order 1050.1E assumes that FAA exercises any precedence over DOI's land management authority. Order 1050.1E guides the FAA in carrying out it's responsibilities under NEPA and other environmental law pertinent to FAA decisions and actions. Under NEPA, the responsibility for assessing the impacts of a proposed Federal action resides with the Federal decisionmaking agency. The FAA is responsible for Federal decisions concerning civil aviation and for determining the best available methodology and impact criteria to use in its assessments. This responsibility does not transfer to the NPS at the boundary of a national park. The FAA recognizes the special expertise of the NPS and routinely consults with the NPS on potential impacts on national parks. As an agency of the U.S. Department of Transportation, FAA must comply with Section 4(f) of the DOT Act (re-codified as 49 U.S.C. 303(c)). In doing so, it thoroughly evaluates effects of aircraft noise on uses for which parks, refuges, recreational, and historic sites were established. FAA consults with NPS and other agencies having jurisdiction over these special areas in determining if noise would substantially impair use of these important areas. It is the FAA's goal to develop common criteria and reach consensus with the NPS on aviation impacts on national parks.

Another commenter is very deeply concerned that further erosion in the rights of citizens and degradation of environmental quality will result from the implementation of these rule changes. At the Hanscom Field Airport, the commenter believes that these rule changes can and will result in damage to Historical, Natural, and Cultural Landmarks, in contravention of NEPA and the NHPA. The commenter is alarmed that the FAA continues to take actions which directly assault U.S. citizens and U.S. Landmarks, instead of working to make aviation a tolerable neighbor. The commenter believes these rule changes, and the recent attempts to bully the EC into relaxing the environmental regulations relating to Hushkits, are fueling an image that the FAA is bought and paid for by aviation interests instead of serving the people of the USA. The commenter believes that these actions will simply polarize more and more people against the FAA.

Therefore, the commenter asks that in the final order, delete all references to Part 150, its attendant "land use compatibility table," and any references to 65 DNL as a meaningful threshold. FAA's response: As discussed in previous FAA responses on aircraft noise and Part 150, there is a reasonable and non-arbitrary basis for the use of the DNL metric, the criterion for the threshold of significant impact (A significant noise impact would occur if analysis shows that the proposed project will cause noise sensitive areas to experience an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure), and the use of the land use guidelines in Table A of Part 150. However, the FAA recognizes that

special consideration needs to be given to the evaluation of the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges and historic sites, including traditional cultural properties. For example, the DNL 65 dB threshold does not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute. Further, the FAA recognizes that Part 150 guidelines may not be sufficient to determine the noise impact on historic properties where a quiet setting is a generally recognized purpose and attribute, such as a historic village preserved specifically to convey the atmosphere of rural life in an earlier era or a traditional cultural property. (See sections 4.3, 6.2 and 14.3 of Appendix A). Section 4.3 of Appendix A also instructs that Part 150 land use guidelines are not applicable to determining noise impacts on wildlife.

A commenter believes that inclusion of the "land use compatibility" table from Part 150 implies at least that the noise impacts outlined therein amount to a default definition of what constitutes a ""significant effect on the quality of the human environment." In directing the FAA to adopt the Part 150 regulations, Congress did not intend to give the FAA carte blanche to define on a universal basis what constitutes a "significant effect on the quality of the human environment." The FAA has never conducted a rulemaking that would have offered the public meaningful notice that the FAA intended to adopt such a rule. To the extent the FAA regards the current proceeding involving the proposed order 1050.1E as something other than a rulemaking, the FAA has not provided such notice either. Accordingly, the commenter asks that either (1) The final order delete all references to Part 150 and any references to 65 DNL as a meaningful threshold; or (2) The final order expressly state that notwithstanding any inclusion of or reference to Part 150, any inclusion of or reference to the Part 150 "land use compatibility" table, or any suggestion that "65 DNL" constitutes a meaningful threshold, that none of those references suggest that the substance of those provisions define a significant effect on the human environment for the purposes of NEPA. FAA's response: The FAA disagrees with the commenter regarding the use of 1.5 dB and greater increases in noise at or above DNL 65 dB as a significant threshold and the value of the Part 150 land use guidelines. The FAA has provided for public notice and comment on the use of DNL 65 db as the threshold for compatibility of residential and most other land uses in adopting 14 CFR part 150. The FAA established 1.5 dB increases within the DNL 65 dB contour as a significance threshold in Attachment 2, FAA Order 1050.1D, dated 12/21/83, 49 FR 28501, July 12, 1984. Moreover, the FAA has provided for public notice and comment on this threshold as part of this update of its NEPA guidance. Through the FAA's NEPA guidance, and 14 CFR part 150, there has been ample public notice and opportunity to comment on DNL 65 dB as a significance threshold. The FAA recognizes that the Part 150 guidelines may not be, or are not, sufficient in all circumstances. This issue is further discussed earlier in this preamble under the heading "65 dB Level."

Responsible FAA Officials. The Department of Agriculture notes that throughout the notice the FAA discusses the "responsible FAA official." It would be helpful to the reader to have a chart of possible responsible officials for each type of action. FAA's response: This order is not intended to provide such specific information that may change according to the proposed project and working assignments within FAA. Each FAA EIS and EA/FONSI includes the name of the responsible FAA official and how to contact that official.

Glossary. A commenter recommends a "Glossary of Terms" be added as an appendix. FAA's response: A Glossary of Acronyms exists and has been updated. Additionally, Chapter 1, paragraph 11 provides definitions of terms. Otherwise, terms used in Order 1050.1E reflect CEQ regulation terminology.

Chapter 1 Comments:

General Chapter 1 comments. One commenter asked for identification of how to obtain changes or updates or new guidance prior to their incorporation into this order. FAA response: Any changes or updates are provided when they are formally issued through the **Federal Register**, AEE, and the FAA Web site.

One commenter noted that NEPA documents in electronic format is a good idea, but there would still need to be hard copies for review. FAA's response: For public dissemination purposes, hard copies will remain available and will be provided as requested. Electronic versions of NEPA documents may be used by the FAA as a supplement to the distribution of printed versions.

Regarding paragraph 2, the distribution notice in the final Order was changed to accommodate the ongoing changeover of distributing electronic versions of directives instead of printed copies. The distribution provides information on where the public, who may not have access to the internet, may, for a fee, obtain hard copies of the Order (photocopy or computer printout) from the FAA.

Beginning of comments on Paragraph 5: A commenter believes that the change identified as paragraph 5c (incorporating Tribal considerations into FAA's NEPA procedures) has public appeal and may appear politically correct, but it will not protect Tribes from the same fate as a "substantial number of persons affected by the [FAA] action" when the FAA disregards its obligations to NEPA, and to local governments and to citizens. The commenter believes that the FAA has a track record of neutralizing NEPA by approving its own requests for CATEX's in order to implement actions that significantly and detrimentally impact the human environment. The commenter believes that adding Tribes to the list of persons affected by FAA's actions under 1050.1D may add appeal to 1050.1E, but it will have no impact on protecting the Tribe's human environment from injurious FAA actions. FAA's response: The FAA is providing appropriate means for Tribes to participate in the NEPA process and ensure that Tribal concerns are considered in FAA decisionmaking.

A commenter noted that the changes identified in paragraphs 5d and 5f (and associated paragraphs 210 and 305 respectively) have the effect of releasing FAA from documenting their decision to approve a CATEX for an action. The commenter believes this absolves every FAA Official from taking signature responsibility for a decision to apply a CATEX. The persons who are affected by an FAA action are therefore left with no mechanism to recall a faulty or fraudulent decision made by an FAA Official to employ CATEX's. The commenter strongly urges the FAA to rewrite the changes to require documentation for signature approval for the use of CATEX's in order to prevent further abuses of the NEPA process. The commenter believes that the CATEX is a "loophole" which allows the FAA to forge ahead with any and all plans for airport expansion or flight traffic route changes while circumventing NEPA and the protection it should afford the general public. FAA's response: NEPA and its implementing CEQ regulations do not require documentation of the use of

CATEX's. Once CATEX's are promulgated with notice and public procedure, CEQ guidance discourages repeated documentation that an activity is CATEXed. In final Order 1050.1E, documentation of an individual CATEX is optional.

A commenter noted that the change identified in paragraph 5h and the associated paragraph 404d, claim to provide procedures for enabling the FAA Official to adopt EA's prepared by other agencies and require the FAA official to make a written evaluation of an adopted EA, take full responsibility for that EA "and issue [her/his] own FONSI. It appears as if this allows the FAA to choose to adopt only those EA's that are favorable to their plans. This should be rewritten to indicate that issuing a FONSI based on an adopted EA is not a foregone conclusion. It may be more appropriate to conduct an EIS or choose not to implement the FAA action. This should also be written to require third party, objective reviews of EA's for the adoption process and require the FAA to adopt all EA's which did not result in a FONSI. These paragraphs also require the FAA Official to take signature responsibility for an adopted EA. At first glance this seems favorable, but the system that allows the FAA to approve its own adoption of an EA has an inherent conflict of interest. The commenter believes that the FAA has a track record of neutralizing NEPA by approving its own requests for CATEX's. This proposed change will allow FAA to make selective use of EA's that favor the FAA's preferred alternative of implementing an action that my be detrimental to the human environment. This should be rewritten to require adoption of EA's to be allowed only after EPA and public review. FAA's response: The CEQ regulations allow Federal agencies to adopt EIS's at 40 CFR 1506.3, and agencies are allowed to use the same procedures to adopt an EA. Federal agencies are responsible for the adequacy and accuracy of environmental documents used in their decisionmaking processes.

A commenter noted that there were several new proposed appendices included in 1050.1E, but they are not included in the **Federal Register** notice. They should be made available for public comment. FAA's response: These appendices are simply transcriptions of existing documents such as the CEQ regulations that are otherwise publicly available. The appendixes in question have been removed from the final order.

Beginning of Paragraph 6 comments: Considering paragraph 6a, The Department of the Interior (DOI) noted that it concurs that avoidance or minimization of adverse effects of proposed actions, and the restoration or enhancement of resources and environmental quality is the appropriate policy for NEPA compliance. However, such a policy is not consistent with the use of "significant" in the CATEX's and extraordinary circumstances, and provides a reason to delete those terms in those sections. FAA's response: The FAA does not see any inconsistency between the NEPA policy statements and the provisions for CATEX's. The CEQ regulations at 40 CFR 1508.4 define CATEX's as a category of actions which do not have a significant effect on the human environment, and the regulations require that agency procedures for CATEX's "provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." The use of a "significant" context in relation to extraordinary circumstances is therefore appropriate and has been reviewed with CEQ. As described in a previous response to DOI, the final Order 1050.1E uses the detailed resource impact guidance in Appendix A to determine when an extraordinary circumstance triggers the preparation of an EA or EIS. (see *Extraordinary Circumstances* under the heading "Comments on General Subject Matter" earlier in this preamble)

A commenter noted that the emphasis seems to be on the consideration of the effect on the human environment. Isn't consideration of the effect on natural resources or natural environment and equal consideration? It does not appear to be presented that way throughout the order. The commenter asks for clarification or modification. FAA's response: See paragraph 11b where the CEQ definition of natural environment has been added for clarification.

A commenter noted that Order 1050 outlines the procedures by which the FAA will conform to requirements of NEPA and the CEQ regulations. NEPA requires that before taking an action that might significantly affect the quality of the human environment, the FAA give careful consideration to the potential environmental consequences of the proposed action. The FAA must also consider the cumulative environmental impacts of actions. FAA's response: The FAA does consider the potential environmental consequences, including cumulative impacts. See Chapter 5, paragraph 506f.

Beginning Paragraph 7 comments. Considering paragraph 7a, a commenter asked that the text "reasonable time" be defined or a limit placed on it. FAA's response: The paragraph was revised to remove the time requirements. It should be noted that all components of the FAA must comply with 1050.1E. Supplementary procedures issued by a component of the FAA will be consistent with 1050.1E.

The FAA amended paragraph 7b(1) to indicate that publishing explanatory guidance developed by a program office in the **Federal Register** for notice and public procedure is encouraged but not mandatory. If the explanatory guidance complies with Order 1050.1E, further public involvement should not be required.

Beginning Paragraph 10 comments. A commenter asked that the word "substantially" as used in paragraph 10 be defined and questioned how one could be advised of when the Administrator has specifically reserved authority to make changes and updates. FAA's response: Order 1050.1E establishes FAA policies and procedures for compliance with NEPA and also provides certain explanatory guidance. Establishment of, or substantial changes to, policies and procedures under Order 1050.1E are subject to the notice and public procedure requirements of 40 CFR 1507.3(a). The specific procedures included in Order 1050.1E that are subject to notice and public procedure are identified under 40 CFR 1507.3(b). *Explanatory guidance,* whether established within Order 1050.1E or by other agency directives or documents, is not subject to those notice and public procedure requirements. A *substantial change* to the policies and procedures prescribed under Order 1050.1E is the establishment of, or a change to, any procedure identified in 40 CFR 1507.3(b) which will (1) alter to a lesser level the level-of-review of a class of actions within the NEPA review process (*i.e.*, whether a class of actions normally requires an EIS; normally requires an EA but not necessarily an EIS; or normally is categorically excluded); (2) alter any period of time set pursuant to 40 CFR 1507.3(d) as necessary to comply with other specific statutory requirements; or (3) alter any notices to, or any interaction with, the public, private applicants, or non-Federal entities. For example, a substantial change to the categorical exclusions provided in Order 1050.1E would be the addition of new categorical exclusion or a change to an existing categorical exclusion (or the list of associated extraordinary circumstances) such that the scope of the given categorical exclusion is expanded to include actions previously normally subject to an EA. A substantial change to the list of actions which normally require an EA

but not necessarily an EIS provided under Order 1050.1E is a change such that an action or class of actions previously normally subject to an EIS is removed from that list (paragraph 501) and placed in a lower level of review (*i.e.*, moved to the list of action which normally require an EA but not necessarily an EIS (paragraph 401)).

The following are examples of changes that are not substantial relative to the notice and public procedure requirements of 40 CFR 1507.3: (1) Editorial changes, including re-writing to comply with the "plain language" requirements of E.O. 12866 and Presidential Memorandum on Plain Language in Government Writing, and including any re-structuring of the existing text; (2) adding to a list of embedded examples (a "such as" list); (3) reducing the scope or adding a condition (a restriction on the application) to an existing categorical exclusion. Regarding the commenter's issue with the authority of the Administrator to issue changes to FAA directives, the Administrator has statutory authority to issue such documents. The Administrator has the authority to delegate the authority to issue changes and revisions of directives to lower level managers (see FAA Order 1320.1D, "FAA Directives System"). However, the Administrator may at any time and without advance notice re-assume sole authority to approve a change or revision to any FAA directive.

Beginning Paragraph 11 comments. Considering the definition for "noise sensitive areas" under paragraph 11b(9), DOI raised the issue that noise sensitive areas are still noise sensitive whether they are outside the 65 DNL contour or inside the contour. This definition should simply define the term, and should not mix the definition with policy related to such areas. The discussion in this section that excludes noise sensitive sites beyond a certain distance seems arbitrary. If the noise interferes with normal activities associated with a site, the level and distance should not matter; in such cases, the impacts and mitigation should be thoroughly evaluated in an EA or EIS. The impact is what is important, not a criteria which may or may not apply in a particular situation. FAA's response: The FAA has amended the definition in the final Order to recognize that there are unique areas outside of a residential setting where the DNL 65 dB standard either may not or does not apply and where determinations of the appropriate noise assessment methodology and impact criteria must be made based on the specific uses of these areas.

A commenter asked what constitutes a large or small rocket in defining the extent of a noise sensitive area around a launch facility. FAA's response: There are no large or small rockets regarding the extent of noise they produce. All rockets are noisy when compared with normal daily noise-producing activities. The size of the noise sensitive area in a launch facility depends on the types of rockets launched, the location of the facility, its topography, and the species found in the general area.

The FAA added definitions for "applicant," "human environment" and "launch facility" (see paragraphs 11b(1), 11b(6) and 11b(7) respectively).

Chapter 2 Comments

Beginning General Chapter 2 Comments. A commenter noted that in paragraphs 208 and 212, and other similar sections, the FAA proposes to directly coordinate with public or regulatory review agencies at least at the state and local levels. The commenter indicated the FAA should include the sponsor when directly approaching the public and or regulatory review agencies, if there is one. The FAA could unintentionally step into or interfere with local issues that could be detrimental to one or all. FAA's response: The FAA concurs and has revised the cited paragraphs accordingly.

A commenter noted that Chapter 2 has been expanded significantly, with particular emphasis on the early coordination of the requirements under various environmental statutes. The Introduction states that "NEPA * * * provides a means for efficiently complying with related statutes, orders, and regulations." It also states that "* * * the responsible FAA official can use the NEPA process most effectively as an umbrella process or vehicle for giving appropriate consideration to specific environmental concerns. * * *" These goals are laudable as long as the integration of compliance is not misinterpreted as an enhancement of authority. The revised Order should include the appropriate cautionary language. FAA's response: Chapter 2 clarifies the responsibilities that FAA has always had under NEPA and is not an enhancement of authority.

Beginning Paragraph 200 Comments. A commenter noted that paragraph 200 implies that airport master plans and NEPA processing should proceed simultaneously, or as nearly so as possible, yet some FAA officials continue to fear that there is something inappropriate about that. Suggest additional clarification here. FAA's response: The text in paragraph 200 is intended to clarify and emphasize the concern of the commenter.

Concerning paragraph 200a(1), a commenter noted that NEPA compliance includes providing for actions that are categorically excluded from NEPA processing. In order to provide thorough consideration of NEPA compliance the decisionmaker should also determine whether the NEPA process for an action justifies consideration of a Categorical Exclusion Determination, not just an EA or EIS. This section might be revised to the following: "200a(1) Whether an action is categorically excluded from further environmental considerations, or requires an EA or an EIS." FAA's response: The FAA concurs and has revised the cited paragraph accordingly.

Beginning Paragraph 201 Comments. Regarding paragraph 201(a), a commenter indicated that the decisionmaker must also consider whether or not the action justifies consideration of a Categorical Exclusion Determination, not just an EA or EIS. The statement "the FAA can take action without further environmental review" gives the impression that no documentation of the decisionmaking process is warranted. The decisionmakers should document the entire decisionmaking process, including preparing a Categorical Exclusion Determination document. FAA's response: The FAA has previously responded that CATEX's are not required to be individually documented. CEQ discourages such a practice. CATEX documentation is optional, and Order 1050.1E reiterates this.

Regarding paragraph 201c, the DOI indicates that, consistent with the stated NEPA policy in paragraph 6a, mitigation should be included in a FONSI not only when it reduces impacts below a threshold of significance, but also when it avoids or minimizes any adverse effects of the action. The DOI believes this to be an extremely important point, that mitigation be used in all cases where it makes sense, not only in those cases where it is needed to avoid an EIS. FAA's response: Paragraph 201c is intended to describe a particular type of FONSI—a mitigated FONSI. The mitigation of adverse impacts in a FONSI, not only where mitigation is needed to avoid an EIS, is recognized in Chapter 4 of Order 1050.1E.

Concerning paragraph 201d, a commenter suggested that the text "the responsible FAA official may prepare a ROD * * *, be changed to "may submit a prepared ROD. * * *" FAA's response: The text in question has been revised to clarify that the FAA may

issue a ROD no sooner than 30 days after publication of the notice of availability of the FEIS by EPA in the **Federal Register**.

Regarding paragraph 201e, a commenter asked if there is a process for relief if it appears that the FAA is asking for what reasonably seems to be too much. The commenter is concerned that there are times that the regulatory agencies and sponsor believe this is the case and do not see satisfactory recourse. FAA's response: There is no formal recourse process in the Order. When such situations occur, they are informally discussed and resolved.

Beginning Paragraph 202 Comments. A commenter notes that paragraphs 202(a) and (2) state that the responsible FAA official should initially review whether the proposed action: (2) would be located in * * * habitat of Federal listed endangered or threatened species or affected wildlife * * *? What is affected wildlife? Some wildlife will be living in that habitat. The FAA needs to clarify what they mean by affected wildlife because the current language infers some special legal status on "affected wildlife," since it is linked in this paragraph to Federal listed endangered species. FAA's response: The FAA agrees with the commenter's concern and has consequently removed the text "affected wildlife." The same commenter indicates that an addition needs to be made to address wildlife hazards including the review of a proposed action if said action could increase wildlife hazards to aviation and/or subsequently affect human health and safety. FAA's response: Wildlife that are hazardous to aviation are addressed in Appendix A, section 8.2(c).

Regarding paragraph 202, DOI believes that the word "significantly" should be replaced with "adversely." FAA's response: The FAA disagrees. This paragraph is intended to be an initial review for significant impacts. The text in question is essentially from NEPA and the CEQ regulations. DOI also recommended that "cultural resources" should be added to the list in paragraph 202a(1). FAA's response: We concur. Cultural resources have been added. DOI also believes that the initial review should also include areas "located near noise sensitive areas" and actions that may "adversely affect noise sensitive areas." FAA's response: This level of detail is not appropriate for Chapter 2, which is a general overview. Appendix A provides the detailed guidance for noise impact assessment.

Beginning Paragraph 203 Comments. A commenter recommended that this paragraph and paragraph 204 clearly state that in third-party contract situations, FAA maintains the same oversight and control as it would if FAA were paying the contractor. FAA's response: This information is included in Appendix B, specifically dealing with third-party contractual arrangements.

Regarding paragraph 203c, a commenter asked what constitutes commencement of an EA or EIS. FAA's response: The issue is discussed in Chapters 4 and 5. The FAA has slightly revised paragraph 203c to add the phrase "no later than" before the text string "immediately after the FAA receives the application or proposal" per 40 CFR 1502.5(b), Timing.

A commenter noted that paragraph 203 should clarify the circumstances under which applicants can prepare EA's. Paragraph 203(b) states only that "Applicants may prepare EA's." Overall, paragraph 203 makes the distinction between (1) "actions directly undertaken by the FAA," and (2) actions "where the FAA has sufficient control and responsibility to condition the license or project approval." Paragraph 203 is clear in stating that, in case (1), FAA may prepare EA's or EIS's, or use contractors. But paragraph 203 should be clearer in defining what shall occur in case (2). Paragraph 203 should also address how the conflicts of interest mentioned in appendix B would be avoided by applicants who prepare EA's. In some EA's, the distinction between "significant" and "non-significant" impacts is non-straightforward, and the EA's can be large and important documents. In such cases, the assurance that the preparer has no conflict of interest can be very important. Paragraph 203 should make it clear that the FAA has responsibilities to ensure that any applicant-prepared EA's meet several of the tests mentioned in paragraph 2f of Appendix B, *e.g.*, the FAA is still responsible for exercising oversight to ensure that a conflict of interest does not exist and performing independent evaluation of the document. Paragraph 203(b) might be revised to read as follows: Where the FAA must evaluate applications and has sufficient control to conditionally approve the license or project, applicants may prepare EA's but not EIS's. If the applicant prepares an EA, the FAA must perform an independent evaluation of the EA and ensure that an applicant's potential conflict of interest does not impair the objectivity of the document. Applicants may fund the preparation of EIS's through third-party contracting (see paragraph 204 and Appendix B). In such cases, the role of the applicant is limited to providing environmental studies and information. FAA's response: The FAA agrees that this paragraph would be more helpful if it included more information about the affirmative role and responsibility of the FAA under 40 CFR 1506.5(a) and (b). Revisions substantially similar to those proposed by the commenter are adopted. Paragraph 203(b) was further revised to more closely conform to the requirements for incomplete or unavailable information as provided under 40 CFR 1502.22.

Beginning Paragraph 204 Comments. One commenter believes that paragraph 204 indicates that when a contractor prepares an EIS, FAA will require that the contractor execute a disclosure statement "specifying that the contractor has no financial or other interest in the outcome of the action." The final Order should provide further guidance on the type of interest that would be inappropriate, with particular emphasis on the types of projects that involves FAA approvals. FAA's response: CEQ is the best source of additional guidance. See questions 17a and 17b of 40 Most Asked Questions Concerning CEQ's NEPA regulations for this guidance. This CEQ document is available on the Web site of the FAA Office of Environment and Energy (*http://www.aee.faa.gov*).

The FAA expanded paragraph 204b to clarify the issue of contractor conflict of interest and to include definitions for the terminology "final design work" and "preliminary design work."

Beginning Paragraph 205 Comments. A commenter noted that this Order's effective date should be stated so that all studies begun after a specific date will need to comply with Order 1050.1E. FAA's response: The final order will be effective on the date of the signature of the Order. See paragraph 12 for instructions on environmental review work in progress or completed.

Beginning Paragraph 206 Comments. The FAA determined that the proposed introductory paragraph should have stated that the restriction on "any action or irretrievable and irreversible commitment of resources" applies only to EIS's—not EA's as proposed. The text was amended accordingly in the final order to properly correspond to the requirements of 40 CFR 1506.1.

Regarding paragraph 206b, one commenter noted that paragraph 206a is too vague and arbitrary and needs definition or reference. Should this only apply in cases where an EA may potentially become an EIS? FAA's response: The provision states "may also be considered," and is therefore not a requirement. See Chapter 4, paragraph 405.

Regarding paragraph 206b, it was noted that it would not be prudent for the FAA to acquire an interest in land prior to completion of required NEPA documents as proposed in paragraph 206b(1) of the notice. Accordingly, the last two sentences of the proposed paragraph were deleted and the existing provisions of Order 1050.1D, Appendix 5, paragraph 1b(5) and Appendix 1, paragraph 6d were carried forward into final Order 1050.1E as paragraph 206b(2). The existing provisions allow the FAA to contact property owners under certain circumstances and to acquire options for land in limited circumstances; but the FAA may not make a final decision on acquisition prior to completion of the NEPA review and associated documentation. Paragraph 206b(1) was further amended in the final Order to indicate that a transfer of title or other interests in real property is not a major Federal action significantly affecting the environment unless the acquisition "effectively limits the choice of reasonable alternatives". The adopted change more clearly conforms to the CEQ regulations.

Concerning paragraph 206c, the DOI comments that responsibilities under section 4(f) of the DOT Act are correctly stated here. However, lands such as units of the national park system should receive "particular attention" as noise sensitive, light sensitive, culturally or ecologically sensitive, etc., as appropriate, irrespective of section 4(f) of the DOT Act. FAA's response: Guidance on the analysis of impacts on environmental resources in Appendix A gives particular attention to unique areas, such as units of the national park system, irrespective of section 4(f) of the DOT Act.

Paragraph 207 Comment. Regarding paragraph 207a, the DOI believes, for the record, the National Parks Service possesses special expertise and jurisdiction regarding the management of and the nature, extent, and acceptability of impacts on park resources and visitors in units of the national park system that may be affected by FAA actions. Whenever any action has any potential to affect any unit of the national park system, the NPS should be notified at the earliest possible stage of planning. FAA's response: The Order provides for appropriate notification of affected agencies and officials, including DOI and NPS.

Beginning Paragraph 208 Comments. The FAA split the contents of the proposed paragraph 208 into two paragraphs: the adopted paragraph 208 discusses public involvement and paragraph 209 discusses public hearings, workshops and meetings. Regarding paragraph 208b, the first sentence was changed in the final Order to correctly identify and conform to the requirements of 40 CFR 1501.2 which prescribes early interaction of the Federal agency with the affected communities and agencies.

Beginning Paragraph 209 Comments. The Wisconsin DOT comments most public hearing records for EA's are currently kept by airport sponsors or their agents. This would be a very burdensome requirement for airport sponsors and would be a massive record keeping task for the Chief Counsel's office. Delete this requirement. FAA's response: Order 1050.1E does not require public hearings for EA's. Public hearings for EA's are discretionary on a case-by-case basis, as appropriate.

A commenter asks that terms such as "degree of interest" and "national interest" be defined, at least in the contexts in which they are used. FAA's response: These terms do not lend themselves to precise definitions, but the circumstances are usually apparent when present.

Regarding paragraph 209c, a "draft FONSI" was removed from the requirement that draft EA's and EIS's should be made available to the public at least 30 days prior to a public hearing, meeting, or workshop. The inclusion of a draft FONSI could be misconstrued as the government having already decided on a finding of "no significant impact" when the purpose of the hearing, meeting, or workshop is to solicit public input on the findings of the environmental analysis prior to a government decision based on the findings. The change was made accordingly in the final order.

In response to an internal comment, additional information is provided on the FAA's out-reach efforts to notify and involve potentially affected minority and low-income populations at the earliest stages of project planning. The additional information also notes that provisions should be made to accommodate the needs of the elderly, handicapped, non-English speaking, minority and low-income populations in the FAA's public involvement efforts. This information is provided under paragraph 209d.

Paragraph 210 Comment. Regarding paragraph 210a, a commenter noted that if data standards are to be met, the standards should be included or a better reference source should be included. FAA's response: A **Federal Register** citation has been added. Paragraph 210b was changed in the final Order to identify Department of Transportation "Information Quality Guidelines" prepared pursuant to OMB guidelines (Pub. L. 106–554) which prescribe guidelines for the objectivity, utility and integrity of disseminated information. In accordance with the DOT guidelines, paragraph 206b also provides (1) the public comment and participation process for a draft EIS satisfies the process for requesting correction of information; (2) any corrections deemed appropriate will be included in the Final EIS; and (3) a request for corrections to a Final EIS or for reconsideration of a request for corrections may be handled as though it were a request for a Supplemental EIS.

Regarding paragraph 211 which identifies incorporation by reference as an allowable CEQ procedure, additional text was added to paragraph 211d of the final Order concerning the use of hyperlinks to documents that are stored and maintained electronically in order to facilitate public access to such documents that are incorporated by reference in a NEPA document. As a reminder to FAA NEPA practitioners, similar text referring to incorporation by reference was added to paragraphs 404d, 405c, 405e, 405f(1), 500B, and 506f in the final Order.

Paragraph 212 Comment. Regarding paragraph 212b, a commenter believes that cautionary language should be added to ensure that a "piecemeal" approach to NEPA analysis is not encouraged. For example, FAA should address airspace issues associated with a new airport in the same NEPA document that addresses airport construction. The two actions are inextricably linked, yet FAA has not always addressed them together since different divisions within the FAA are responsible for each part. FAA's response: Instructions on FAA actions that should be environmentally reviewed together are in paragraph 500 of Order 1050.1E.

Beginning Paragraph 213 Comments. Regarding paragraph 213, the DOI believes there are more than just executive orders that bear on interagency coordination (e.g., executive memoranda, memoranda of agreement, etc.). There should also be a paragraph discussing other Federal agencies, especially Federal land management agencies such as NPS, BLM and Forest Service which manage large tracts of land that may be affected by FAA actions. FAA's response: Paragraph 213 provides a broad, general discussion. The Order in entirety provides greater detail on the appropriate involvement of affected agency officials, including federal land management agencies. Also, the FAA has revised the second sentence in paragraph 213b(2) to add at

the beginning "For regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on Federally-recognized Tribes." Executive Order 13175 provides for consultation concerning "Federal policies that have tribal implications." The text added to the final order sets forth the definition of the policies that require consultation under Executive Order (see EO 13175, section 1(a) and FAA Order 1210.20,"American Indian and Alaska Native Tribal Consultation Policy and Procedures" (January 28, 2004)).

Paragraph 214 was amended in the final order to incorporate recent changes in the FAA organizational structure. Specific changes were made to recognize the Assistant Administrator for Aviation Policy, Planning, and Environment (AEP) and the Air Traffic Organization.

A commenter recommended that if the airport is in the vicinity of a National Park, special consideration should be given to consultation with the NPS both at the local and headquarters levels. FAA's response: As written, the order provides appropriate involvement of affected agency officials, including federal land management agencies. The commenter also recommended that the terms "coordination and consultation" should be defined more precisely, written submittals of materials should be specified, and the possibility of funding consultant services for the affected agencies and state and local governments should be discussed. FAA's response: Coordination and consultation range from brief review and comments to extensive discussions involving additional analyses. They must be suited to the particular project and its impacts and do not readily lend themselves to specific definitions that cover all circumstances. Some coordination and consultation involve written materials, but not all. The CEQ regulations discuss funding at 40 CFR 1501.6(b)(5).

Chapter 3 Comments

General Chapter 3 Comments: A commenter recommended that all sections describing categorically excluded actions include financial assistance and ALP approval as one of the potential federal actions. This is necessary because these guidelines are applied by FAA to projects at airports for which there is no specific federal aid for the particular proposed project, but nearly all airport projects are considered federal actions because the airport in general has been the recipient of federal aid in the past and because the proposed action may affect a change on one of the many ALP detail sheets considered part of the ALP and trigger an ALP approval. If this should not be the case, then please state so. FAA's response: The FAA agrees and has revised appropriate CATEX's in Chapter 3 to include the Federal actions of financial assistance and ALP approval. The same commenter asked whether a project by an airport proprietor using their own funds is still subject to NEPA review. FAA's response: Yes, if FAA must approve a change to the ALP.

Paragraph 300 Comment. A commenter believes there has always been a problem with the CATEX discussion in FAA documents that reference to public controversy is buried in text. Many readers focus on the specific project that is referenced in the CATEX list, concluding that it should rightfully be excluded. What the list really says is "this project is excluded unless we determine that it should be included." That point should be made in a much more obvious way in the text. FAA's response: We concur. See revised wording in paragraph 303 and the addition of emphasized text at the beginning of each paragraph (307–312) containing the lists of categorical exclusions.

Regarding paragraph 301, the FAA action "designation of alert areas" is an advisory action and not subject to NEPA requirements. Accordingly, that action was removed from CATEX 311e and was added as paragraph 301c in the final Order.

Regarding paragraph 302, the FAA, in the final Order, revised the last sentence to read "FAA will then consult with CEQ about alternative arrangements for complying with NEPA."

Paragraph 303 Comment. A commenter first recommended that paragraph 303 should be revisited, since many of the DOD CATEX's are now incorporated into paragraphs 307–312 and then allow under paragraph 303 review and use of any supporting documentation DOD may provide for any DOD CATEX that is not listed or that is listed and for which we must review for extraordinary circumstances. In a subsequent comment, the commenter recommended strongly that text in question in paragraph 303 be removed since it would appear that the existing CATEX list will adequately cover the situation. It is the commenter's position that it is not appropriate for a Federal agency to adopt another Federal agency's decision. For example, an agency may adopt an EIS, but it prepares its own ROD, or adopts an EA, but it prepares its own FONSI. FAA's response: The FAA concurs and has removed the text in question and has removed references to the text in question from other locations in the final Order.

Beginning Paragraph 304 Comments. Regarding the introductory paragraph of paragraph 304, the FAA determined that the presence of one or more extraordinary circumstances(s) in connection with a proposed action is not necessarily a reason to prepare an EA. Accordingly, and after subsequent consultation with CEQ, the paragraph was amended in the final Order to indicate a determination of whether a proposed action that is normally categorically excluded should require an EA or EIS depends on whether the proposed action (1) involves any of the circumstances provided under paragraph 304 and (2) may have a significant effect on the human environment.

Regarding paragraph 304a, the DOI objects to having the word "significant" in that sentence, "Likely to have a significant adverse effect on cultural resources pursuant to the NHPA. . . ." Language in the Advisory Council on Historic Preservation regulations refers to "No properties adversely affected." There is no qualifier in that language, and it should be removed from the sentence. Actions with the potential to adversely affect National Register eligible or listed properties should have an EA or EIS with public involvement to evaluate the effects. The purpose of developing an EA is to determine if effects are significant. If a CATEX is written instead, the public and other agencies never have a chance to comment on the severity of the impacts. FAA's response: Paragraph 304a has been revised to remove the "significant impact" terminology. It now refers to "adverse effect". Section 106 of the NHPA affords opportunities for consultation and public comment to evaluate federal undertakings that have the potential to adversely affect National Register eligible or listed properties. Whether the FAA may fulfill Section 106 and conclude the NEPA review with a categorical exclusion or is required to prepare an EA or EIS depends upon the potential for affect and the potential severity of the potential adverse effects established by consultation. If Section 106 consultation establishes adverse effects that may be significant, then at least an EA is required. In preparing the EA, the FAA must involve the public and other agencies to the extent practicable.

Regarding paragraphs 304(b), (c), (e), (f), (g), (h), & (k), the DOI believes that the same rationale applies here [as in the previous comment on paragraph

304a] concerning using the word "significant" with impacts associated with noise, ecology, air quality, water quality, visual nature, and traffic congestion. If there are any adverse impacts, not just significant adverse impacts, then the severity of the impacts must be documented in an EA or an EIS. The word "significant" must be deleted from all these extraordinary circumstances. If the impacts are "significant" in the NEPA sense, then an EIS is required. The general purpose of an EA is to determine if there are any "significant" impacts. Inserting the word "significant" into the CATEX's short-circuits a large part of NEPA. FAA's response: The FAA does not concur that "any adverse impacts" require an EA. The CEQ regulations at 40 CFR 1508.4 define CATEX's as a category of actions which do not have a significant effect on the human environment. Actions that have adverse effects that are not significant can properly be CATEX'ed under the CEQ regulations. As discussed above in response to a previous DOI comment on this point, the FAA has modified the guidance in paragraph 304 to clarify how to consider the potential for significant adverse impacts in determining whether extraordinary circumstances exist.

Regarding paragraph 304c, the DOI believes that to be consistent with CEQ regulations 40 CFR 1508.27(b), criteria here should also include unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, etc. FAA's response: Paragraph 304 has been revised to clarify that the potential for significant impacts should be considered using the circumstances identified in paragraph 304, guidance provided in Appendix A to Order 1050.1E, and the factors identified under 40 CFR 1508.27(b) (see paragraph 501 of Order 1050.1E). This procedure addresses the concern of the commenter. This procedure is consistent with the CEQ's regulations.

Regarding paragraph 304c, the DOI indicated that the reference to section 7 of the ESA should be removed. Species are not listed under section 7. Section 7 describes the conservation and consultation responsibilities of federal agencies. Section 4 of the ESA describes listing and recovery responsibilities. FAA's response: DOI is correct about the reference to section 7, which has been deleted in the final Order. With this change, the text is accurate.

Regarding paragraph 304k, the DOI believes that lighting impact should not be limited to residential areas and business properties. Lands such as units of the national park system may be adversely affected by lighting, and such impacts should be fully evaluated in an EA or EIS. FAA's response: The potential impact on the visual nature of surrounding land uses, which is also listed in paragraph 304k, is broad enough to include lighting impacts. The cross-reference to sections 11 and 12 in Appendix A provides further guidance.

Regarding paragraph 304, a commenter believes that the way the paragraph is written, all impacts listed in the same section are significant and require an EIS. There is no consideration for EA's as indicated. Rewording seems in order. FAA's response: That was not the intent. Paragraph 304 has been reworded as previously described. An action that is normally CATEXed could require either an EA or EIS. An EA or EIS can also be prepared as a matter of policy at any time to aid in agency planning and decisionmaking.

A commenter, an association, commented on two changes to paragraph 304. First, paragraph 304 indicates that significant adverse effects on cultural resources constitute an extraordinary circumstance. The commenter believes this is a higher standard than reflected in the current order. However, the commenter believes that this is an appropriate change. Second, paragraph 304 includes significant impacts to candidate species under the Endangered Species Act (ESA) among those that will require the preparation of some environmental documentation. The commenter believes that the ESA does not afford protection to "candidate species" and the revised order should not impose additional requirements beyond this. FAA's response: The commenter is correct that 1050.1E reflected a higher standard for extraordinary circumstances than 1050.1D. As explained above, in response to DOI concerns, paragraph 304 has been revised in final Order 1050.1D to delete the word "significantly" from the list of extraordinary circumstances. As revised, paragraph 304 provides for using the guidance in Appendix A to assess the potential for significant impacts in determining whether an action that is normally categorically excluded requires an EA or EIS. As to "candidate species," the commenter is correct that the ESA does not afford protection for such species. The candidate list is maintained to provide, among other things, advance knowledge of potential listing that could affect decisions of environmental planners and developers. A candidate species is one for which USFWS has on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher priority listing actions. The USFWS encourages state and Federal agencies to give consideration to these species in environmental planning. Based on the FAA's experience, this is an area where exercising our discretion to exceed minimum requirements is cost-beneficial. Considering candidate species in the extraordinary circumstance factors enables FAA environmental planners and airport sponsors to assess potential impacts and adopt appropriate mitigation measures to alleviate threats. This approach may remove the need for USFWS to list the species. This approach also streamlines the environmental review process. It forestalls any requirement after the EA and FONSI or final EIS is issued to consider formal listing as new information requiring supplemental environmental documentation.

Concerning adding a reference to Tribes in paragraph 304, a commenter believes this obviously is a significant change to the level of environmental analysis required of the agency or applicant. The commenter, an association, believes that this additional burden should not be thrust on private parties, in particular, without some determination that the Tribal concerns or Tribal laws at issue are reasonable grounds for extending the analysis. The commenter recommends that the revised order should indicate that the appropriate FAA program office ensure that a reasonable basis exists for extending the environmental requirements. FAA's response: These references to Tribes in paragraphs 304c, g, h, i, and j, are consistent with the intent of NEPA, as implemented by the CEQ regulations. See, *e.g.* 40 CFR 1502.16(c) (requiring Federal agencies to consider possible conflicts between the proposed action and the objectives of Federal, regional, state, local (and in the case of a reservation, Tribe) land use plans, policies and controls for the area concerned). They modernize the extraordinary circumstance factors in 1050.1E to reflect the legal status of Tribes under recent federal environmental laws and executive and departmental orders. Under the Clean Air and Water Acts, Congress has determined that Tribes may have the competence and administrative capabilities to set air and water quality standards. Just as it does for the States, the U.S. EPA delegates to Tribes under

existing regulatory programs when the specific Tribe has demonstrated its ability to handle duties under either of these two Acts. The U.S. EPA steps in only when necessary to ensure that statutory standards are met. See also, Secretary of Interior and Commerce Secretarial Order "American Indian Tribal Rights, Federal-Tribal Trust Responsibility and the Endangered Species Act" dated June 5, 1994 (Defining the government-to-government relationship to require, among other things, that both Departments consult with, and seek the participation of, affected Tribes to the maximum extent practicable in any action under the Endangered Species Act.) The commenter is not correct in believing that adding these references to the extraordinary circumstances factors changes the level of required environmental analysis. The underlying factors are to be considered along with the potential for significant impacts in determining whether a proposed action that normally qualifies for categorical exclusion warrants an EA or EIS. The standards for delegation to Tribes on a case-by-case basis under the Clean Air and Water Acts provide the assurance desired by the commenter for subparagraphs g and h. With respect to the remaining subparagraphs, we see no legal basis for presuming that Tribal concerns and laws are any less valid than their State and local counterparts.

Regarding the removal from the characteristics for extraordinary circumstances those actions that are like to be highly controversial with respect to the availability of adequate relocation housing (paragraph 304), one commenter supported the deletion. However, another commenter opposed the deletion citing that few such cases do not provide sufficient justification. FAA's response: In FAA's experience, this circumstance is accompanied by other extraordinary circumstances, such as those in paragraphs 304d and k. Therefore, the provision in 1050.1D is, as proposed, deleted in the final 1050.1E.

A commenter notes that the list of impact categories in paragraph 304 and their relationship to extraordinary circumstances is complete and useful. Paragraph 304i (controversy) has been somewhat clarified but still remains imprecise. Suggest adding to the second sentence "* * * when there is merit for such concern with respect to the potential environmental impacts of the project under consideration." FAA's response: Both in response to this comment and to the suggestion of the First Circuit Court of Appeals stated in *Save Our Heritage* v. *FAA*, 269 F.3d 49, 61 (1st Cir. 2001), the FAA has defined "controversial" and "highly controversial" more precisely to reflect applicable case law. Language similar to that proposed by the commenter has been added to clarify that the effects of a project are considered highly controversial when a reasonable disagreement exists over the project's risks of causing environmental harm. FAA environmental specialists should consider opposition by federal, state, or local agencies, Native American Tribes, and a substantial number of those affected by the action in determining whether or not a reasonable disagreement exists about a project's risks of causing harm. Opposition to an action, the effect of which is relatively undisputed, does not qualify as an extraordinary circumstance.

A commenter notes that paragraph 304f provides for an exception to the CATEX rule where there are extraordinary circumstances which are "likely to have a significant impact on noise levels or noise sensitive areas." However, the description of noise sensitive areas in paragraph 11 seems only to refer to areas within the DNL 65 noise contour. If this is correct, then the exception would not apply to the Special Use Airspace situation, at least where there are no 65-DNL noise contours developed or noise contour studies for that airspace. FAA's response: Noise sensitive areas are not restricted to the DNL 65 dB contour. Guidance on noise sensitive areas is in Appendix A and has been expanded to include circumstances beyond the usual community noise assessment.

A commenter notes that paragraph 304 states that actions, normally CATEXed, would be subject to an EA, or if significant impacts are anticipated, an EIS; however, paragraphs 304a-h all contain the word "significant," meaning that in every case an EIS would have to be prepared. Suggest "significant" be deleted in these sections. FAA's response: In response to this comment and DOI comments, the FAA has modified paragraph 304 in the final Order to remove the word "significant," clarify how potential effects are weighed in determining whether there are extraordinary circumstances that warrant an EA or EIS, and to clarify that either an EA or EIS may be prepared. Paragraph 304 contemplated the use of the criteria of potential significance as an initial step and the use of screening tools and actual data ("if potential impacts are significant") to determine whether an EIS was required rather than an EA. For example, the FAA has a screening tool known as the area equivalent method for determining whether a proposal is likely to cause a 1.5 DNL dB or greater increase in the 65 DNL dB contour. Although the FAA does not agree that paragraph 304 had the effect of requiring an EIS, based on extraordinary circumstances, for every action that is normally CATEXed, we have revised the paragraph in an abundance of caution to minimize the potential for confusion.

Beginning Paragraph 305 Comments. The DOI comments that if documentation is optional, how will potentially affected parties know if and how the FAA has considered their interests in making its determinations. We believe that some level of documentation is warranted in all but the most benign cases. *FAA's response:* Some level of documentation is prepared in most cases. Paragraph 305 refers to preparation of documents for the administrative record beyond those generated in the normal course of business. Like other federal agencies, during the course of developing its own projects or approving federal actions requested by applicants to support their projects, the FAA typically documents the basis for its environmental determinations. As this is the case, the CEQ discourages documentation for categorical exclusions. As explained in its Guidance Regarding NEPA Regulations, (48 FR 34263, July 22, 1983), "* * * the Council discourages procedures that would require the preparation of additional paperwork to document an activity that has been categorically excluded."

The Illinois DOT comments that within all categories of actions that qualify for a CATEX, an action can sometimes require an EA or EIS if there are extraordinary circumstances. This paragraph notes that there may be occasions in which FAA even decides to assemble documentation to support a decision to proceed with a CATEX. However it does not describe any procedures for public notice of CATEX determinations. Without some method to announce decisions about CATEX's (including monthly mailings, newspaper announcements, posting of Web sites, etc.), there is no way for anyone outside FAA to raise the concern that perhaps an extraordinary circumstance exists for which FAA is not aware. Some of the items on the list of CATEX's that are just the sort of things for which an outsider's perspective may be needed to determine whether extraordinary circumstances exist. Specifically, the issuance of the National Plan for Integrated Airport Systems, which presumably includes additions and deletions from the NPIAS, the issuance of advisory circulars (such

as the recent advisory on location of runways near hazardous wildlife) and the establishment of new or revised air traffic control procedures over 3,000 feet AGL are all actions for which FAA may be unable to predict the impacts of its decisions. There should be some procedure for publication in either electronic or print format of proposed decisions to issue CATEX's for these actions so that interested citizens can comment on the determination that no extraordinary circumstances exist. FAA's response: CEQ regulations do not require documentation or public notice for CATEX's. CATEX's have been created to alleviate the administrative burden on Federal agencies. The suggested procedure for each and every action subject to a CATEX would be contrary to the intent of NEPA (see 40 CFR 1500.4(p); 1500.5(k) and 1508.4). For example, the NPIAS is a planning document. The FAA issues advisory circulars provide guidelines and approved means of compliance with standards for airport design and operation. Neither is the type of action that normally has the potential to significantly impact the environment. As explained in detail above, under Issues of Special Interest, Noise, the FAA conducted a special study to determine whether the establishment of new or revised air traffic control procedures over 3,000 feet AGL normally has the potential to significantly impact the environment. This study is available in the FAA Docket. We see no basis for the statement that the NPIAS, advisory circulars, and the categorical exclusion for air traffic control procedures over 3,000 feet AGL "all are actions for which the FAA may be unable to predict the impacts of its decisions." None of these actions normally have possible effects that are highly uncertain or involve unique or unknown risks. The FAA has a screening tool for determining whether air traffic control procedures over 3,000 feet AGL are likely to result in DNL 5 dB or greater increases in noise in residential areas subject to noise levels between DNL 60 DB to DNL 45 dB. Based on FAA's experience, such increases are an indicator of potential adverse community reaction. This tool aids the FAA in making an informed judgment about the existence of extraordinary circumstances.

A commenter cautions the FAA to avoid undercutting the benefit of CATEX's by creating added procedures and circumstances that require subjective determinations by FAA staff without sufficient guidance. The extraordinary circumstances listed in 304 already contain a fair degree of subjectivity. Overlaying additional subjective determinations about whether documentation is required, and, if so, what type, will not benefit the process. Reviewers should not be encouraged to exercise subjective considerations in finding the existence of extraordinary circumstances or in determining whether documentation is necessary. Otherwise, unnecessary delays or EA's will be required. Additional guidance on when the documentation is required for extraordinary circumstances and what type should be included in the revised order. FAA's response: Documentation of CATEX's is optional. When documentation is prepared in addition to that generated in the normal course of business, it is based on the judgment of the responsible FAA official. Since documentation of CATEX's is on a case-by-case basis, and does not impact good faith, objective compliance with NEPA, it is neither feasible nor necessary to develop standardized guidance.

A commenter believes that this appears to be a major departure from past FAA policy. Is it correct to infer that no written record supporting the determination of CATEX's (including review of extraordinary circumstances) is required? In the absence of explicit requirements for determining "no controversy," this appears to invite abuse of the CATEX process. FAA's response: As discussed above in response to the DOI comment, paragraph 305 is consistent with CEQ guidance. Paragraph 305 states FAA policy and practice.

A commenter believes that although paragraph 305 states that a CATEX determination "shall not be considered deficient if it is not supported by documentation," paragraph 306 states that the "FAA official must assure * * * that compliance * * * is reflected in the determination to apply a CATEX." Paragraph 306 further states that "such compliance * * * should be documented." These paragraphs present a side-by-side contradiction. The entire decisionmaking process should be documented, including the CATEX. Paragraph 305 might be revised to state that minimal documentation of the CATEX determination be prepared. FAA's response: Paragraph 306 has been revised to more clearly indicate that "compliance * * * should be documented" refers to laws and regulations in addition to NEPA—not to NEPA.

Beginning General Categorical Exclusion Comments. The DOI comments that, as written, the CATEX's are so broadly worded that most actions could be interpreted to fall within a CATEX. This is partially offset by the list of extraordinary circumstances, except that many of those use the word "significant," which predeterminines the NEPA decision and allows the use of the CATEX in all but the most severe cases. NPS is concerned that under this wording, most of the airport issues on which NPS has worked with FAA in recent years may be CATEXed under the proposed wording. DOI believes that such exclusion would be improper. FAA's response: The CATEX's are consistent with CEQ regulations. We are uncertain about the "airport issues" to which NPS refers, but major airport actions having the potential to affect NPS resources (*i.e.*, runway or major runway construction, new airports) are not listed as CATEX's, so FAA cannot CATEX them. For these, FAA requires an EA or EIS. See response to comment regarding "Extraordinary Circumstances" Under "Comments on General Subject Matter" above.

Three commenters submitted identical comments to the effect that the proposed order contains numerous CATEX's that are overly broad, vague and improperly discretionary. Examples of these are CATEX's which are expressed in terms of "substantial" increase or "significant" increase in environmental impacts. The commenters believe these revised CATEX's fail to contain any adequate standards for determining the extent of the exclusion. Rather, the language is unacceptably vague and provides improperly broad discretion to FAA managers to classify actions as CATEX's which do not warrant it. The adoption of improper CATEX's will undermine the long term planning process, eliminate public participation and comment which is the goal of NEPA, and must ultimately be adjudged arbitrary and capricious in their present form. FAA's response: As to use of the word "significant," see the Response to Comments on General Subject Matter, Extraordinary Circumstances. The CATEX's in question are existing CATEX's that the FAA promulgated in earlier versions of Order 1050.1. The FAA has more than two decades of experience with the CATEX's in question and has far more experience with the actions identified in those CATEX's. The FAA believes that, given the nature of the actions involved, and the FAA's judgment that has evolved through years of experience with the actions, the public interest is well served by these existing CATEX's. The FAA would much rather see the efforts

of the project team directed to examining the real environmental issues listed extraordinary circumstances (paragraph 304) rather than focusing attention on whether the proposed action triggers an arbitrary (but qualitative) significance criterion or limitation built into the CATEX.

Two commenters asked that a cumulative impact analysis be made on each and every CATEX and until this procedure is completed for public comment as stipulated under NEPA, all CATEX's be deleted from the final order. FAA's response: The FAA establishes CATEX's as provided for in CEQ regulations and has thoroughly reviewed its CATEX guidance and list with CEQ.

A commenter believes that airports historically tend to undertake many smaller insignificant projects such as runway, taxiway, apron, and ramp improvements and extensions claiming CATEX's in order to circumvent NEPA compliance. Taken together they more often than not result in significant cumulative environmental impacts. That is true also of accessory on-site structures, construction of facilities, buildings, parking areas, etc. The commenter contends that AIP grants are currently being used at the local airport (Reno, NV) for an ongoing series of these types of projects without environmental analysis, while significant cumulative impacts have been realized—most critically, noise. Said airport prepared three separate EA's in three consecutive years for the implicit purpose of avoiding a full-blown EIS. The commenter contends that this loophole is consistently used by airports and the FAA to circumvent public participation in quality of life issues. FAA's response: Order 1050.1E includes guidance on the consideration of cumulative impacts, as well as on independent utility of projects and segmentation. Projects that have independent utility may be categorically excluded or evaluated in separate NEPA documents provided that reasonably foreseeable cumulative impacts are properly assessed and disclosed. Also, in determining if extraordinary circumstances apply to a project, FAA must often contact or consult the public to complete the regulatory process associated with the resource that is the focus of a potential extraordinary circumstance (*i.e.*, historic property).

A commenter believes that the CATEX list is inadequate and incomplete. Unless the CATEX's currently contained in the appendices are incorporated into Chapter 3 in their entirety, this effort to streamline will only result in added confusion, uncertainty and controversy among FAA officials and the private parties impacted by the order. FAA's response: All relevant and applicable CATEX's from Chapter 3 of Order 1050.1D, Appendixes 1–6 of Order 1050.1D and Chapter 3 of Order 5050.4A have been included in Chapter 3 of final Order 1050.1E.

One commenter believes the proposed order's CATEX's would simplify the approval of many projects that are currently closely scrutinized, shifting more of the burden to the communities surrounding airports, instead of enacting more stringent measures to mitigate (maintain or even decrease) the level of aviation impact on these communities. The commenter believes this is not an equitable proposal, therefore, it needs to be rethought, amended to achieve a fair balance, and then resubmitted. FAA's response: Federal agencies are allowed under CEQ regulations to identify actions that do not normally have potentially significant impacts and place them in a CATEX category. The FAA has thoroughly examined the basis for the five new categories of actions related to airports. The FAA believes that the environmental review of proposed actions that are legitimate CATEX's should be simplified. This is one of FAA's environmental streamlining goals.

A commenter noted that a recurrent theme in the proposed order is that CATEX's will be granted, provided they: "do not significantly increase noise," "do not substantially expand those facilities," "do not essentially change existing tracks," "do not have a significant effect on the human environment," etc. However, there is no definition as to what constitutes a "significant," or "essential" etc. change. As currently structured, many elements of the proposed order are inadequately defined, therefore, prone to misinterpretation in the absence of clear quantitative thresholds. FAA's response: As to use of the word "significant," see the Response to Comments on General Subject Matter, Extraordinary Circumstances. The CATEX's in question are existing CATEX's that the FAA promulgated in earlier versions of Order 1050.1. The FAA has more than two decades of experience with the CATEX's in question and has far more experience with the actions identified in those CATEX's. The FAA believes that, given the nature of the actions involved, and the FAA's judgment that has evolved through years of experience with the actions, the public interest is well served by these existing CATEX's. The FAA would much rather see the efforts of the project team directed to examining the real environmental issues listed extraordinary circumstances (paragraph 304) rather than focusing attention on whether the proposed action triggers an arbitrary (but qualitative) significance criterion or limitation built into the CATEX.

The commenter recommended that a new figure number be given to each subcategory of CATEX in proposed Figure 3–2 (*e.g.*, 3–2, 3–3, 3–4, etc.).

That way, each CATEX can be identified by a specific number reference. As it is now, number references such as #4 could be referring to CATEX's in other subcategories. FAA's response: We concur. Figure 3–2 was replaced in the final Order with paragraphs 307–312 in order to simplify the citation of a particular categorical exclusion, present the lists in a logical manner, and identify each categorical exclusion with a unique reference.

Beginning Paragraph 307 Comments. Regarding the CATEX of 307a, a commenter suggested changing "emergency measures" to "measures to respond to emergency situations" in order to clearly state the intent of the CATEX. FAA's response: We concur and have amended the CATEX accordingly in the final Order. The similar CATEX under paragraph 311j was also amended in the final Order to incorporate the commenter's suggestion. Further, a condition was added to restrict the applicability of the CATEX to instances where there are no reasonably foreseeable long-term adverse effects. This restriction was added in consideration of the requirements of 40 CFR 1506.11 and paragraph 302 of this Order which provide alternative NEPA compliance procedures for actions taken to respond to emergency situations that significantly affect the environment.

Regarding the CATEX of paragraph 307c, a commenter concluded that any conveyance of land for airport purposes is almost by definition of environmental concern and should NOT be CATEXed. FAA's response: This CATEX applies to the conveyance of land simply to transfer ownership where there is no reasonably foreseeable change in use that has the potential to significantly impact the environment. The CATEX has been revised to clarify that its use is limited to circumstances where the proposed use of the land is either unchanged or for a use that is CATEXed. As revised, the CATEX of paragraph 307c is within the scope of the existing CATEX in Airport Environmental Handbook, FAA Order 5050.4A, paragraph 34a.

Regarding the CATEX of paragraph 307c, a commenter disagrees with this CATEX. The commenter contends that there is an AIP project currently, where residential property was acquired under the guise of noise, then conveyed to Regional Transportation to construct a major arterial roadway to benefit the airport. An Air Cargo Complex dependent on the roadway to carry significant truck traffic was an unmentioned part of the project. The commenter believes that granting CATEX's rather than preparing environmental analysis deprives the public opportunity to defend their quality of life. FAA's response: In use and development of CATEX's, FAA follows procedures set forth in 40 CFR 1508.4 and 1507.3. The Responsible FAA official must determine if extraordinary circumstances exist prior to applying a CATEX and these determinations often involve public input. We are unable to determine the relevance of the scenario described by the commenter as it appears to involve the conveyance of airport land and a release from federal obligations under 307b, not a conveyance of Federally-owned land. The nature of the AIP project is not clear. Nor is it clear whether the use of the land for a roadway project was reasonably foreseeable when the airport sponsor requested the release. It is also not clear whether federal action was involved in construction of the roadway project by "Regional Transportation."

The DOI believes that the CATEX of paragraph 307c needs a qualifier that excepts airports in or near national park units from the CATEX. The DOI also recommends adding the word "existing" to read "* * * operating environment of the existing airport." Land conveyances for new airports should not be CATEXed. FAA's response: This CATEX has been revised to clarify limitations on its availability, as described above. It was not intended to apply to the conveyance of land on which to build an entire new airport or to a conveyance of land on which to build airport development that is not also normally subject to categorical exclusion. As qualified, the conveyance of land alone has no impact on the environment regardless of the location of an airport.

Regarding the CATEX's of paragraphs 307e and c, a commenter supports the inclusion of NOTAMS and FAA actions relating to conveyance of land that do not substantially change the operating environment. FAA's response: Comment noted.

Regarding the paragraph of 307d, the CATEX was revised in the final Order 1050.1E to make clear that the CATEX addresses Federal funding and FAA's approval to amend the airport layout plan to depict Part 150 noise compatibility projects.

Regarding the CATEX of paragraph 307f, a commenter concluded that the appropriateness of excluding mandatory actions required under treaties from NEPA analysis is questionable. CATEX's are for actions that normally do not result in significant impacts, based on the inherent characteristics of the action. An action that is mandatory under a treaty may well result in significant environmental impacts. The mandatory nature of the action relates to the discretion of the FAA in implementing the action, not the resulting environmental impacts. Even if implementation of the action is mandatory, there may be opportunity to reduce impacts on the environment through proper timing or staging of the action or use of other mitigation measures identified by a NEPA analysis. Another commenter believes that treaties with international organizations, governments and/or authorities must not overrule U.S. law that is designed to protect the health, safety and environment of its citizens. Other international entities could be more concerned about commerce, over human health and our environment. FAA's response: The FAA believes that the phrase at the end of the categorical exclusion, "except when the United States has discretion over implementation of such requirements" addresses the concern raised by the commenter. "Mandatory action" refers to circumstances in which the federal agency has no choice about whether or how to accomplish the action, including timing, staging or mitigating impacts during implementation. The NEPA requires Federal agencies to take environmental concerns into consideration when making decisions over actions that are potentially subject to Federal control and responsibility. See 40 CFR 1508.18. Conversely, the federal courts have recognized that where no choice is involved such that an action is ministerial, no NEPA analysis is required. No purpose would be served in completing such analysis where the Federal agency has no discretion to take environmental impacts into account in implementing the action. See, *City of New York* v. *Slater*, 262 F.3d 169 (2nd Cir. 2001). For example, the 1995 bilateral agreement phasing in an "Open Transborder" regime between the U.S. and Canada required the FAA to allocate slots to Canadian carriers under the slot program for Chicago O'Hare International Airport (14 CFR part 93, subpart K). During the rulemaking to amend the slot program at O'Hare Airport the FAA realized that mandatory actions taken by the State Department pursuant to treaties or international agreements qualify for exemption from NEPA under State Department regulations implementing the NEPA, 22 CFR part 161. This categorical exclusion is intended to afford the same treatment to such actions when taken by the FAA. This categorical exclusion stems from the NEPA, not from application of the international treaty or agreement to override U.S. law. As a result of the Wendell H. Ford Aviation Investment Reform Act of 2000, there should be fewer occasions to use this categorical exclusion. Reagan National Airport is now the only airport left in the high density traffic airport program.

The FAA amended the CATEX of paragraph 307h to include the indicated text: "Approval of an airport sponsor's request solely to impose Passenger Facility Charges (PFC) *or approval to impose and use Passenger Facility Charges for planning studies*". Federal funding of a planning study, including those studies necessary to comply with NEPA, whether under the airports grants program or the state block grants program (see CATEX paragraph 307o), or under the PFC program, does not imply Federal commitment to execution of the project or action under study. FAA approval of such projects or actions is independent of the planning study approval. Concerning the PFC program, since, for the purposes of compliance with NEPA, approval to impose and use PFC's for planning purposes is functionally equivalent to similar approvals for planning studies under the airport grants program or the state block grants program, and since a CATEX has been found to be appropriate for planning studies under the airport grants program and the state block grants program, it may be concluded that the planning studies approved under the PFC program can be similarly CATEX'ed from further NEPA review. In fact, funds are often co-mingled for such studies leading to the conclusion that the source of funding is irrelevant to NEPA compliance issues. It is further concluded that the issue is better addressed by amending the CATEX under paragraph 307h rather than amending paragraph 307o. Accordingly, the text at issue is adopted under paragraph 307h in the final Order 1050.1E.

Concerning the CATEX in paragraph 307o, the Illinois DOT commented that

within the AIP, certain states, including Illinois, are allowed to administer the federal program under the State Block Grant Program. Each state has a separate block grant agreement with the FAA that identifies the state's role and responsibilities. Each year IDOT receives a single grant (or multiple grants) for the program based on an application that includes a list of airport development projects. The commenter notes that the FAA uses a CATEX on the issuance of the state block grant, which excludes the need for NEPA review of projects contained in the block grant. In practical terms this means that IDOT is required to produce and approve the environmental documents that FAA would have approved if there were no state block grant. The Illinois DOT consults with FAA but does not act on its behalf. The commenter states that the proposed order does not make any reference to the peculiarities of the procedures to carry out NEPA under the special state/FAA relationship for block grant states. Additionally, FAA's NEPA oversight after the block grant is issued is not spelled out in the proposed order. The FAA cannot delegate NEPA to a state so the state cannot act in FAA's name. Environmental action approvals prepared by a block grant state are signed only after intense scrutiny by FAA, but they are the state's own decisions. The scrutiny has reached a point where the state cannot sign the approval unless FAA agrees. While Illinois DOT has successfully worked with FAA to implement the State Block Grant Program for some years, it urges that this "gray area" of interagency operation be clarified in the new order. The Illinois DOT recommends that it address any special procedural actions used for the block grants, especially since this order is intended to reflect numerous changes since the last update in the 1980's. FAA's response: This order incorporates categorical exclusions for the FAA's airport improvement program, however the detailed environmental policies and procedures for administration of the airport program will remain in its separate order, FAA Order 5050.4, the Airport Environmental Handbook. The FAA Office of Airports, in updating Order 5050.4, intends to include more detailed information on the State Block Grant Program that will address your concerns. Order 5050.4B will be consistent with Order 1050.1E, but will include more detailed guidance specific to airport environmental reviews.

The FAA found that the proposed CATEX of paragraph 307o did not carry forward the condition "which do not imply a project commitment" for those planning grants as originally provided in the existing CATEX under Order 1050.1D, Chapter 3, paragraph 31a(3). Proposed paragraph 307o, which was a combination of existing CATEX's under 1050.1D and Order 5050.4a, could be misinterpreted to imply that the original intent of the existing CATEX's was not carried forward into Order 1050.1E. Accordingly, the final Order 1050.1E adopts the original CATEX from Order 1050.1D and adds to paragraph 307o the existing CATEX from Order 5050.4a as a "such as" provision of paragraph 307o. Thus, as intended, the original intent of the existing CATEX's are carried forward in the final Order 1050.1E.

Beginning Paragraph 308 Comments. Regarding the CATEX of paragraph 308c, a commenter strongly recommended that issuances of certificates and related actions under the Airport Certification Program be eliminated from CATEX's. The commenter reported a situation of an air carrier, Shuttle America, being certified without an environmental review—a major change and disruption to the community. FAA's response: The commenter has confused airport certification for safety with the issuance of aircraft operations specifications. The foregoing are distinctly separate and independent programs within the FAA. FAA believes the CATEX for the Airport Certification Program is appropriate. It is not a newly-proposed CATEX; it has been in existence for years. Regarding the issuance of air carrier certificates and operating specifications, as noted in response to paragraph 307 comments, the FAA as a matter of policy applies NEPA to FAA approval of air carrier operations specifications and amendments to specifications. The comment overlooks the environmental review that the FAA conducted in deciding to approve Shuttle America's application to initiate service at, and increase service from Hansom Field to other airports. See, *Save Our Heritage* v. *FAA*, 269 F.3d 49 (1st Cir. 2001). The court in that case upheld the FAA's reasoned determination of *de minimis* environmental effects from ten or so flights a day, against a backdrop of nearly 100,000 flights a year. Given the FAA's policy of reviewing the proposed FAA actions that most directly authorize air carriers to change service at airports, the normal categorical exclusion of other ministerial, safety-based related FAA actions is justified. Airports are certificated to serve air carriers based upon safety standards and requirements such as crash, fire, and rescue equipment and security programs in 14 CFR part 139. Although airport and air carrier certification are prerequisites, it is not normally clear that new air carrier service will result. Although not required, as a matter of policy the FAA has proposed to replace the statement that the categorical exclusion for airport certification is not subject to review for extraordinary circumstances with the statement that there is no reasonable expectation of a change in use that would cause environmental impacts. See paragraph 303d. This final Order has been revised further to affirmatively state in paragraph 308 that the categorical exclusion for airport certification is subject to review for extraordinary circumstances.

Regarding the CATEX of paragraph 308c, a commenter noted that in September 1999, Massport issued a certificate for commercial flights to Shuttle America, using Hanscom Field. Massport had promised repeatedly, in writing, since 1978 that Hanscom Field would remain a GA airport. Massport took this action with no review by the Advisory Board that had been chartered by the State to review Hanscom changes. Massport is being sued by the surrounding towns for this action. A CATEX for Issuance of Certificates gives an airport owner inappropriate control of the destiny of a very large area, again, for the financial benefit of a very small number of people (in this case, a group of investors in Shuttle America). FAA's response: This categorical exclusion would apply to certificates issued by the FAA under federal law, not certificates issued by Massport as proprietor of the airport under state law.

Regarding the CATEX of paragraph 308d, a commenter believes that the CATEX restricts and limits the current exclusion provided in Appendix 4, paragraph 3e in 1050.1D which clearly provides that preparation of an EA is normally required for "Approval of operations specifications authorizing an operator to use turbojet airplanes for scheduled passenger service into an airport when that airport has not previously been serviced by any scheduled passenger turbojet airplanes." FAA's response: Although it is correct that an EA is normally required for scheduled turbojet passenger service into an airport when that airport has not been previously been serviced by any scheduled passenger turbojet airplanes, Order 1050.1D, Appendix 4, paragraph 3e does not preclude the possibility of an EA being required when an airport already had scheduled passenger turbojet airplanes. Further, the commenter is incorrect in the

assumption that the situation identified in his comment is a "restriction" on the applicability of the CATEX in question. In Order 1050.1D, the appendixes provide separate paragraphs for those actions which normally require an EA and those actions that are normally CATEXed. In Order 1050.1E, the provisions of the appendixes of Order 1050.1D were separated. Those actions which normally require an EA are now consolidated and listed under paragraph 401 in final Order 1050.1E. The specific action identified by the commenter is now listed as paragraph 401(l). CATEX's from Order 1050.1D (along with those from Order 5050.4A) are consolidated and are now listed in Chapter 3 of Order 1050.1E. The provisions of Appendix 4 of Order 1050.1D are, with minor editorial changes, carried forward unchanged into final Order 1050.1E as previously described.

Regarding the CATEX of paragraph 308d, three commenters believe the CATEX fails to define what is meant by the term "substantially" or "operating environment of the airport." Thus, it is impossible to ascertain to what activities the proposed CATEX would pertain, and the proposed CATEX is thereby rendered vague and ambiguous, implausible and unenforceable as arbitrary and capricious. FAA's response: This CATEX is an existing CATEX originally issued approximately in its present form in Order 1050.1B (June 16, 1977). The FAA is not proposing to alter the intent or scope of this existing CATEX in Order 1050.1E. The text string "do not significantly change the operating environment of the airport" means that the proposed change in the (aircraft operations) level of service or type of aircraft operation is minor and does not have the potential to significantly increase noise over noise sensitive areas or to result in other significant impacts. A sentence to this effect has been added to this CATEX in the final Order. See, *Sierra Club* v. *Dole*, 753 F.2d 120 (DC Cir. 1985), *Save Our Heritage* v. *FAA* 269 F.3d 49, 56 (1st Cir. 2001). See also paragraph 401(l) of Order 1050.1E which further delineates the meaning of the text string in question by including examples of operating specifications which may significantly change the operating environment of an airport and which, consequently, require the preparation of an EA. The issue of "significance," and significance thresholds where available, are discussed for each environmental impact category in Appendix A of Order 1050.1E. For example, a significant increase in noise is defined as an increase of DNL 1.5 dB or more at or above DNL 65 dB noise exposure over a noise sensitive area (see section 14.3 of Appendix A).

Beginning Paragraph 309 Comments. Regarding the CATEX's of paragraphs 309b, c, d, and g, the DOI believes that these CATEX's need qualifiers that except airports in or near national park units. FAA's response: The extraordinary circumstances listed in paragraph 304 include provisions for section 4(f) lands, which include public parks (*e.g.*, National Parks) and recreational lands, wildlife and waterfowl refuges, and historic sites. However, geographic proximity alone, without resulting effects that trigger extraordinary circumstances, does not warrant preparation of an EA or EIS for actions that normally qualify for a CATEX.

Regarding the CATEX of paragraph 309a, the DOI recommends that after "equipment," add the following: "within the perimeter of an airport or launch facility, or in a location currently used for similar facilities or equipment." FAA's response: We concur and the recommendation, with a minor change, is adopted.

Regarding the CATEX of paragraph 309b, the DOI recommends that at the end, add the following: "provided the action will not create light emissions or visual impacts visible outside of the airport from areas such as wilderness, national park system units, or similar light-sensitive areas near the airport." FAA's response: The FAA believes that national parks, wilderness areas, and other areas are adequately protected from the inappropriate use of a CATEX by the guidance governing extraordinary circumstances.

Regarding the CATEX of paragraph 309b, the DOI notes that there appears to be a conflict with paragraph 401j. Conflict would disappear if "which are not on airport property" were added to 401j. FAA's response: We concur. The recommendation was adopted and paragraph 401j has been modified accordingly in the final Order.

Regarding the CATEX's of paragraphs 309b and c, a commenter questions most of the provisions of this CATEX, believing any changes in major lighting systems, approach beacons, and navigational systems affect both the appearance of the airport and flight practices, and they should not be CATEXed. The commenter believes that building, strengthening, extending or resurfacing of existing runways and ramps can change the airport capacity to handle flights, and may open up the airport to additional operations. Likewise, construction of accessory structures such as storage buildings, garages or small parking areas affect future airport activities and its capacity, and they should not be CATEXed. FAA's response: The scenarios described by the commenter do not normally occur and would constitute an extraordinary circumstance for these CATEX's. These items remain CATEXed in Order 1050.1E, subject to extraordinary circumstances.

Regarding the CATEX of paragraph 309c, the FAA added a parenthetical note to indicate that the establishment or relocation of Instrument Landing Systems are not included in the CATEX. Also, text relating to upgrading facilities and equipment to improve operational efficiency, which was misplaced under paragraph 310s, was relocated to the end of the fourth sentence of paragraph 309c in the final Order.

Regarding the CATEX of paragraph 309d, a commenter noted that this CATEX does not appear to be in keeping with FAA practice. In recent years, the FAA has prepared EA's for many proposed radar facilities (*e.g.* terminal Doppler weather radars, airport surveillance radars, precision runway monitors, and next generation weather radars) located at or near airports. FAA's response: Paragraph 309d only applies to facilities and equipment that would be located on airports, or FAA or launch facilities. Contrary to the commenter's assertion, this CATEX is routinely used by the FAA if an analysis of extraordinary circumstances determines that significant impacts would not occur. As a current example of the FAA's routine use of this CATEX, FAA has identified the preferred sites for approximately 30 on-airport ASR–11 radar systems. Following an analysis of extraordinary circumstances, 23 of the 30 on-airport preferred sites qualify for this CATEX and CATEX's have been applied at these 23 locations. The FAA prepares EA/FONSI's when an analysis of extraordinary circumstances determines that potentially significant impacts may occur, or the facility or equipment would not be located on an airport or other FAA or launch facility. The commenter also noted that ANSI/IEEE use the word "standards," not "guidelines." FAA's response: We concur and the appropriate change was adopted.

Regarding the CATEX of paragraph 309d, two commenters support this CATEX. One commenter notes that the listed equipment has minimal environmental impact, and a CATEX provides a valuable tool for the timely installation of equipment such as the Precision Runway Monitor (PRM). The other commenter supports the inclusion

of approach lighting systems. FAA's response: Comments noted.

Regarding the CATEX's of paragraphs 309b, 309c and 309d, the FAA found that the qualifier "within the perimeter of an airport" needed to be better delineated. Accordingly, the text in question was replaced with "on designated airport or FAA property or launch facility." In this context, "on designated airport property" means previously acquired real property used for, or intended to be used for, airport purposes as provided under 14 CFR Subchapter I, Airports, of the Federal Aviation Regulations. "On FAA property" means real property previously acquired by the FAA for purposes other than the proposed action. "Launch facility" means an existing facility as defined in paragraph 11 of Order 1050.1E.

Regarding the CATEX of paragraph 309e, the FAA added mobile Airport Traffic Control Towers and Mobile Emergency Radar Facilities to the examples of miscellaneous airports facilities and equipment that are included under the CATEX. These facilities are mobile and designed for temporary use in place of damaged or otherwise out of commission facilities already in use on an airport. A mobile Airport Traffic Control Tower may also be used as a temporary facility in support of an airshow at small airport lacking a permanent Airport Traffic Control Tower. These facilities are used in conjunction with other actions that are CATEXed (see paragraphs 307a, 311j and 312b). The indicated facilities are included in paragraph 309e in final order 1050.1E.

Beginning Paragraph 310 Comments. Regarding paragraphs 310e, f, g, h, and r, the DOI believes that these CATEX's need qualifiers that except airports in or near national park units. FAA's response: As previously noted, geographic proximity to a national park alone does not disqualify an action for CATEX. Sensitive environmental resources within or near an airport would be reviewed pursuant to Order 1050.1E to determine whether extraordinary circumstances, involving impacts on resources, require the preparation of an EA or EIS.

Regarding the CATEX of paragraph 310d, three commenters believe that this CATEX would immunize from environmental analysis FAA assistance to, planning for, and installation of de-icing facilities which purport to have obtained requisite water quality permits. The commenters believe that this totally begs the question of, among other impacts, the air quality effects of de-icing facilities. In other words, de-icing facilities using toxic chemicals ethylene and propylene glycol would be exempt from review because, arguably their water quality impacts had been resolved, leaving unresolved numerous additional potential impacts. The proposed order is devoid of evidence to support a CATEX where important environmental impacts are both probably present and unexplored. FAA's response: De-icing facilities have been reviewed and have not been found to produce the significant impacts the commenter is concerned about. Our review of the literature on glycol-based deicing fluids indicates glycol atomizes and mixes with air in the immediate and adjacent vicinities of the aircraft being treated with these fluids. The resulting dilution protects workers beyond the immediate area where the deicing occurs. As a result, a person beyond an airport's airside operations is highly unlikely to be exposed to airborne glycol concentrations causing harm to one's health. Water quality impacts are the known circumstance that could extraordinarily preclude a CATEX. However, other extraordinary circumstances would also be reviewed by the FAA responsible official.

Regarding the CATEX of paragraph 310d, a commenter asks for justification for the addition of installation of deicing and anti-icing facilities with NPDES permits or similar permits. The commenters question whether this is a new policy. Another commenter noted that the proposed change must not CATEX federal assistance, ALP approval, or FAA installation of deicing/anti-icing facilities just because they comply with NPDES since many state permits are of minimum quality. FAA's response: The CATEX is based on the determination that de-icing/anti-icing facilities meeting NPDES permit requirements would not significantly impact water quality—the primary impact of concern. State water quality agencies specify the volumes of de-icing agents that an airport may discharge to receiving waters based on the receiving water's ability to decompose, biologically and chemically, the de-icing agents. Consequently, concentrations of dissolved oxygen and de-icing agent components in receiving waters remain at levels that are not harmful to aquatic life.

Regarding the CATEX of paragraphs 310f and h, a commenter suggests that the terms "limited" and "small" be defined or examples of excluded projects included in final guidance materials. Several other commenters requests that the terms "substantially" and "limited expansion" be defined so that the potential to lead to expanded operations would not be ignored. For example, would adding 10 airline gates when there are already 120 gates "substantially expand" the airport? Does FAA have a "rule of thumb" that applies to interpret "substantially expand" in the context of passenger gates and cargo warehouses? FAA's response: The responsible FAA official determines "substantially" on a case-by-case basis in conjunction with a thorough examination of extraordinary circumstances. The Office of Airports (ARP) approves construction or expansion of passenger handling and cargo handling facilities. It finances only the public use areas of passenger handling facilities. As written, categorical exclusion 307h would apply only to passenger or cargo construction or expansion having no potential to significantly affect air quality, noise, or other environmental impacts. As a result, minor passenger or cargo facility construction or expansion would not normally cause significant environmental impacts. However, FAA recognizes small changes in these facilities could cause significant environmental changes. For example, they could adversely affect an endangered species. As a result, FAA's categorical exclusion analysis requires that the responsible FAA official conduct compulsory reviews of extraordinary circumstances. This ensures no minor expansion causes significant environmental effects. If such effects would occur, FAA will not categorically exclude any passenger or cargo handling facility causing those effects. As a result, the proposed categorical exclusion revision would meet CEQ's categorical exclusion definition because it would not normally cause significant environmental impacts. Note: "Substantial expansion" means actions increasing the numbers of passengers, vehicular traffic, or aircraft operations to levels that can cause changes in air quality or noise requiring further analyses. For air quality impact screening, refer to pg. 20 of the FAA and U.S. Air Force's "Air Quality Procedures for Civilian Airports and Air Force Bases," (April 1997). For noise impact screening, refer to pg. 30, of FAA Order 5050.4A, "Airports Environmental Handbook," para. 47e(1)(c)2. Whether or not expansion falls within a limited or substantial classification relates to the change in both size and service capabilities at specific locations. These items have been subject to CATEX's for years, and the appropriate application of extraordinary circumstances combined

with technical judgments have identified those expansions that need to be reviewed with an EA or EIS. The FAA understands the interest in more detailed, rule-of-thumb guidance and will provide it in FAA Order 5050.4B, the Airport Environmental Handbook. Order 5050.4B will be consistent with Order 1050.1E, but will deal more specifically with the environmental review of airport development.

Regarding the CATEX of paragraph 310h, a commenter objects to this CATEX. The commenter states that any construction of terminal facilities, passenger handling facilities, cargo buildings at commercial service airports have potential vehicular traffic impacts, and by attracting more customers, impact on frequency of commercial services. The commenter regards such changes to be of critical environmental significance, and they should not be CATEXed. The commenter further regards construction of terminal facilities as a sign of airport expansion. FAA's response: The FAA disagrees with the commenter's assumption that the construction of airport buildings necessarily attracts more air passengers. With respect to the commenter's concern that terminal expansion is a sign of airport expansion, the CATEX is worded to exclude substantial expansion. This categorical exclusion would not apply where construction of facilities is connected to other expansion activities, such as additional runways or new air carrier service. In addition, extraordinary circumstances would trigger an EA or EIS, instead of a CATEX, if changes of critical environmental significance were related to a specific terminal expansion proposal. Further regarding this CATEX, the FAA has determined that the scope of this CATEX includes "T-hangers" used for storage/parking of small general aviation aircraft. This determination is based on EA's conducted for such facilities and consequent findings of no significant impact.

Regarding the CATEX of paragraph 310k, a commenter suggests a clarification, as there may be a number of cases where a USACOE Nationwide Permit would be appropriate for minor projects in wetland areas that would not require an EA or EIS. Suggest adding this sentence at the end: "When the land is delineated as a wetland, FAA will consult with the U.S. Corps of Engineers (Corps) to determine the required environmental documentation to meet the standards of the Corp; if an EA or EIS is not required, FAA will use this CATEX unless other environmental considerations require an EA or EIS." FAA's response: The FAA concurs and has added a sentence to the effect that minor dredging and filling of wetlands may qualify under this CATEX if the action qualifies for a U.S. Army Corps of Engineers nationwide or regional general permit. The features of interest to the commenter are essentially built into the CATEX and extraordinary circumstances. Further, consultation procedures are explicitly addressed in Appendix A, section 18 on wetlands.

Regarding the CATEX of paragraph 310m, the FAA concluded that the length of the lease for space in buildings and towers was not a determining factor in predicting the potential for environmental impact. Accordingly, the qualifying text "for a firm-term of one year or less" was deleted from the CATEX in the final Order. The qualifying text was originally included since at that time the FAA only had authority to execute leases for a maximum of one year. A lease of any duration that may have an impact on the environment would be captured under the extraordinary circumstances analysis process.

Regarding the CATEX of paragraph 310p, the CATEX adopted in the final order was amended by adding restrictions on the application of the CATEX that reflect concerns about invasive species, landscape practices that are environmentally damaging and unsustainable, and attractants to wildlife that are hazardous to aviation as follows: "New gardening or landscaping, and maintenance of existing landscaping that do not cause or promote the introduction or spread of invasive species that would harm the native ecosystem, use landscape practices that reflect the recommendations in the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837), and do not attract wildlife that is hazardous to aviation." The restriction on invasive species was added to ensure the application of the CATEX is consistent with E.O. 13112, "Invasive Species." The restriction for wildlife hazardous to aviation was added to ensure that such issues are substantively addressed if present. Also, the CATEX was amended in the final Order to add the consideration of landscape practices that reflect the recommendations in the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837). The Presidential Memorandum is a guidance document developed to assist federal agencies in the application of environmentally and economically beneficial landscape practices. The intent is to use landscape practices that can result in healthier, longer-lived plantings which rely less on pesticides and fertilizers, minimize water use, require less maintenance, and increase erosion control. The guidance is fairly general in nature and limited by the parameter of cost-effectiveness and discretionary site-specific considerations. It does not advocate replacement of existing landscapes, unless it is cost-effective to do so. The guidance does not supersede Federal agency directives, policy, or other guidance relating to the mission of the agency or to health and safety concerns.

Regarding the CATEX of paragraph 310r, a commenter objects to this CATEX. The commenter believes that the purchase of 3 or less acres of land adjacent to an airport changes the potential of the airport to handle traffic, is of significance to the neighbors of the airport, and should not be CATEXed. The purchase of 3 acres can represent a large amount of land in urban and suburban communities. FAA's response: The CATEX in question involves small tracts of land and associated easements and rights-of-way. Land purchased for significant airport expansion is not CATEXed.

Regarding the CATEX of paragraph 310r, a commenter asked if the easements and rights-of-way mentioned are those that may be required or those previously existing, or both. FAA's response: Generally, the CATEX applies to new easements and rights-of-way; however, on occasion it may apply to those previously existing.

Regarding the CATEX of paragraph 310r, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. FAA's response: The FAA's experience is that acquisition of small tracts of land and associated easements and rights-of-way do not individually or cumulatively cause significant impacts. The acquisition of land does not precipitate any change in the status quo. By merely accepting title the FAA is not undertaking a project that changes the character or function of the land. The use of the land for the proposed new facility would require an EA or EIS. For example, the acquisition of land and associated restrictive easements for Airport Surveillance Radar facilities will maintain the type of land use and the status quo of the airspace. The restrictive easement will prevent the development of the land and avoid physical impacts to the environment. This is not the type of change that normally effects the environment.

However, if such were the case in any particular instance, extraordinary circumstances would trigger either an EA or EIS.

Regarding the CATEX of paragraph 310t, a commenter objects to this CATEX. The commenter contends that commencing or adding to heliport operations changes the nature of air traffic at the airport. Sometimes, standard DNL contours may not change, but the perception of the aviation noise will change if helicopters are included or added. The phrase "would not increase noise over noise sensitive areas" is unacceptable to the commenter in that it eliminates public input of which areas are sensitive and under what conditions noise is increased. Helicopter noise has a different character than airplanes. Helicopters tend to warm up longer and fly lower. FAA's response: The critical qualifying factor of the CATEX is that noise would not significantly increase over noise sensitive areas. The FAA uses quantitative analysis to determine significant noise increases. The FAA has published guidance for public review in this Order of the definitions of noise sensitive areas and its methods of assessing noise. In addition, through extraordinary circumstances screening, if an action is likely to be highly controversial on environmental grounds, this action would not be CATEXed. Appendix A, section 6.2, DOT section 4(f), and section 14.4b, Noise, set forth the applicability of Part 150 land use guidelines and the standards of significance for noise increases over residential and traditional recreational land uses. These sections, together with section 4, Compatible Land Use, also provide special guidance for areas in units of the national park system and national wildlife refuges that are of value for their quiet setting, as this is an evolving area.

Regarding the CATEX of paragraph 310t, a commenter notes that this presumes someone would know the flight tracks and noise footprint of helicopters flying in and out of a newly licensed facility, and would also know where noise sensitive areas are, before being able to CATEX the proposed activity. In order to be able to fully analyze these factors, an EA would need to be prepared. This CATEX needs to be modified or deleted. FAA's response: Because this activity would occur at an existing airport, the location of noise sensitive areas would be known. This knowledge would help in determining whether extraordinary circumstances are present. The CATEX is adopted as proposed.

Regarding the CATEX of paragraph 310t, the DOI recommends that the word "significantly" should be deleted in the phrase "would not significantly increase noise over noise sensitive areas." FAA's response: As previously stated in this preamble, CEQ regulations provide for Federal agencies to CATEX actions that do not "significantly" affect the environment (see 40 CFR 1508.4). Accordingly, the recommendation is not adopted.

Regarding the CATEX of paragraph 310t, a commenter recommended that after the words "launch facility," remove the word "that" and replace with "either of which." FAA's response: We concur with the recommendation, and the change is adopted.

Regarding the CATEX of paragraph 310t, three commenters believe that helicopters represent a unique variety of noise, different than that attributable to fixed-wing aircraft, and sometimes more onerous, due partially to the low frequency noise created, as well as to helicopter's ability to hover in one place for long periods of time. The commenters believe that CATEX approval of an ALP containing a heliport—the earliest opportunity to analyze the proposed heliport's environmental impacts—would give carte blanche to new and even more intrusive noise impacts than already exist. The purported limitation contained in the order that a CATEX under this section would only be granted where the proposed facility would not "significantly increase noise over noise sensitive areas" is no improvement. The commenter believes that the limitation is so overbroad and vague that virtually any contemplated project could fit within it. FAA's response: The FAA believes the qualifier for this CATEX, backed up by historical experience concerning when significant impacts could potentially result, are adequate to support the CATEX and to provide for environmental review of appropriate exceptions to the CATEX.

Regarding the CATEX of paragraph 310u, the FAA expanded the CATEX to include closure, removal or remediation of fuel storage tanks, and the CATEX was clarified to specify that all actions pertaining to closure, removal, or remediation of a fuel storage tank at a FAA facility must conform to the requirements of FAA Order 1050.15A, Fuel Storage Tanks at FAA Facilities, and EPA regulations 40 CFR parts 280, 281, and 112 in order to qualify for this CATEX.

Regarding the CATEX of paragraph 310v, a commenter supports the inclusion of de-icing /anti-icing facilities. FAA's response: Replacement facilities that fall within the parameters of the CATEX would be included.

Regarding the CATEX of paragraph 310v, three commenters believe that this would go beyond anything previously proposed, in that it would allow not merely the approval of a plan or ALP for a new terminal without environmental review, but also actual construction of the terminal without environmental review as well. Moreover, the commenters contend that purported limitation on applicability to projects of the same size, scope and location is no limitation at all, as the proposed rule contains neither a measure to gauge whether the terminal is "substantially" the same size, nor a definition of "substantially." The commenters believe this CATEX has no justification or explanation and is arbitrary and capricious. FAA's response: The FAA does not believe the CATEX is ill-defined, arbitrary, or capricious, or far beyond anything previously proposed. It is applicable to the replacement of reconstruction of a building of similar size and purpose on the same site as the building being replaced or reconstructed. The only change in this CATEX from the current CATEX is the insertion of the word "terminal" to clarify that a terminal is considered as a structure or building. All actions qualifying as CATEX's undergo evaluations for extraordinary circumstances. These evaluations must satisfy applicable environmental laws and regulation, many of which require public input. Results of these evaluations help FAA determine if the proposed action will be the subject of an EA (or if potential impacts are significant, an EIS). (see paragraph 304). Therefore, NEPA analysis of actions that qualify as CATEX's does take place.

Regarding the CATEX of paragraph 310w, the FAA found that snow removal, vegetation control and erosion control work for trails, grounds, parking areas and utilities are similar to such practices for roads and rights-of-way, and that none of the actions significantly affect the environment (in the absence of extraordinary circumstances—see paragraph 304). Accordingly, trails, grounds, parking areas and utilities are added to paragraph 310w in the final order.

Regarding the CATEX of paragraph 310x, a commenter asks the FAA to define the difference between "facility decommissioning" and "facility disposal." FAA's response: Decommissioning is defined as being no longer operational in the National Airway System (NAS). Disposal includes surplusing of property.

Regarding the CATEX of paragraph 310y, a commenter suggests adding the phrase "* * * if the proposed use is essentially the same." FAA's response: The use of facilities being taken over by the FAA for incorporation in the National Airspace System (NAS) would always be the same. Accordingly, the proposed change is not adopted.

Regarding the CATEX of paragraph 310z, a commenter supports the inclusion of tree trimming to meet 14 CFR 77. FAA's response: The CATEX includes topping or trimming trees to remove obstructions to airspace.

Regarding the CATEX of paragraph 310aa, the DOI has a concern that this CATEX applies to airports near NPS cultural landscape areas where changing paint color, for example, could adversely affect the integrity of the landscape. In such cases, the action should not be CATEXed. FAA's response: This possibility of significant impacts resulting from a change in the paint color of a building would be extremely rare, but would be covered under paragraph 304k.

Regarding the CATEX of paragraph 310bb, the FAA found that the existing CATEX, identified in Order 1050.1D as paragraph 4f under Appendix 5, was inadvertently not included in the CATEX's identified in the **Federal Register** notice of October 1999 for proposed Order 1050.1E. The CATEX in question, "Purchase of land or easements for existing operational facilities," is carried forward unchanged in final Order 1050.1E.

A commenter requests adding the following new CATEX: "Federal, state or local financial assistance, licensing, local government approval, ALP approval, or FAA action related to establishment of a parachute jump facility, drop zone, parachute landing area, etc." FAA's response: We believe that the FAA actions identified in the request are adequately accounted for under the CATEX's of paragraphs 311b and 312b. The other actions identified in the request are non-federal actions and, as such, are not within the scope of the procedures associated with this Order.

Beginning Paragraph 311 Comments. Regarding the CATEX of paragraph 311c, the DOI believes that if actions to return Special Use Airspace to the National Airspace System could include airspace such as the Grand Canyon National Park Special Flight Rules Area, then this CATEX is much too broad and should be reworded or deleted. FAA's response: Special Use Airspace does not include airspace such as the Grand Canyon National Park Special Flight Rules Area. See 14 CFR part 73 and FAA Order 7400.2E, "Procedures for Handling Airspace Matters."

Regarding the CATEX of paragraph 311d, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. This becomes significant if the rerouting brings aircraft over or close to noise sensitive areas such as national park units. FAA's response: Paragraph 311d has been revised to replace the phrase "involving minor adjustments to" with the text "that does not alter." As revised, this categorical exclusion does not permit modifications that could bring aircraft over or close to noise sensitive areas and units of the national park system. Extraordinary circumstances related to noise sensitive areas, including noise sensitive areas in National Park System units, would ensure the consideration of impacts on such areas when deciding whether to invoke this CATEX.

Regarding the CATEX of paragraph 311e, the DOI believes that this action [designation of alert areas and controlled firing areas (CFA)] should not automatically be CATEXed; sometimes it should require an EA or EIS. This CATEX needs qualification. If these are new designations, they should not be CATEXed. However, if they are designated within existing SUA and do no more than make a minor change to the use of the SUA, they may warrant a CATEX. FAA's response: FAA does not concur. FAA's experience with CFA designations is that they typically do not affect the environment. CFA's are established to contain activities that are conducted in a controlled manner to prevent any hazard or impact to nonparticipating aircraft. Examples of such activities are munitions disposal and rocket test stand firings. Although CFA's are technically classified as SUA, there is no charted airspace designation involved, nor is any airspace reserved for the user. In a CFA, the user simply agrees to keep a watch for passing aircraft and immediately terminate the activity if an aircraft approaches the area; and to adhere to certain visibility conditions to ensure the ability to observe passing aircraft. CFA's are not published on aeronautical charts and aircraft are NOT required to deviate around the CFA. Because CFA's impose no impact whatever on aviation, pilots would not even be aware of the existence of a CFA. There is no statutory requirement for the creation of a CFA. As to the designation of alert areas, since this is an advisory action, it has been removed from the CATEX and placed in paragraph 301 in the final Order. An alert area is a type of SUA that is designated where there is a high volume of pilot training activity, or an unusual type of aeronautical activity is conducted. Designation of an alert area is not required in order for that activity to take place. All activities in the area must be conducted in compliance with applicable Federal Aviation Regulations without waiver. Alert areas are shown on aeronautical charts and serve to inform pilots of the existence of activity that they might not otherwise expect to encounter. These are pre-existing activities that do not require FAA approval. Therefore, the designation of an alert area does not result in any change to the environment in that area.

Regarding the CATEX of paragraph 311f, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. This becomes significant if the rerouting brings aircraft over noise sensitive areas such as national park units. DOI further comments that the 3,000 feet designation does not necessarily relate to impacts, especially where flight tracks occur over national park units. The Nevada DOT believes that this change is inconsistent with the Nevada Statewide Aviation System Plan policies or goals. If incorporated into the document, this CATEX could provide for the establishment of SUA independent of public comment and could undermine the intended purpose of the Joint Military Affairs Committee process. Another commenter believes that because DOD requests for special use airspace establishment or modification are inherently controversial, because there is a paucity of scientific evidence and data concerning the cause and effect relationship between military aircraft overflight and wildlife, recreation, livestock production, and other environmental values, the commenter requests that the FAA's proposed rule be changed to require that all DOD special use airspace proposals for establishment or modification be evaluated at least at the EA level and that a CATEX not be available for such actions. FAA's response: The CATEX in question, originally proposed as item #6, Procedural Action of Figure 3–2, "Categorical Exclusion List," in the **Federal Register** notice, has been removed in the final Order for further study. CATEX 311f in the final Order is marked "Reserved".

Regarding the CATEX of paragraph 311i, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. Impacts on park units may occur from traffic greater than 3,000 feet AGL. FAA's response: Past environmental assessments and impact statements

confirm that the FAA normally proposes changes in air traffic and instrument approach and departure procedures for air traffic in the vicinity of large, busy airports. The predominant land uses in these areas are suburban and residential. Proposed changes to the routes that overfly parks like Zion and Grand Canyon National Park are much less frequent than those in the vicinity of large airports. Assuming, without deciding, that changes in procedures for air traffic at altitudes greater than 3,000 feet may cause potentially significant impacts on park units, these occur in exceptional circumstances. Air traffic and instrument approach and departure procedures for proposed major airport development projects are connected actions that would be part of an EA or EIS.

Regarding the CATEX of paragraph 311i, a commenter believes that impacts from changes to air traffic control procedures over noise sensitive areas should be exempt from regular noise monitoring requirements where they exist, as well as CATEXed as long as the procedures are limited in time and there is a mechanism for coordination with the airport sponsor and the impacted air carriers. FAA's response: Instrument procedures conducted below 3,000 feet AGL that cause traffic to be routinely routed over noise sensitive areas would at least be subject to an EA, which normally would not include noise monitoring. However, noise monitoring should be considered if there are legitimate questions concerning potential cumulative noise impacts on DOT Section 4(f) resources. Such re-routings can potentially cause significant noise impacts and, therefore, cannot be CATEXed. The commenter's proposal is not adopted.

Regarding the CATEX of paragraph 311j, in response to a comment to the similar CATEX under paragraph 307a, paragraph 311j was amended in the final order consistent with the changes adopted in Paragraph 307a. See the discussion for the comment to paragraph 307a in this preamble.

Regarding the CATEX of paragraph 311m, a commenter supports CATEXing short-term air traffic changes below 3000 feet to accommodate airport construction. However, changes of six months duration may be too long (and controversial) for exposure to new aircraft noise. A change in procedures of that duration should be anticipated by FAA and the airport if it is for airport construction. Such changes should be susceptible to an EA. FAA's response: We agree that if it is reasonably foreseeable that construction will last more than six months, an EA would normally be appropriate. However, based upon FAA experience, where the activity will not exceed six months, a CATEX is appropriate, absent extraordinary circumstances. We agree that there may be circumstances in which changes of six months duration that could result in potentially significant long-term impacts. Based on the experience of the FAA in conducting environmental reviews for over short term tests of changes in air traffic procedures at airports like Newark International, Detroit Metropolitan, Minneapolis St. Paul, Washington National, and Dulles Airports, these circumstances are not the norm.

A commenter requested the following new CATEX: "FAA air traffic control receipt of notification letter for, or issuance of authorization for, parachute jump activity parachute operations, or skydiving activity in the National Airspace System." FAA's response: We believe that the FAA actions identified in the request are adequately accounted for under the CATEX of paragraph 311b.

Proposed new CATEX (Table 3–2; Procedural Actions; item #7; "Establishment or modification of Special Use Airspace (SUA) for supersonic flying operations over land and above 30,000 feet mean sea level (MSL) or over water above 10,000 feet MSL and more than 15 nautical miles from land," is withdrawn from the final order in order to further validate by analysis and review of current scientific literature the specified altitude and distance thresholds.

Beginning Paragraph 312 Comments. Regarding the CATEX of paragraph 312b, the DOI believes that the actions should not be automatically CATEXed; sometimes they should require an EA or EIS. Depending upon the location and nature of such actions, the temporary impacts may cause long-term adverse effects that warrant an EA or EIS. FAA's response: The qualifying wording of the CATEX (*i.e.*, that the "temporary impacts * * * revert back to original conditions upon action completion") means that actions that cause long-term adverse effects are not covered by this CATEX. The FAA believes the DOI concern is accounted for in the CATEX without the need for further modification.

A commenter requested amending paragraph 312b to include "Aerobatic Practice Box" and "Aerobatic Contest Box" stating that aviation activities conducted within such airspace per FAA Order 8700.1, Chapter 48, are considered to be equal to "airshows" as a type of "infrequent" aviation event. Individually or cumulatively these events do not have a significant effect on the human environment, and are not conducted within or above noise sensitive areas. FAA's response: We concur with the request and the conclusions stated and have revised paragraph 312b accordingly.

Regarding the CATEX of paragraph 312d, the DOI believes that while the issuance of the document might be a CATEX, the actions proposed in the documents might not be. This seems too broad. These actions should not be automatically CATEXed; sometimes they should require an EA or EIS. FAA's response: As stated in the CATEX, the actions proposed in the regulatory document are limited to administrative or procedural actions which are typically categorically excluded. See response to comment regarding "Extraordinary Circumstances" under the heading "Comments on General Subject Matter", above. The need for an EA or EIS would be identified through the extraordinary circumstances analysis process described in paragraph 304.

Regarding the CATEX of paragraph 312f, it was found that the existing CATEX, identified in Order 1050.1D as paragraph 4j under Appendix 4, was inadvertently not included in the CATEX's identified in the **Federal Register** notice of October 1999. The CATEX in question, "Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment)," is carried forward unchanged in final Order 1050.1E as paragraph 312f.

A commenter requested the addition of the following new CATEX: "Authorizations, waivers, certificates, and exemptions for infrequent or occasional actions such as parachute or skydiving demonstration or exhibition jumps, parachute or skydiving competitions or meets; and parachute or skydiving conventions or events that may or may not draw public attention or spectators." FAA's response: We believe that the actions described in the requested CATEX are adequately accounted for under the CATEX of paragraph 312b.

Chapter 4 Comments

Beginning Paragraph 401 Comments. Regarding paragraph 401g, the FAA found that the requirements for an EA for the establishment or relocation of Air Route Surveillance Radars, Air Traffic Control Beacons, and Next Generation Radar was not consistent with the categorical exclusion provided under paragraph 309d. Paragraph 401g is consequently amended in the final

Order to indicate that EA's are normally required only if located off of airport property. Paragraph 309d states that if such facilities are located on airport or designated FAA property they are categorically excluded.

Regarding paragraph 401k, the DOI comments that DNL levels (*i.e.*, 1.5 dB increase and 65 dB) are not absolutes. There may be instances where an airport is used infrequently enough for its noise not to significantly affect the annual average DNL, but where its noise could significantly affect a sensitive resource during a sensitive time period (*e.g.*, nesting endangered species off the end of the runway, or a cultural site during a sensitive religious period). Where appropriate, other criteria should be used. FAA's response: Paragraph 401k presents categories of airport actions that normally require an EA, and may require an EIS. It is not the "normal" or usual case that a runway strengthening project, which is the subject of DOI's DNL 65 dB comment, would present the type of environmental circumstances envisioned by DOI. However, there is provision in Appendix A to give special noise consideration to national parks and other unique areas, and Order 1050.1E provides flexibility to assess noise effects on such areas that would be lower than DNL 65 dB with metrics other than DNL.

Regarding paragraphs 401m, n, and p, the DOI comments that significant impacts might occur to national park units and noise sensitive areas at flight altitudes greater than 3,000 feet AGL. FAA's response: This response is similar to the one above. Paragraphs 401m, n, and p address the usual and normal EA requirements, and do not preclude preparation of an EA or EIS for actions above 3,000 feet AGL, where appropriate.

Regarding paragraph 401p, one commenter notes that the FAA suggests that EA's would only be required for DOD special use airspace applications where the floor of the proposed area is below 3,000 ft AGL or a supersonic flight is anticipated at any altitude. The commenter agrees with the FAA proposal that supersonic flight anticipated in special use airspace at any altitude should trigger a minimum evaluation through an EA. However, the suggested floor of 3,000 feet AGL for triggering an EA is inappropriate for DOD special use airspace applications. The establishment or modification of special use airspace by the DOD is generally contrary to the established FAA policy of minimizing the proliferation of special use and restricted airspace. Also, there is no basis in the EA or overflight impact assessment literature that establishes that military flight at 3,000 feet AGL is a presumptively safe or environmentally benign level. Accordingly, because DOD requests for special use airspace establishment or modification are inherently controversial, because there is a paucity of scientific evidence and data concerning the cause and effect relationship between military aircraft overflight and wildlife, recreation, livestock production, and other environmental values, and because the establishment of military special use airspace is generally an exception established FAA policy on the nonproliferation of special use airspace, the commenter requests that the FAA's proposed rule be changed to require that all DOD special use airspace proposals for establishment or modification be evaluated at least at the EA level and that a CATEX not be available for such actions. FAA's response: The CATEX at issue has been removed from the final Order for further study. Paragraph 401p has also been accordingly amended in the final Order to remove references to the 3,000 ft. AGL condition on the applicability of the CATEX and paragraph 401p. Paragraph 401p now prescribes that an EA should be conducted for all SUA airspace designations regardless of the base height above ground unless otherwise explicitly CATEXed under Chapter 3.

Beginning Paragraph 404 Comments. Regarding Figure 4–1, the DOI recommends adding the topics of scoping and alternative formulation between steps 3 and 4 of the figure. FAA's response: We concur with the requested change, and the figure is modified accordingly. Scoping remains optional for EA's. Also regarding the same figure, another commenter requested adding "and alternatives" to the end of the text of Step 1. FAA's response: We concur, and the figure is modified accordingly. Also regarding paragraph 404, a new sentence was added in the final Order to the effect that an EA for an airport capacity project, an aviation safety project, or an aviation security project may quality and be appropriate for environmental streamlining under provisions of "Vision 100—Century of Aviation Reauthorization Act."

Regarding Figure 4–2, the DOI recommends that under the title "Scope" the sentence should read, "Addresses the proposed action's impacts on affected environmental resources (natural, cultural, and socioeconomic)." Under the title "Content" the last bullet should be modified to read, "Agencies, organizations, and persons consulted." FAA's response: Figure 4–2 is intended to provide an outline of the process; more detail is provided in the text. The first DOI recommendation is not adopted. The second DOI recommendation regarding "Content" is adopted. Also regarding Figure 4–2, another commenter requested a definition of "baseline." FAA's response: The term is changed to "existing" to remove the ambiguity.

Regarding paragraph 404b(5), a commenter recommends substituting the word "context" for "severity." CEQ regulations define "significance" in terms of both "context" and "intensity," where "intensity" is equated with "severity." Environmental justice impacts can be overlooked if the analysis is limited to one aspect and not both. For example, a change at an airport or facility may not be significant across a regional population but may be "intensely" felt by a sub-population, such as a low-income neighborhood, or low-income workers within but spread out among the regional population. FAA's response: The sentence in 404b(5) containing this terminology has been removed from this particular location in the Order during final review with CEQ because it was misplaced. "Significance" is addressed elsewhere in the Order. We agree that the word "context" is appropriate, instead of "severity". The commenter also suggested that there should be a separate section in the order that covers environmental justice. FAA's response: Environmental Justice is covered in appendix A, section 16.

Regarding paragraph 404c, the following new sentence was added in the final Order: "If FAA has experience with an environmental management system (EMS) that includes monitoring of the implementation of actions similar to the proposed action and alternatives, the EMS may provide a factual basis for an assessment of the potential environmental impacts." The new sentence was added to facilitate coordination of the NEPA and EMS processes. Executive Order 13148 of April 21, 2000 "Greening the Government Through Leadership in Environmental Management" requires Federal agencies to use an EMS approach for improving environmental performance. Where EMS's have been implemented, they may assist in the evaluation of environmental impacts. In those cases, the NEPA and EMS processes should be complementary. Similar references to complementary aspects between NEPA and EMS were added to paragraphs 405f(1)(c) and 506h(1) in the final Order.

Regarding paragraph 404d, a commenter asks; What does "If more than three years have elapsed since the FONSI was issued, the responsible FAA official should prepare a written evaluation of the EA" mean? Does this refer to reevaluation of an EA/FONSI if a project has not begun within three years? Does it refer to a project that has begun with EA approval but not been completed in three years? Three years will elapse on any FONSI, but the question is what is the trigger for reevaluation? FAA's response: The three-year period begins from the date another agency issues its EA/FONSI. When the FAA adopts another agency's EA, there would be no circumstance under which an action would have begun prior to the FAA's adoption. Paragraph 404d is adopted with changes to clarify that the three-year period starts when the other agency issues its EA/FONSI.

Regarding paragraph 404d, a commenter notes that a significant benefit of this provision is lost if FAA must prepare a written evaluation of the information in the other agency's EA. The purpose of this requirement is to ensure that FAA independently verifies the information in the EA and that the analysis is appropriate, given the approval that FAA must provide. Those goals can be met without the formality of a written evaluation, and this additional step should be avoided. The revised order should retain the procedure for adopting EA's or FONSI's of other agencies, but delete the requirement for a written evaluation. FAA's response: We concur. Independent review does not have to be written, but a written reevaluation is required if another agency's EA is more than three years old. The provision is adopted with the requested change.

The FAA, in the final order, deleted the proposed sentence in paragraph 404d indicating that a copy of an adopted EA or EA/FONSI should be forwarded to EPA. The deleted sentence could have been interpreted as mandatory and that forwarding of such documents is not a requirement of, or consistent with, FAA, DOT, or CEQ policies or CEQ regulations.

Further regarding paragraph 404d, two additional sentences were adopted in the final Order indicating that incorporating by reference may be useful in ensuring that the EA is both concise and clear about the bases for its conclusions.

Beginning Paragraph 405 Comments. Regarding paragraph 405e, the DOI recommends that the fourth sentence should be modified to read: "However, data and analysis should be pertinent to the impacts and commensurate with its importance." FAA's response: The recommended change is adopted. The sentence at issue was further expanded in the final Order to indicate that such background data may be incorporated by reference.

The FAA has revised paragraph 405c to provide that the Office of the Chief Counsel (Regional Counsel and AGC–600) will not waive legal sufficiency review of the FONSI and underlying EA where the proposed Federal action is opposed on environmental grounds by a Federal, state, or local agency or a Tribe. It has been our experience that legal review of the FONSI and underlying EA is in the best interest of the agency in such circumstances.

Regarding paragraph 405d, the discussion on identifying and considering alternatives to a proposed action was amended in the final Order to ensure conformity with CEQ regulations and policies.

Regarding paragraph 405e(2), the DOI recommends that examples should include "appropriate noise and visual data." FAA's response: These types of data are already included in the general text of paragraph 405e(2) (*e.g.*, "This section shall succinctly describe existing environmental conditions of the potentially affected geographic area(s) * * * It also may include * * * any other unique factors associated with the action."), and it is therefore unnecessary to list them separately.

Regarding paragraph 405e(5), a commenter asks for a definition for time frames of the actions. FAA's response: The temporal boundary used for the cumulative effects analysis will vary depending on the proposed action and duration of its effects.

Regarding paragraph 405f, a commenter believes that the referenced document "Considering Cumulative Effects under the National Environmental Policy Act" is problematic and flawed. FAA's response: This document is the best, currently available guidance from CEQ and is used at the discretion of the FAA. Paragraph 405f(1)(c) has been revised in the final Order to summarize the CEQ regulations regarding cumulative effects.

Regarding paragraph 405f, the Illinois DOT notes that this provision states that the environmental consequences of the proposed action and the no action alternatives should be shown in comparative form and that environmental impacts of other alternatives that are being considered should also be discussed in the EA/EIS. This appears to mean that there should be an impact analysis of alternatives which were considered in the EA/EIS, but do not meet the purpose and need. Clarify. FAA's response: If an alternative is being analyzed under the environmental consequences section of an EA, it has already been determined that the alternative is reasonable; otherwise, it would have been eliminated from further analysis. Paragraph 405f is amended in the final Order to clarify the issue and to ensure conformity of the paragraph with the CEQ regulations and policies.

Regarding paragraph 405g, the Illinois DOT notes that this provision states that when mitigation measures are changed after a FONSI and the changes result in significant impacts, the responsible FAA official must issue a Notice of Intent (NOI) to prepare an EIS. We do not think that every change in mitigation that follows a FONSI, even if it is judged to cause a significant impact, should automatically mandate an EIS. We recommend that the FAA be given flexibility to address the issue without being required in every instance to prepare a full EIS for the project, given all that is entailed in such an effort. FAA's response: An EIS would only be required in this instance when environmental impacts rise to significant levels that are not mitigated below thresholds of significance. If impacts are significant, an EIS must be prepared.

Regarding paragraph 405i, a commenter asks whether any further detail should be provided, *e.g.*, dates or phone numbers, for the list of agencies and persons contacted? FAA's response: This is not required information. It may optionally be provided, to the extent determined appropriate and useful.

Beginning Paragraph 406 Comments. Regarding Figure 4–3, the DOI agrees that the content of the FONSI should include mitigation measures. FAA's response: Comment noted.

Regarding paragraph 406c(1), which prescribes the internal FAA review process, the following sentence from Order 1050.1D, paragraph 56a, which was inadvertently omitted in draft Order 1050.1E, is carried forward in final Order 1050.1E in order to emphasize the purpose of the internal review requirements: "This internal review is to ensure that related foreseeable agency actions by other FAA elements are properly covered in the statement or finding and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out."

Regarding paragraph 406d, a commenter asks for clarification on what is meant by "FONSI's are required to be coordinated outside of the agency

* * *." It is unclear if an FAA decisionmaker can satisfy this requirement by relying on the results of normal agency consultation, if a decisionmaker must circulate a draft FONSI for approval by officials from other agencies who have relevant expertise and jurisdiction, or if a decisionmaker is merely obligated to send copies of a FONSI to officials of other agencies. FAA's response: We have modified paragraphs 404f and 406d in the final Order to clarify the procedures.

Regarding paragraphs 406f and g, the Wisconsin DOT believes that not all final EA's and FONSI's need to be circulated to commenting agencies. This is normally only done when requested. FAA's response: Those agencies, organizations or individuals that provided substantive comments are included on a mailing list to receive a copy of the final EA/FONSI.

Paragraph 407 Comments. A commenter believes that this paragraph should be expanded to include the responsibilities of the FAA to self-police with a formal follow-up commitment to ensure that air traffic procedures that are described in the EA/EIS for use with a new runway or airport are followed. It should not become the responsibility of the airport operator to ensure that these procedures are adhered to. FAA's response: The FAA is responsible for assuring the implementation of mitigation commitments within the FAA's sphere of responsibility, such as air traffic procedures. The first sentence of paragraph 407 clearly states that mitigation "* * * shall be implemented by the lead agency * * *." The FAA does not believe that expansion of 1050.1E guidance on this point is necessary. Individual FAA offices may issue more detailed instructions to their respective field personnel.

Paragraph 408 Comments. Commenters noted that the FAA's use of the term "record of decision" (ROD) in conjunction with a FONSI is easily confused with the same term used in the EIS process. Both suggested alternative terminology for the FONSI/ROD. FAA's response: This provision simply codifies long-standing policy and guidance that permits FAA to prepare decision documents in conjunction with findings of no significant impact. These decision documents include the same content as records of decision that must be prepared following preparation of an environmental impact statement, as well as identifying the document as the decision/order that is subject to judicial review in accordance with the appropriate statutory review provisions. Use of similar terminology is beneficial because FAA personnel are familiar with the content and purpose of an FAA record of decision. It is also useful because it highlights the legal distinction between a finding of no significant impact and the agency decision to take action based upon the FONSI that forms the basis for judicial review. Therefore, FAA has determined to retain use of the term FONSI/ROD in FAA Order 1050.1E.

Paragraph 410 Comments. The Wisconsin DOT believes that the requirements for EIS's should not be imposed on EA's for purposes of a written re-evaluation. FAA's response: Although there is no legal requirement to perform a written evaluation of EA's, the FAA has previously concluded that there can be a benefit to doing a written re-evaluation for an EA because a written re-evaluation can confirm the continued accuracy and validity of the EA when questions and challenges have arisen. Accordingly, Order 1050.1D already contains such requirements and those requirements are carried forward in final Order 1050.1E under paragraph 410. Further, the time limitations for the life expectancy of environmental documents originally identified in paragraphs 91 and 92 of Order 1050.1D are explicitly set forth under paragraph 402 in the final Order 1050.1E. The time limitations for EA's and FONSI's are similar to those prescribed for EIS's under paragraph 514 of final Order 1050.1E.

Paragraph 411 Comments. The Wisconsin DOT believes that the requirements for EIS's should not be imposed on EA's for purposes of revision or adding supplemental information. FAA's response: Compliance with NEPA to ensure accurate disclosure of impacts would necessitate similar consideration for preparing a supplemental EA/FONSI. Existing Order 1050.1D already contains conditional criteria for preparing a supplement to an EA under paragraph 92. Those existing requirements are carried forward in final Order 1050.1E under paragraph 411.

Paragraph 412 Comments. The Wisconsin DOT believes that the requirements for EIS's should not be imposed on EA's for purposes of review and adoption of EA's proposed by other agencies. FAA's response: We concur in part. We agree that the CEQ's regulatory requirements for commenting (only) on other agency's EIS's should not be made mandatory requirements for the FAA's commenting on other agency's EA's. Such requirements are not contained in Order 1050.1D and it was not the intent of the FAA to imply in Order 1050.1E that such requirements be made to apply to EA's. Thus, references in paragraph 412 to paragraphs 518h and 404h, and proposed paragraph 404h itself, are removed from the final Order 1050.1E. However, as discussed above in the responses to comments on paragraph 410 and 411, the FAA believes that it is entirely proper that certain requirements for evaluation and adoption of EIS's should also apply to EA's. Order 1050.1D already provides for such requirements for EA's in paragraphs 92 and 93 and those requirements are carried forward in final Order 1050.1E as paragraphs 410 and 411. Since the requirements for adopting another agency's EA are already provided under paragraph 404d and since the remainder of proposed paragraph 412 has been deleted, proposed paragraph 412 is redundant and has been removed from the final Order 1050.1E.

Chapter 5 Comments

Paragraph 500 Comments. The FAA found that since the procedure used to file draft, final, supplemental and programmatic EIS's is the same, it would be appropriate to have one EIS filing paragraph and refer to that paragraph in paragraphs 508, 509, 513 and 519. The affected paragraphs were modified accordingly in the final Order.

Paragraph 501 comments. The FAA deleted the third sentence proposed under paragraph 501b in the final Order. The FAA need not necessarily circulate a mitigated EA/FONSI for public and agency comment. Instead, reference is made to paragraph 406e wherein instructions are provided for public review of an EA/FONSI under special circumstances.

Paragraph 501 has been revised to (1) clarify that the significance criteria set forth in 40 CFR 1508.27 should be considered in determining whether to prepare an EIS after an EA has been prepared and (2) include the text of 1508.27.

Paragraph 503 Comments. Regarding Step 1 of Figure 5.1, the DOI commented that the proposed action should not be defined prior to scoping. One of the primary purposes of scoping is to define the proposed action and alternatives. FAA's response: Proposed FAA direct actions and applicant proposals to FAA are usually formulated prior to FAA's determination that an EIS will be required and, therefore, prior to scoping. See CEQ regulations at 40 CFR 1501.7 on scoping: "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." CEQ guidance on

scoping states that scoping "cannot be useful until the agency knows enough about the proposed action * * * to present a coherent proposal and a suggested initial list of environmental issues and alternatives." (see CEQ memorandum: Scoping Guidance (CEQ, April 30, 1981) (see FAA Web site at *http://www.aee.faa.gov*). The proposed action may be modified to address issues raised during scoping.

Beginning Paragraph 504 Comments. Regarding Figure 5–2, third bullet, left column, a commenter believes the cited text should say no less than 30 days. FAA's response: "At least 30 days" means the same thing as "no less than 30 days."

Further regarding Figure 5–2, it was correctly noted that the 30-day lead time for notification of a scoping meeting is suggested FAA policy; not a regulatory requirement. Accordingly, Figure 5–2 was amended in the final Order to change "must" to "should" in reference to the 30-day scoping meeting notification.

One commenter believes that the Notice of Intent (NOI) should not just be published in the **Federal Register**, but should be mailed to the appropriate local officials in the communities abutting the airport. FAA's response: A NOI must be published in the **Federal Register** and invite state, local and Tribal representatives and the public to participate in the scoping process. See 40 CFR 1501.7(a)(1) and 1508.22. Direct mailings of a NOI is not a CEQ requirement and, accordingly, is not required in Order 1050.1E.

Beginning Paragraph 505 Comments. Regarding paragraph 505a, a commenter notes that the FAA has proposed creating an optional procedure for preparing a scoping document. The commenter believes this additional procedural step is unnecessary and will add more time and expense to the process and yield little, if any, benefit. While it is being presented as an "optional" approach, it is likely to very quickly become a standard *de facto* practice. Aviation projects sometimes are controversial, particularly as they relate to community impacts. FAA staff may be reluctant to deny procedural opportunities for the public to provide input, if they perceive that there is opposition. In addition, encouraging 30 days notice for meetings or hearings removes some of the process flexibility the FAA currently enjoys. Similarly, encouraging the creation of a report will mean additional costs and delays for private applicants. The commenter contends that there is no evidence that scoping under the current system is not effective, and FAA should avoid creating what will be perceived as an entitlement when it will make little, if any, meaningful difference to the process. The proposed scoping document should be deleted. FAA's response: We do not concur with the conclusion that an optional scoping document will become a standard *de facto* practice. Documentation of the scoping process is an optional procedure that is available to the responsible FAA official. The proposal to eliminate the optional scoping document is not adopted.

Further regarding paragraph 505a, the third sentence of paragraph 505a was corrected in the final Order to indicate that the purpose of scoping includes identifying and eliminating from detailed study those issues that are insignificant. The correction is necessary to remove a typographical error in the proposed text in question that indicated scoping would "de-emphasize issues that are significant."

A commenter noted that preparers need consistent guidance on the content and location in the EIS of the discussion of contextual material, planning forecasts, planning process, other projects (independent and cumulative actions), timing of the proposed action, funding, and required permits. Also needed are working definitions of purpose and need. Guidance as to the latitude available for variation in the organization of the EIS would be useful for preparers. FAA's response: The FAA believes that sufficient agency-wide guidance is provided in paragraph 506. Components and lines-of-business of the FAA may issue more detailed guidance tailored to their specific needs.

Beginning Paragraph 506 Comments. Regarding paragraph 506d, the DOI asks why the proposed action is being presented in this paragraph. This paragraph presents the rationale for the study and the issues that need to be resolved. The proposed action should be described in the Alternatives paragraph (506e). FAA's response: We concur and have modified paragraph 506d accordingly. However for many FAA actions, identification of the proposed action (a brief description) in the context of the agency's purpose and need is appropriate. The decision to address the proposed action in the purpose and need section is left to the discretion of the responsible FAA official.

The FAA has revised paragraph 506e in the final Order to delete the phrase "but within the jurisdiction of the Federal Government" and simply refer to the "rule of reason" as codified in the CEQ regulations and articulated, qualified, and applied in the case law.

Regarding paragraph 506g, the Illinois DOT notes that the provision states that the environmental consequences of the proposed action and the no action alternatives should be shown in comparative form and that environmental impacts of other alternatives that are being considered should also be discussed in the EA/EIS. This appears to mean that there should be an impact analysis of alternatives which were considered in the EA/EIS, but do not meet the purpose and need. Since this was probably not the intent and is not consistent with FAA NEPA practice, the language should be clarified. FAA's response: We concur with the comment and have modified paragraphs 506g(1) and (2) accordingly.

Regarding Figure 5–3, it was noted that holding a public hearing less than 30 days after issuance of the draft EIS is inconsistent with paragraph 209c, which provides that a draft EIS must be available to the public at least 30 days prior to a public hearing. Figure 5–3 was changed in the final Order to be consistent with paragraph 209c.

Paragraph 507 Comments. A commenter notes that the first statement is quite confusing. The comment period for a draft EIS is a minimum of 45 days (1506.10(c)). No final decision on the proposed action can be made or recorded in a ROD until 90 days after the filing of the draft EIS (1506.10(b)(1)). There is a 30-day wait period after the filing of the final EIS. However, if the final EIS is filed within the 90-day period after filing of the draft EIS, then the decision cannot be made until both the 30-day and 90-day requirements have been met. While the 45-day and 30-day periods can be altered by EPA upon a showing of compelling reasons of national policy, the 90-day period cannot be altered. FAA's response: We concur and have modified paragraph 507a accordingly. Corresponding changes to Figure 5–1 are also made in the final order. The commenter also noted that the statement "EPA may receive a 30-day extension * * *" probably is an incorrect interpretation of 40 CFR 1506.10(d)). This statement needs to be rewritten as "EPA, upon a showing by another Federal agency of compelling reasons of national policy, may extend the 30-day and 45-day periods for up to 30 days, but no longer than 30 days without the permission of the lead Federal Agency." FAA's response: We concur and have adopted the recommended text.

The standard language in paragraph 508c(3) has been revised in the final Order to use plain English.

Beginning Paragraph 508 Comments. Regarding paragraph 508h, a commenter

suggests deleting specific reference to EPA's current rating system since these ratings are EPA actions and not FAA actions. They are used as a summary shorthand for the EPA comments and thus do not seem relevant to FAA's order. FAA's response: We concur and have removed the reference accordingly.

A commenter also recommends that this paragraph should clarify that as part of the EIS filing process EPA publishes the official **Federal Register** notice of availability for an EIS. Agencies, including FAA, may also publish an availability notice in the **Federal Register**, but the FAA notice cannot be used on its own. FAA's response: We concur and have added text clarifying the issue to paragraph 507(a).

Regarding paragraph 508c, the requirement was changed in the final Order to specify that the DEIS must be distributed to interested parties, libraries and other public venues prior to formal notification to the EPA. As adopted in the final Order, the responsible FAA official must certify that such distribution has occurred in the FAA's letter to the EPA requesting publication of a Notice of Availability in the **Federal Register**. As originally proposed, the text in question called for concurrent public distribution and notification to the EPA.

Regarding paragraph 508d(2)(e), a commenter believes that it is confusing to mix the EPA EIS filing distribution with the EPA review distribution. The commenter suggested that FAA drop the filing because it is covered in another section. FAA's response: We concur and have deleted the text in question from this paragraph in the final Order.

Regarding paragraph 508d(2)(g), a commenter notes that it appears something may be askew here, but it is not clear. It seems that this paragraph should be presented similarly and contain similar information as paragraph 511e–g. FAA's response: Paragraphs 508 and 511 have been modified to clarify the requirements.

Regarding paragraph 509, a sentence was added in the final Order to specify that the action in question must be in compliance with all applicable environmental laws, regulations, executive orders and agency orders prior to issuance of the ROD. It is desired that all environmental issues be resolved and documented in the FEIS; however, if it is impossible to comply with certain environmental issues in the FEIS, then such issues must be resolved prior to issuance of the ROD.

Paragraph 510 Comments. A commenter noted that the statement "EPA may obtain a 30-day extension" probably is an incorrect interpretation of 40 CFR 1506.10(d). This statement needs to be rewritten as "EPA, upon a showing by another Federal Agency of compelling reasons of national policy, may extend prescribed periods up to 30 days, but no longer than 30 days without the permission of the lead agency." FAA's response: We concur and have adopted the recommended text. The commenter also suggests that a sentence be added that states that if FAA approves an overall extension of the comment period, then EPA should be notified so that EPA's **Federal Register** notice can be modified. FAA's response: We concur and have added a sentence to this effect.

Beginning Paragraph 512 Comments. A commenter suggests that some language be added to this paragraph to indicate that the ROD can also be used to clarify and respond to issues raised on the final EIS. FAA's response: We concur and have added the suggested text in the second sentence of the paragraph.

A commenter suggested that paragraph 512 describe the difference between a NEPA ROD and a FAA ROD. It should also state that where appropriate the NEPA decision document and the FAA ROD may be combined into one document. FAA's response: This provision simply codifies long-standing policy and guidance that permits FAA to prepare decision documents in conjunction with findings of no significant impact. These decision documents include the same content as records of decision that must be prepared following preparation of an environmental impact statement, as well as identify the document as the decision/order that is subject to judicial review in accordance with the appropriate statutory review provisions. Use of similar terminology is beneficial because FAA personnel are familiar with the content and purpose of an FAA record of decision. It is also useful because it highlights the legal distinction between a finding of no significant impact and the agency decision to take action based upon the FONSI that forms the basis for judicial review. Therefore, FAA has determined to retain use of the term FONSI/ROD in paragraph 408 of Order 1050.1E. The FAA believes that it would be confusing to reiterate the discussion on FONSI/ROD in Chapter 5.

Paragraph 513 Comments. A commenter suggests that this paragraph include a sentence such as, "FAA prepares, circulates, and files tiered and programmatic EIS's in the same fashion as draft and final EIS's. FAA's response: We concur and have added a sentence to this effect as the last sentence of the paragraph.

Further regarding paragraph 514, proposed paragraph 514b(3) was not carried forward into the final Order. The provision called for an extension to the three-year time period of assumed validity of an EIS if the proposed action is restrained or enjoined by court order or legislative process. Although the provision is an existing provision under paragraph 91b(3) of Order 1050.1D, the FAA has determined that the provision is no longer necessary.

Regarding paragraph 515, the FAA amended the proposed time limits for EIS's in the final Order to exclude the applicability of such time limits to programmatic EIS's. By their nature, programmatic EIS's are expected to have a longer shelf-life than typical project-specific EIS's.

Beginning Paragraph 516 Comments. Regarding paragraph 516b, a commenter recommends a rewrite of the second to last sentence to read: "If, however, there are compelling reasons of national policy to shorten the time periods, the agency must consult with EPA." FAA's response: We concur and have adopted the requested text.

Regarding paragraph 516c, a commenter recommends deleting the text since it restates what has already been stated in paragraph 515. FAA's response: We concur and have revised the text to cross-reference paragraph 515.

Regarding paragraph 516d, the Wisconsin DOT comments that establishing a new coordination requirement (status sheets) for EIS documents does not seem warranted. FAA's response: The provision stated "may," and therefore would not have been a requirement. However, paragraph 516d has been eliminated as a result of other comments (see next).

Regarding paragraph 516d, a commenter believes that while this procedure makes available information that is not available under current procedures, FAA needs to ensure that its staff does not use this to fill information gaps that should have been addressed in the original planning. Otherwise, important NEPA rights will be lost. For example, the proposed procedure does not give the public the opportunity to comment on the new information. The commenter agrees that allowing public comment on such information, if a supplemental EIS is not required, is not necessary. Nevertheless, FAA should include language in the order that cautions against using this procedure as a safety net to develop information that should have identified from the outset and prepared as part of

the original EIS. FAA's response: We concur with the commenter's concerns. Paragraph 516d has been deleted from the Order. The status is periodically provided throughout the NEPA process.

Regarding paragraph 516d, three commenters note that the paragraph is revised to provide for a new procedure for circulating supplemental information for "public comment on points of concern." We support the inclusion of this new procedure, as long as it is clear that it is not a substitute for a Supplemental EIS where the later is required. However, the present proposed language only discusses the publishing of supplemental information to inform the public, but does not specifically provide for the public's right to comment on this supplemental information. We recommend that it be modified to specifically provide for the opportunity for the public to submit comments on this supplemental information. FAA's response: Paragraph 516d has been removed from the Order in response to the concerns raised by several commenters.

Regarding paragraph 516d, a commenter indicated it is not clear what the purpose of this change to paragraph 516 is, or the circumstances in which the FAA would issue such status sheets. FAA's response: Paragraph 516d has been removed from the Order in response to the concerns raised by several commenters.

Beginning Paragraph 517 Comments. A commenter recommended that this paragraph be clarified and made into at least two paragraphs. The commenter believes that a "notice of intended referral" is most often received on a draft EIS, and it may well be sent only to a FAA field office (40 CFR 1504.3(a)). In practice, the letter sent by the referring agency to the lead agency informing it of the referral is normally sent either to the FAA Administrator or, more likely, to the DOT Secretary. FAA's response: We concur with the comment and have modified paragraph 517 accordingly. The commenter further notes that FAA may want to add some guidance that FAA would use when referring another Federal agency's FEIS. FAA's response: We will consider the development of such guidance in future updates of this Order.

Further regarding paragraph 507, the last sentence of paragraph 517c was amended in the final Order to correctly state that an FAA response to a referral by another Federal agency to the CEQ must be made no later than 25 days after the referral; not 20 days as stated in the proposal. An agency's response within 25 days is required under 40 CFR 1504.3b.

Regarding paragraph 519, the FAA clarified this paragraph in the final Order to better distinguish between the CEQ requirements for a draft legislative environmental impact statement (LEIS) and a final LEIS. The final Order now refers to 40 CFR 1506.8(b)(2) which provides the conditions for completion of a final LEIS.

Paragraph 520 Comments. A commenter noted that the term "FONSI" should probably read "EA/FONSI." FAA's response: We concur and have adopted the change.

Further regarding paragraph 520, this paragraph has been combined with paragraph 522a and revised to conform to CEQ regulations applicable to informal rulemaking, public involvement in environmental assessments, and issuance of final rules concurrently with FEIS's without waiting 30 days in certain circumstances. Formal rulemaking is used rarely, where a statute other than the Administrative Procedure Act requires a rule to "be made on the record after opportunity for agency hearing." If the DEIS should normally accompany the proposed rule during informal rulemaking, then the same timing should normally apply to other rulemaking processes.

Regarding paragraph 522, the provision (522a) discussing informal rulemaking (*i.e.*, development and promulgation of regulations) was found to be misplaced. The issue is covered under paragraph 520. Proposed paragraph 522a is deleted in the final Order and subsequent subparagraphs renumbered accordingly.

Appendix A Comments

General Appendix A Comments. The Wisconsin DOT comments that each section (2–19) is preceded by a table with reference to applicable statues, etc. Most tables are very complete. However, some (example—sections 12 and 13) have no references. The following text in the section will sometimes discuss specific E.O.'s, etc, that should have been included in the preceding table. Document should be consistent. FAA's response: Revisions to the final Order clarify that for some categories of environmental effects considered under NEPA, there are no special purpose laws.

A commenter believes that few regulations currently exist to protect citizens, to monitor aircraft-produced toxic pollution, or to effectively monitor the health impacts of jet noise. No agency reviews how the FAA does or does not act to protect the safety of those on the ground. The commenter believes that further airport expansion without strict environmental review of toxic emissions, water and ground pollution, and noise impacts sanctions violence against innocent citizens in favor of highly profitable airline operations. FAA's response: There are many Federal, State, and local environmental protection and safety laws and regulations in effect. The evidence of such laws and regulations is found in the requirements expressed in Order 1050.1E.

A commenter notes that appendix A is a very good compendium of environmental requirements and guidance, but recommends that it be deleted from the order and included in a FAA NEPA manual (or desk reference) along with EIS "how-to" information. FAA's response: FAA has decided to retain appendix A in its final Order as a helpful attachment to the order. FAA has determined that due to the need to update its NEPA procedures to aid users, the agency will not change the format for Order 1050.1E, but will consider changing the format for subsequent versions of the Order.

Section 1 Comments. The DOI comments that the list of impact categories should include: Cultural Resources, Threatened and Endangered Species, and (if Wild and Scenic Rivers are a category) National Parks and other Sensitive Areas. FAA's response: Cultural Resources are included in section 11. Threatened and Endangered Species are included in section 8. National Parks and other sensitive areas are addressed in a number of other sections where appropriate (*i.e.*, sections 4, 6, 12, 14, etc.). The recommended change to the list of impact categories was not adopted in the final Order.

Beginning Section 2 Comments. A commenter suggested the following three changes: (1) The section 2.1(c) discussion of direct and indirect emissions should include a reference to the issues of cumulative impacts and the need for that type of analysis when appropriate; (2) in the second to last sentence of section 2.1(c), the sentence should be clarified to indicate that the concentrations referred to are modeled concentrations and projected exceedences; and (3) in the section 2.1(i) discussion on General Conformity, a sentence should be added to indicate that it is desirable to complete the conformity analysis before the final EIS. FAA's response: We concur and have adopted the suggested changes.

A commenter notes the following statement in the order: "To date, FAA does not have a list of actions that are presumed to conform. Notification of such a list and the basis for the

presumption of conformity will be published in the **Federal Register**." As the commenter reads it, this statement can be understood it two ways—either as a statement of intention (*i.e.*, the FAA will publish a list of presumed-to-conform actions) or as a conditional statement of policy (*i.e.*, if the FAA develops a list of presumed-to-conform actions, then it will publish that list). How should this statement be understood? Is FAA developing such a list now, and if so, when does FAA expect it might become available to the public? FAA's response: It is a statement of policy. When FAA develops such a list, it will be published in the **Federal Register**. However, the statement in question was removed from the final Order in order to prevent any misinterpretation.

Regarding section 2.3 "Significant Impact Thresholds," the following was added in the final Order 1050.1E: "Potentially significant air quality impacts associated with an FAA project or action would be demonstrated by the project or action exceeding one or more of the NAAQS for any of the time periods analyzed." This sentence was added to identify well-established, quantitative, health-based criteria for significant air quality impacts.

Regarding section 2.4, subsection 2.4(e) was split and the split-off portion designated as 2.4(f) (and subsequent subsections re-numbered accordingly) in the final Order 1050.1E in order to separate the distinct issues of "air toxics analysis" and "supplemental analysis of non-aviation sources."

Also regarding section 2, section 305 of the "Vision 100—Century of Aviation Reauthorization Act" (of 2003) eliminates the requirement of an air and water quality certification from the governor of a state for certain airport development projects. The requirement and associated citations have been removed from section 2 (and section 17) of Appendix A of the final Order. Specifically, references to the former requirement (49 U.S.C. 47106(c)(1)(B)) were deleted from the table of statutes and regulations and sections 2.1(a) and 2.4(b) in the final Order, and narrative describing the requirement, as proposed in the third paragraph under section 2.1 of the **Federal Register** notice, was removed from the final Order.

Beginning Section 4 Comments. The DOI believes that airports constructed, modified, or relocated in or near national park units should be included in this section and further notes that national park units are not included or considered in the land use compatibility table or Federal Aviation Regulation Part 150. The NPS and other land management agencies should be considered as "local authorities" in the context of the text accompanying Table 1. In addition, the DOI recommends that the use of other noise metrics besides DNL also be presented here; supplemental analyses will often be necessary. FAA's response: While some National Park System units are not specifically listed in Table 1 in Section 4 (14 CFR part 150, Table 1), some of these units include traditional recreational uses that are delineated in Table 1 of Section 4. Moreover, section 4.3 recognizes that "[s]pecial consideration needs to be given to whether Part 150 land use categories are appropriate for evaluating noise impact on unique and sensitive section 4(f) properties. For example, Part 150 land use categories are not sufficient to determine the noise compatibility of areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute, or to address noise effects on wildlife." The NPS is a Federal agency with specific jurisdiction and expertise, and is properly not included in the definition of "local authorities". Section 14 of Appendix A addresses special noise consideration and analyses for unique areas such as national parks, including the use of supplemental noise metrics.

Regarding section 4.1(b), a commenter notes that this section requires the airport sponsor to provide documentation in support of the "compatible land use" grant assurance. This appears to be part of the FAA's effort to encourage local governments to take a more reasonable approach to airport land use compatibility. Of course, many airport operators do not have land use jurisdiction and are dependent on the good will of other local governments. The FAA must acknowledge this when it reviews the "evidence" provided in these future environmental documents. FAA's response: The FAA does understand and acknowledge that airport proprietors may have limited or no land use jurisdiction. The compatible land use assurance includes the qualification "to the extent reasonable".

Regarding section 4.1(b), a commenter notes that it is clear how the compatible land use assurances relate to land use planning and regulation in guiding future development. Yet the last sentence says the compatible land use assurances also "must be related to existing and planned land uses." What does this statement mean? What does the FAA envision with respect to compatible land use assurances relating to existing land use? Does this refer to some means of phasing out non-compatible existing land uses? FAA's response: If the existing use of land is compatible with airport operations, the airport proprietor is expected to take appropriate action, to the extent reasonable, to maintain compatibility.

Regarding section 4.2 comments, a commenter noted that this section includes the land use compatibility table from 14 CFR part 150. It includes an apparent contradiction. While the text states simply that land use compatibility is to be determined from the table, the "Note" in the table itself has this Part 150 disclaimer: "these designations do not constitute a Federal determination that any use of land * * * is acceptable or unacceptable. * * *" The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rest with the local authorities. The language in the text should be amended to agree with the table. The commenter also notes that Table 1 includes a reference to Part 150 that seems inappropriate here. If this is intended, clarity would be improved by specifically noting in the text that Table 1 is taken verbatim from 14 CFR part 150. The commenter also recommends that the section discuss situations where local governments have officially enacted land use compatibility guidelines that are stricter than Part 150. In California and Oregon, for example, many communities have noise standards in their comprehensive (or general) plans. Often, these standards set compatibility thresholds for residential uses at levels below 65 DNL (or CNEL). FAA's response: We concur with the thrust of the recommendations and have modified the text accordingly.

Regarding table 1, a commenter notes that the text indicates that areas experiencing a DNL of 65 dB are compatible with residential use. The DNL 65 dB level, which qualifies residential owners to free soundproofing of a single room, is often referred to as a "speech interference threshold." This is a gross misnomer, and a direct consequence of the year-long average feature of DNL. FAA's response: The FAA disagrees with several aspects of the commenter's statements. The FAA and other Federal agencies have adopted DNL 65 dB as their noise threshold of significance. It has been well established that DNL correlates well with community response to noise. (Schultz, Fidell, and Finegold). See appendix A, section 14.

Regarding section 4.3, the DOI believes that the Part 150 land use categories are not appropriate for

national park lands protected under section 4(f) (of the DOT Act). In the context of national parks, the DOI believes that the thresholds provided in Appendix A are generally not relevant and do not provide an adequate test of significance. FAA's response: Section 4.3 was amended in the final Order to state that part 150 land use categories are not sufficient to determine the noise compatibility of areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute, or to address noise effects on wildlife. As noted in section 6.1 of Appendix A, FAA will consult with officials having jurisdiction over affected parklands when determining the severity of noise impacts and other impact categories as appropriate.

Regarding section 4.3, a commenter believes that the last sentence is troubling. By making the statement, the FAA is opening the door to ad hoc case-by-case determinations of land use compatibility for section 4(f) uses [section 4(f) of the DOT Act]. Perhaps this is the only practical way to handle this, but it seems fairness and consistency would be better served by establishing some criteria or guidelines on which to base compatibility determinations for these uses. (Some guidance is provided in section 6.2, f, g, h, and i, but it is quite general.) At a minimum, the FAA should provide and continually update a compilation of land use compatibility decisions that have been made with respect to section 4(f) properties in environmental documents so that FAA reviewers and EA/EIS preparers have some basis for making land use compatibility decisions and mitigation plans. FAA's response: The last sentence in section 4.3 has been clarified in the final Order to recognize that Table 1 in section 4.2 includes guidelines applicable to traditional recreational uses that may be protected under section 4(f) of the DOT Act.

Beginning Section 6 Comments. The DOI believes that National Park System (NPS) units, which have greater levels of protection and stronger mandates, should be a separate impact topic. As currently written, NPS units would only receive consideration under the FAA order under section 4(f) of the DOT Act. However, even if section 4(f) did not exist, NPS units would require special treatment from Federal agencies. The DOI is concerned that units of the NPS may be significantly adversely affected by FAA actions many miles from the focus of the action and at much lower noise levels than DNL 60 or 65. Although noise can interfere with normal activities associated with the use of NPS units, unlike other "noise sensitive areas" as the term is used in the FAA procedures, noise in parks is both a human and a resource issue. NPS policy is to take action to prevent or minimize all noise that, through frequency, magnitude or duration, adversely affects the natural ambient soundscape, other park resources or values, or exceeds levels that have been identified as acceptable to, or appropriate for, visitor uses at the sites being monitored. Therefore, units of the NPS should be in a separate category, not just considered under section 4(f) or as a "noise sensitive area." The DOI also believes that socioeconomic impacts are part of the human environment and should be fully considered in NEPA documents. The NPS possesses special expertise to assess the economic impacts and benefits of actions on park resources. FAA's response: Since there is no legislation directing Federal agencies (other than the NPS) to take particular actions according to specified criteria for units of the national park system, it would not be consistent with the structure of Order 1050.1E to establish a separate impact topic for national parks. FAA disagrees that NPS units only receive consideration under section 4(f). While FAA does not agree with NPS that all human-made noise is an adverse impact on national parks, national parks are recognized under several impact topics in the Order, including noise, as unique areas that merit special consideration. Socioeconomic impacts are considered in FAA environmental documents, and guidance on socioeconomic impacts is in section 16 of Appendix A.

Regarding section 6.1, the DOI believes that section 4(f) of the DOT Act is inaccurately quoted. The text states prudent and feasible alternatives "or" all possible planning to minimize harm. The law uses "and" rather than "or," requiring that both conditions be met. FAA's response: We concur and have made the necessary corrections. The DOI also states that all units of the national park system possess national significance by definition, and are included under section 4(f). This should be stated in section 6.2 of Appendix A along with the other categories. FAA's response: FAA agrees that units of the national park system have national significance, but does not believe that section 6.2 of Appendix A needs to be revised. Section 6.2 does not provide a list of all section 4(f) properties that are significant. Rather, section 6.2(a) presumes that any part of a publicly owned park is significant unless the officials with jurisdiction over the park determine that the park is insignificant and FAA concurs.

Regarding section 6.2(e), the DOI states that the NPS has sole authority to determine impairment to resources and visitors in units of the national park system, and must concur in any such determination by the FAA in a 4(f) [of the DOT Act] determination. FAA's response: The FAA disagrees and has so stated in a June 6, 2000 letter from the FAA Assistant Administrator for Policy, Planning, and International Aviation to the Deputy Director of the NPS. Under NEPA, the responsibility for assessing the environmental impacts of proposed actions rests with the decision-making Federal agency. This responsibility does not transfer to the NPS at the boundary of a national park. With respect to section 4(f) of the DOT Act, the FAA is required to consult with the NPS regarding direct or constructive use of a national park by an aviation project, but is not required to obtain NPS concurrence. The FAA consults closely with the NPS regarding impacts on national parks and seeks consensus to the extent possible.

Further regarding section 6.2(e), a sentence proposed under section 6.2(i) is revised and moved to section 6.2(e) of the final Order to clarify that it applies to all constructive use determinations and to all types of project-related impacts, and not simply noise impacts on properties located in a quiet setting, which is the subject of section 6.2(i). The sentence is also revised to clarify that FAA's determination is whether project-related noise or other impacts would constitute a constructive use under section 4(f) of the DOT Act. This modification does not change the meaning or effect of the sentence as previously worded, which indicated that FAA would determine whether project-related noise impacts would substantially impair the resources because substantial impairment constitutes constructive use. Finally, a new sentence is added to the final Order that "Following consultation, FAA is ultimately solely responsible for section 4(f) applicability and determinations." This sentence describes long-standing existing authority and does not confer any new authority upon FAA. The sentence is added to avoid confusion of roles between FAA and consulted officials having jurisdiction over section 4(f) resources.

Regarding section 6.2(f), two additional sentences are added to the final Order to emphasize that impairment of a protected resource must be substantial in order to constitute constructive use under section 4(f) of the DOT Act. The second sentence

provides an example of aircraft noise, which is the most common trigger for constructive use by an aviation proposal. These sentences simply clarify, but do not change, long-standing definitions of section 4(f) constructive use.

Regarding section 6.2(g), the DOI believes that the land use compatibility guidelines are not applicable to units of the national park systems, and DNL has little or no applicability. FAA's response: Section 6.2(i) of Appendix A provides special instructions on the applicability of the land use compatibility guidelines to section 4(f) (of the DOT Act) properties of unique significance, such as national parks. There is also special guidance for areas such as national parks under the impact category of noise (section 14 of appendix A).

Regarding section 6.2(h), the DOI notes that the text "No Effects" should be changed to "No Historic Properties Affected." FAA's response: We concur and have made the recommended change.

Further regarding section 6.2(h), the FAA concluded that in it's effort to make a more general statement in proposed Order 1050.1E of the applicability of section 4(f) to certain archeological resources, the intent of the original sentence in paragraph 5 of Attachment 2, Order 1050.1D, which established the conditions under which section 4(f) does not apply, was lost. The FAA further concluded that the proposed revised sentence only served to add confusion to the issue. Our intent is to carry forward the existing definitive statement provided in Order 1050.1D and to maintain consistency with the requirements and provisions of the parallel FHWA regulation (23 CFR 771.135g(2)). Accordingly, the sixth sentence of section 6.2(h) is revised in the final Order to carry forward into Order 1050.1E the existing sentence in Order 1050.1D, modified by adding the text to emphasize that a determination that an archeological resource is of value chiefly for data recovery purposes and is not important for preservation in place can only be made after consultation with the appropriate SHPO/THPO. The sentence in question now reads: "Although there may be some physical taking of land, section 4(f) does not apply to archeological resources where the responsible FAA official, after consultation with the SHPO/THPO, determines that the archeological resource is important chiefly for data recovery and is not important for preservation in place." Further, a new (seventh) sentence is adopted in the final Order reading "FAA is responsible for complying with section 106 of the National Historic Preservation Act (NHPA) (see section 11 of this appendix) regardless of the disposition of section 4(f)." The new sentence is added in order to emphasize that section 4(f) of the DOT Act and section 106 of NHPA are independent requirements and each, if found applicable, must be complied with.

Further regarding section 6.2(h), the final Order was amended to state that part 150 guidelines may not be sufficient to determine the noise impact on historic properties where a quiet setting is a generally recognized purpose and attribute, such as a historic village preserved specifically to convey the atmosphere of rural life in an earlier era or a traditional cultural property.

Regarding section 6.2(i), the DOI believes that Part 150 guidelines are not applicable to national parks, and the issue is not simply the effects of noise on people as stated, but the effects of noise on park resources and values as well. FAA's response: The FAA is aware of the DOI's views. Section 6.2(i) provides for special consideration beyond Part 150 guidelines, including FAA consultation with officials having jurisdiction over affected section 4(f) resources when determining project-related noise impacts on those resources. The final Order was amended after the first sentence to read: "Additional factors must be weighed in determining whether to apply the thresholds listed in Part 150 guidelines to determine the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties. The Part 150 land use compatibility table may be used as a guideline to determine significance of noise impacts on section 4(f) properties to the extent that the land uses specified bear relevance to the value, significance, and enjoyment of the lands in question. For example, Part 150 guidelines may not be sufficient for all historic sites (see 6.2h above) and do not adequately address the effects of noise on the expectations and purposes of people visiting areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute." The FAA and National Park Service are seeking to develop special criteria for national parks.

Further regarding section 6.2(j) of the final Order, the FAA added "mitigation of project impacts" to the description of measures that may be employed to minimize harm to section 4(f) resources.

Regarding section 6.2(l), the DOI suggests adding wilderness areas to 4(f) properties. FAA's response: Wilderness areas are addressed in section 6.2(b).

Regarding section 6.3, the DOI believes that the same standards for use and constructive use should determine significance, not an additional threshold of "eliminate or severely degrade." If a project uses a 4(f) property, it must meet the standard of no prudent and feasible alternatives and all possible planning to minimize harm before it can proceed. The significant impact threshold proposed in section 6.3 of Appendix A is not an established standard, and it is one that the NPS disagrees with respect to national park units. FAA's response: The significant impact threshold in section 6.3 of Appendix A (related to section 4(f) of the DOT Act) has been reworded to explicitly reference constructive use as the basis for determining significance of effects. The significant impact threshold is reworded for clarity and continuity with the threshold that has been in place since 1985 in FAA Order 5050.4B, Airport Environmental Handbook. The earlier proposed wording was not intended to change the threshold, but gave the appearance of change because it was expressed differently, that is: "A significant impact would occur when a proposed action would eliminate or severely degrade the purpose of use for which the section 4(f) land was established and mitigation would not reduce the impact to levels that would allow the purpose or use to continue." The revised wording adopted in the final Order is: "A significant impact would occur pursuant to NEPA when a proposed action either involves more than a minimal physical use of a section 4(f) property or is deemed a "constructive use" substantially impairing the 4(f) property, and mitigation measures do not eliminate or reduce the effects of the use below the threshold of significance (*e.g.*, by replacement in kind of a neighborhood park). Substantial impairment would occur when impacts to section 4(f) lands are sufficiently serious that the value of the site in terms of its prior significance and enjoyment are substantially reduced or lost. Following this sentence, an additional sentence is added to clarify that if a proposed action has a direct or constructive use, FAA is responsible for complying with section 4(f), even if the impact is less than significant for NEPA purposes. These changes are also responsive to the DOI's comments on section 6.3 that the same standards for use and constructive use should determine significance, and that if a project uses a 4(f) property, it must meet the standard of no prudent and feasible

alternatives and all possible planning to minimize harm before it can proceed. DOI further commented that the significant impact threshold proposed for section 6.3 is not an established standard, and it is one that the NPS disagrees with respect to national park units. In response, FAA is retaining the established standard. FAA is defining significance in terms of constructive use except where FAA and the jurisdictional agency agree that the constructive use has been effectively eliminated or reduced below significant levels. (Such a determination is not expected for national parks, but is not uncommon with respect to direct or constructive use of a portion of an urban playground that is replaced in kind.) FAA is also complying with the requirements of section 4(f) of the DOT Act at all times if a project uses a 4(f) property even if impacts are below significant levels. Finally, the last sentence proposed in section 6.3 regarding consultation with jurisdictional officials when determining the degree of impairment is deleted from the final Order because this determination occurs earlier in the process and is addressed in section 6.2(e).

Section 7 Comments. Regarding the table at the head of the section, the Wisconsin DOT commented that under the heading of oversight agency, "USDA" should be prefixed to Natural Resource Conservation Service. FAA's response: We concur and have adopted the requested change.

Section 8 Comments. Regarding the table heading the section, the Department of Agriculture commented that "The ADC Act of 1931" should be included under the "Statute" heading and "Wildlife Services" should be listed under the "Oversight Agency" heading. This policy will be used by the FAA's NEPA people and District offices at a minimum. The FAA should include in their NEPA policy that Wildlife Services has wildlife management responsibility and expertise. FAA's response: We have added the ADC Act to the table and new text as section 8.2(c), to ensure that consultation and coordination with wildlife management specialists from the U.S. Department of Agriculture's Wildlife Services will occur as appropriate.

The DOI comments that section 8 does not address FAA responsibilities under the Migratory Bird Treaty Act (MBTA). Birds protected by the MBTA are often taken on or in the vicinity of airports during control operations, and such take requires a permit from the USFWS. Although the MBTA does not expressly protect bird habitats, the FAA must consider the impacts of airport construction and expansion activities on migratory birds and their habitats under NEPA and other federal regulations. New airports are often constructed on or near wetlands, and these proposed procedures should also consider conflicts that might arise between FAA and bird conservation activities promoted by legislation such as the North American Wetlands Conservation Act. FAA's response: A split developed in the federal circuit courts of appeals concerning the applicability of the MBTA to Federal agencies after the FAA issued 1050.1E for comment. Compare *Humane Soc. of the U.S.* v. *Glickman*, 217 F.3d 882 (D.C. Cir. 2000) and *Sierra Club* v. *Martin*, 110 F.3d 1551 (11th Cir. 1997). In addition, Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds," was issued "in furtherance of the purposes of" among other authorities, the MBTA. The last paragraph in Section 2 of the E.O. states "These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act (Act), the United States has implemented these migratory bird conventions with respect to the United States. This Executive Order directs Executive departments and agencies to take certain actions to further implement the Act." The FAA has accordingly revised Section 8 to add language addressing both the MBTA and E.O. 13186. The MBTA requires private parties (and Federal agencies in certain federal circuits) to obtain a permit to hunt, take, sell, or engage in other activities that harm migratory birds, their eggs, or nests. E.O. 13186 requires Federal agencies to enter into Memoranda of Understanding (MOU's) with the Fish and Wildlife Service to promote the conservation of migratory birds. Among other things, these MOU's must ensure that environmental analyses of Federal actions under NEPA and other established environmental review processes evaluate the effects of actions and agency plans on migratory birds. Airport sponsors are responsible for meeting wildlife control measures to ensure safe airport operations. When these measures affect migratory birds, the sponsor must obtain a permit from USFWS any permit required under the MBTA. As a result, USFWS is responsible for preparing the NEPA document for the issuance of that permit. During FAA's environmental analysis of a new airport, or for that matter, any airport project requiring FAA approval, the agency evaluates the effects of the proposed project on birds, wetlands, and other affected resources, in compliance with NEPA and other applicable environmental requirements.

The DOI believes that impacts on Fish, Wildlife and Plants are not just an endangered species issue. In the context of all Federal agencies' responsibilities to minimize impacts on the environment, impacts on all species must be considered. FAA's response: Section 8 of Appendix A is intended to identify and briefly discuss all major statutes and regulations that may be relevant when fish, wildlife, and plants are potentially impacted by a proposed project. Thus, this section does not limit its scope to a discussion of potential impacts to federally endangered species. Instead, this section acknowledges that impacts to fish, wildlife, and plants should be considered based on myriad statutes and regulations.

Regarding section 8.1(a), the DOI recommends that the reference to section 10 of the Endangered Species Act (ESA) should be removed. Recovery plans are not developed under section 10, they are described in section 4. The DOI further comments that the sentence with the reference to candidate species is incorrect and should be changed to read: "If a species has been proposed for listing as threatened or endangered or critical habitat has been proposed, section 7(a)(4) states that each agency shall confer with the Services." FAA's response: We concur and have cited section 4 and adopted the recommended text. The FAA has also added a new sentence properly referencing section 10 and it's associated conservation plan.

Regarding section 8.1(g), the Department of Agriculture notes that section 8.1(h) states one of the goals of the FAA's systematic, interdisciplinary approach used during the decision making process is to "maintain the health, sustainability, and biological diversity of ecosystems * * *." Is this an appropriate goal at an airport, given the potential for wildlife to be a hazard to aircraft and passenger safety? Also, the section states that the ecosystem approach considers all relevant ecological and economic consequences, but there is no statement considering or addressing the safety of the flying public. FAA's response: We concur with the observation and have amended the section 8.1(g) to add FAA's mission to ensure aviation safety with respect to wildlife that are hazards to aviation.

Regarding section 8.2, the DOI comments that there are several mistakes regarding the Endangered Species Act and the section 7 consultation process. The DOI states that it is difficult to identify specific

lines where corrections should be made, as much of the FAA's proposed language regarding section 7 consultation procedures is incorrect. FAA's response: We have revised section 8.2 of Appendix A to correct and clarify the process.

Regarding section 8.2(c), the DOI believes that the discussion of procedures is misleading. The FAA should refer to the interagency consultation regulations (50 CFR 402.13) and the Consultation Handbook for guidance on informal consultation. The regulations at 50 CFR 402.12 regarding Biological Assessment(s) (BA's) also pertain to this section. In general the informal consultation process includes all discussions and correspondence between the Fish & Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) and the Federal agency which are designed to assist the Federal agency in determining whether formal consultation or a conference is required. Informal consultation ends when the Federal agency makes a determination of whether the proposed action will adversely affect listed species or critical habitat. If the Federal agency determines that the proposed action is not likely to adversely affect listed species or critical habitat, and the FWS and/or NMFS concurs with this determination in writing, section 7 consultation is complete. If the Federal agency determines that the proposed action will adversely affect listed species or critical habitat, or the FWS/NMFS does not concur with the determination of not likely to adversely affect, the Federal agency must request formal consultation. FAA's response: We have revised section 8.2 of Appendix A to clarify the process.

Regarding section 8.3, the DOI notes that "significant impacts" are defined in this section as when the FWS or NMFS determines that the proposed action would be likely to jeopardize the species. If this definition is applied to the description of extraordinary circumstances, actions that adversely impact listed species up to the point of jeopardizing the species could be categorically excluded from further environmental analysis. FAA's response: In all cases, the FAA will fulfill its responsibilities under the Endangered Species Act in addition to NEPA responsibilities. For NEPA purposes, if a proposed action would result in potential impacts on endangered or threatened species that are not individually or cumulatively significant, a CATEX is allowed under CEQ regulations. A CATEX is not precluded due to adverse impacts; it is precluded due to significant impacts.

Regarding section 8.3, the DOI comments that the words "significance," "significant," and "significantly" are used much too broadly. In section 8.3, the FAA chooses to establish a level of significance for endangered species impacts. DOI believes it is inappropriate to connect the term "significant impact" as used in NEPA with the determinations made during section 7 [of the Endangered Species Act] consultation. Significant impacts must be determined on a case-by-case basis and should not be tied to section 7 consultations. Significant impacts may occur without jeopardizing the existence of a listed species. This threshold is much too high, and does not apply to non-listed species at all. FAA's response: We agree that impacts may be significant where FWS or NMFS have determined that a proposed action is not likely to jeopardize the existence of a species. Section 8.3 of Appendix A was not intended to set forth a per se rule prohibiting the FAA from issuing a finding of significance under the NEPA unless the DOI has issued a jeopardy opinion. The text of this section has been revised in the final Order to clarify that serious impacts like the threat of extinction are factors weighing in favor of a finding of significance, however lesser impacts, including impacts on non-listed species, may also be significant. In consultation with agencies having jurisdiction or specialized expertise (including Tribes), FAA NEPA practitioners should consider other relevant factors in assessing potential significance such as the existence of uncertainty regarding potential impacts and impacts on biodiversity and the ecosystem. The determination of significance should be based on the best available scientific information concerning factors of population dynamics that affect the sustainability of species populations.

Section 10 Comments. The DOI comments that it may be useful to highlight that CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act] includes provisions for notification of and coordination with natural resource trustees (*e.g.* DOI, NOAA, DOD, DOE, States, Tribes) where there are potential resource damages and/or settlement negotiations with responsible parties due to contaminant releases. FAA's response: We concur and have added text to this effect in section 10.1(a).

Section 11 Comments. Regarding section 11.1, the DOI comments that it is inappropriate to use a CATEX for a project with an "adverse effect" on a National Register property. FAA's response: It is noted at 36 CFR 800.8(b)(1) that a project, activity or program that falls within a NEPA categorical exclusion may still require NHPA section 106 review. A categorical exclusion from NEPA does not mean that section 106 may not apply. As previously stated, a CATEX is not precluded based on adverse effects, so long as those effects are not significant.

Regarding section 11.1, the Hawaii DOT comments that discussion of Native Hawaiian religious sensitivities in this section and in the context of Environmental Justice can be a complicated matter in relation to Hawaii airports because of the ceded land issue. Because airport revenues cannot legally be used to reimburse claims by the Office of Hawaiian Affairs, the state has to compensate with other funds. Until this statewide issue is settled, ancient religious sites may be remembered on airports. FAA's response: Comment noted.

Further regarding section 11, the FAA re-drafted section 11 in the final Order to clarify the requirements of the Federal Archeology Program and applicable Federal historic and cultural resource preservation laws and to correct technical inconsistencies with those requirements. Sections 11.2(b) and 11.2(l)(4) and (5) have been revised to reflect the Advisory Council on Historic Preservation's proposed amendment to 36 CFR part 800 in response to *National Mining Association* (NMA) v. *Fowler,* 324 F.3d 752 (DC Cir. 2003), rev'g *NMA* v. *Slater,* 167 F. Supp.2d 265 (DDC 2001) at 68 FR 55354 (proposed September 25, 2003). The phrase in the second sentence of 11.2(b) "and the SHPO/THPO concurs" has been deleted because there is no such requirement at this stage in the 106 process under the applicable regulations. Sections 11.2(e)–(h) have been changed to clarify the provisions relating to Traditional Cultural Properties and certain other cultural resources, to distinguish those resources which are not TCP's but may qualify for protection, and to make the terminology more consistent with applicable laws, regulations, and Executive Orders. Section 11.3 was changed in the final Order 1050.1E to add a statement regarding adverse effect findings from the section 106 regulations of the National Historic Preservation Act. Further, the text "feasible and prudent" prior to the word "alternatives" was deleted from the second sentence in the final order to be consistent with the section 106 regulation cited above. The two sentences in question now read: "Regulations at 36 CFR 800.8(a) state

that an adverse effect finding does not automatically trigger preparation of an EIS (*i.e.*, a significant impact). The section 106 consultation process includes consideration of alternatives to avoid adverse effects on National Register listed or eligible properties; of mitigation measures; and of accepting adverse effects."

Regarding section 12.1(a), when consideration is given to light emissions and visual impacts on people and properties covered by section 4(f) of the DOT Act, the FAA believes that the guidance of section 6 of Appendix A, "Department of Transportation, Section 4(f)" should be used to determine section 4(f) use and significant impact. The recommended reference to section 6 of Appendix A would ensure that the criteria for substantial impairment set forth in section 6 are appropriately applied to light emissions and visual impacts. The foregoing change is adopted in the final Order.

Regarding section 12.2, the DOI comments that in the context of national park units that may be affected by light emissions by airports or similar facilities, annoyance is not the issue. The issue is impacts on the use and/or characteristics of the unit, and preserving the resources in an unimpaired natural condition. In some cases, the night sky may be an important part of the park's purpose. FAA's response: Sections 12.2(b) and 12.3(b) deal with visual and aesthetic impacts that differ from annoyance.

Regarding section 12.2(b), the FAA added to the final Order text, to the effect, that the mere visual sight of aircraft, aircraft contrails, or aircraft lights at night, particularly at a viewing distance that is not normally intrusive, should not be assumed to constitute an adverse impact.

Section 14 Comments. Regarding section 14 in general, the DOI believes that the significant impact threshold, analysis, and noise methodology (*e.g.*, DNL and CNEL) are mostly inapplicable to units of the national park system. FAA's response: Although DNL is the primary metric for aircraft noise exposure, the FAA recognizes that there are situations, involving locations within the National Park System and elsewhere, in which it is appropriate to perform supplemental noise analysis, which may include the use of metrics other than DNL, in characterizing specific noise impacts from a proposed action. As explained in section 14 of Appendix A, one of the uses of supplemental noise analysis is to describe aircraft noise impacts for specific noise-sensitive locations. The significance threshold in section 14.3 has been qualified to note that special consideration needs to be given to the evaluation of the significance of noise impacts on noise-sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties. Section 14.3 further states that the DNL 65 dB threshold does not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute. In the final Order, section 14.5(g) has been revised to provide specifically that the FAA will consider use of appropriate supplemental noise analysis in consultation with the officials having jurisdiction over the properties in question.

Regarding section 14 in general, a commenter provides the following observations and recommendations: *Observations.* (1) Noise is the biggest environmental problem in aviation. In over 20 years of use of 65 DNL as a criterion, the communities around airports have not agreed that predicted noise exposures under 65 DNL constitute "no significant impact." (2) Aircraft noise has been reduced through technological developments over this time, but Stage 3 jets are not "noise-less." In fact levels in excess of 85 dBA (max level) have been measured from these jets at altitudes of over 3,000 feet. Thus, they would interfere with speech communication in the classroom, according to the FICON report. (3) Every time flight paths or corridors are changed, newly-impacted communities complain vociferously. This occurs even when changes in impact are below 1.5 dB in DNL, predicted noise exposures are only 55 DNL, or aircraft are over 3,000 feet. Many have stated that the changes are "illegal," even though with the current procedures they are not. (4) Jet arrivals 15 nautical miles away and at altitudes over 8,000 feet result in nighttime complaints about sleep interference. So do turboprop operations (although at lower altitudes). *Recommendations.* (1) Require environmental noise assessments for all projects to 55 DNL. FAA's response: The recommendation is not accepted as a mandatory requirement. FAA's guidance in Order 1050.1E is consistent with the conclusions and recommendations of the FICON report on the scope of noise analyses within the NEPA context. Recommendation (2) Require environmental noise assessments for all changes in nighttime procedures (10 pm to 7 am), showing where impact is increased and where it is reduced around the affected airport. FAA's response: The FAA disagrees that all changes during nighttime hours should generate a detailed noise assessment. The nature of the nighttime weighting of the DNL metric already makes it more sensitive to changes in air traffic during nighttime hours, triggering an assessment in appropriate cases. Also, see response to *Issues of Special Interest* topic DNL 65 dBA provided earlier in this preamble. Recommendation (3) Change the 3,000 foot exemption to 10,000 feet. FAA's response: See response to *Issues of Special Interest* topic 3000 ft. CATEX provided earlier in this preamble. Recommendation (4) If noise monitoring information is available, require a comparison of a current year contour prediction with comparable measured data. FAA's response: Noise monitoring can be a useful supplement, but is prone to errors since there is no standard noise monitoring methodology. As such, it cannot be used to replicate noise contours. The FAA suggests that monitoring be done on a voluntary basis. Recommendation (5) Revise noise-sensitive and noise compatibility criteria (section 4 of appendix A) to account for known speech interference effects. As a minimum, the "compatibility" DNL should not be higher than 60 DNL. A future goal could be the compatibility criteria developed by HUD in the 1970's, where compatible DNL's for residential areas were on the order of 45 dBA. FAA's response: The FAA does not believe there is an adequate basis for changing the threshold of significance. State and local governments have the discretion to define land use compatibility criteria that differ from the Federal guidelines. The FAA believes the reference to 45 dBA is an interior compatibility guideline, not an exterior one. The FAA's compatibility goal for insulating the interiors of noise sensitive structures is 45 dBA. Also see response to *Issues of Special Interest* topic DNL 65 dBA provided earlier in this preamble.

Regarding section 14 in general, a commenter believes that, while recognizing that the DNL is the recommended noise metric and should be used as such for purposes of assessing aircraft noise exposure, the revised order appears to open the door to supplementing the DNL metric with other "specific noise effects" on a potentially open-ended basis ("to assist the public's understanding of noise impacts"). Unfortunately, the proposal does not sufficiently explain and circumscribe the instances in which the FAA might look to such supplemental

"noise effects" and how, if at all, they would be evaluated in the context of a particular federal action. It therefore creates a potential for misinterpretation and misapplication of the underlying regulatory requirements. Indeed, the discussion of these effects and their impacts provides little in the way of guidance in their potential application other than to indicate that they will be considered on an ad hoc basis. Underlying this deficiency is the reality that the referenced supplemental noise effects have little significance in assessing noise impacts other than in situations involving extremely sensitive noise impact areas such as national parks, hospitals, schools, and the like. The proposed revised order should clarify the limited significance of applicability of such supplement "noise effects" in the NEPA context and ensure that the consideration of such effects is addressed only in appropriate and carefully circumscribed contexts consistent with existing regulatory provisions relating to the use of metrics, such as those set forth in Part 150 of the Federal Aviation Regulations. FAA's response: Comment noted. As stated in section 14.5 Supplemental Noise Analysis, these supplemental metrics are useful in characterizing specific events and conveying to the affected communities a clearer understanding of the potential on their living environments as a result of proposed changes in aircraft operations. (See FICON report, August 1992 and FICAN finding on awakenings from sleep, May 1998.)

Regarding section 14 in general, a commenter believes that if any DNL contours or data are used in noise analysis, it must be made a requirement that the estimated accuracy of the modeled data, as dependant on the assumptions made in the modeling and as compared to actual measurements, should be specified. The commenter also recommends that a table should be provided translating the dB data as linear ratio to the average environmental non-aviation noise level. FAA's response: FAA is confident in the accuracy of our noise models to determine the effects of aircraft noise. FAA has no requirements regarding noise measurement since short-term measurements can be less accurate than modeled data, which are based on specific controlled measurement data. Noise measurements cannot practically replicate noise contours and cannot be used for forecasting future impacts. Further, measurements to establish ambient non-aviation noise levels are very difficult to acquire accurately.

Regarding section 14 in general, a commenter believes that as long as the FAA continues basing its policies and thresholds on DNL values (with only occasional consideration of other metrics) the problems of the past will persist. The root cause of the problem is that DNL incorrectly uses a long-time, energy-averaging process to characterize the effects of flyovers, which are intrinsically short duration events, with significant amplitude excursions above the ambient noise. Furthermore, DNL routinely combines levels ranging from 40 to 100 dB, which corresponds to averaging (acoustic energy) values ranging from 1 to 1,000,000, respectively. Averaging objects of such an extreme dynamic range is not a good scientific practice because it tends to obscure the true effects of the "high energy events" associated with flyovers. FAA's response: See response to *Issues of Special Interest* topic DNL 65 dBA provided earlier in this preamble.

Regarding section 14 in general, a commenter notes that this section is based entirely on the metric of a noise contour which exceeds 65 decibels. The 65 dB threshold is inadequate when comparing the noise impact of increased plane traffic over neighborhoods that are adjacent to properties of unique significance such as national parks. The text of Appendix A does state that such a situation should be considered when making an assessment of noise impact. Unfortunately, this clause which protects areas of unique significance from improper noise assessments is negated by a prior paragraph in section 14 which empowers the FAA to use the noise impact model AEM and to make a determination of no significant impact using that model which is based on the 65 dB threshold. This section creates a system that negates the use of noise models with lower thresholds, even when appropriate, and creates a conflict of interest by allowing the FAA to apply the noise models themselves. This entire section should be rewritten to require EPA oversight or objective third party review of FAA noise assessments. FAA's response: The instructions on the use of AEM do not preclude special noise consideration of locations of unique sensitivity, including such locations in national parks. FAA continues to support the Federal land use compatibility guidelines for residential land uses and for parks to the extent relevant to activities in the parks. Sections 4, 6, and 14 of Appendix A have been revised to give special consideration to areas of unique significance such as national parks. Neither NEPA nor CEQ regulations mandate third-party oversight by EPA or any other entity of FAA's noise assessments. FAA's noise assessments are subjected to scrutiny by other agencies and the public through the NEPA process.

Regarding section 14.1, the DOI comments that the section fails to mention the need for and applicability of "supplemental analyses." It is not sufficient to simply say that Part 150 categories may need some adjustment with respect to national parks; they do not apply at all. In addition, while FAA can certainly specify what types of analysis it normally finds prudent and acceptable, the DOI knows of no FAA authority to limit presentation of additional analysis which an agency, such as the NPS, or other entity believes is important for the decision-maker's consideration in assessing the full extent of impacts. DOI believes there is enough controversy surrounding the applicability of specific noise methodologies in specific situations, notably national park situations, which additional flexibility should be provided in these procedures to present the most relevant information and analyses to the decision-makers and the public. FAA's response: Guidance in the final Order 1050.1E has been strengthened to require the weighing of additional factors in determining whether to apply the thresholds listed in Part 150 land use guidelines to determine the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties. There is variability among units of the national park system and a variety of uses within national parks, including traditional recreational uses. FAA does not assume that all Part 150 categories of uses would be inapplicable for all park situations, but does explicitly state that Part 150 guidelines do not adequately address the effects of noise on the expectations and purposes of people visiting areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute. (See section 6.2(i).) Order 1050.1E clearly provides flexibility for noise assessment in locations to which the Part 150 guidelines would not be relevant, including such locations in national parks. and provides for consultation with NPS on analyses. However, "flexibility" does not mean that FAA is required to perform all additional analyses that may be requested by other agencies.

Regarding section 14.1, a commenter, noting the inclusion of a reference to the

MOA between the FAA and DOI/NPS that specifies coordination of noise minimization efforts over DOI/NPS lands, asks the questions: Do these requirements apply when the sponsoring body is another federal agency? Are other agreements in place that place similar requirements or constraints on the FAA for noise or other categorical evaluations? FAA's response: The paragraph in question relates to the Interagency Agreement (IA) between the National Park Service (NPS), Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), and Federal Aviation Administration (FAA). The IA, while recognizing the public freedom of transit of the navigable airspace, was developed to identify cooperative efforts by each agency, individually and jointly, to seek voluntary cooperation with the 2,000 feet above ground level (AGL) minimum altitude advisory (FAA Advisory Circular [AC] 91–36C) to reduce the incidence of low-flying aircraft, including fixed-wing aircraft, helicopters, ultralight vehicles, balloons, and gliders, over NPS, FWS, and BLM administered lands. The IA, effective January 15, 1993, was set to expire on December 31, 1999. However, by letter in November 1999, the FAA Administrator extended the cancellation date for one year to allow revision of the IA. Efforts to further extend the cancellation date past December 2000 were overtaken by higher priority events and therefore, by default, the IA was cancelled. The FAA and the other signature agencies of the IA determined that the procedures outlined in the original IA were still valid and should remain in force. Therefore, an interagency team was formed to update the IA, and information gathered during this process was used as a basis for updating the Advisory Circular. Since the updated Interagency Agreement has not yet been signed, the paragraph in question has been deleted from the final Order 1050.1E. However, once the new IA and the associated Advisory Circular related to Visual Flight Rules (VFR) Flight Over Noise Sensitive Lands (AC91–36) are signed, appropriate notification will be made in the **Federal Register**. Additionally, a decision will be made at that time as to whether the Order 1050.1E should be changed to include the updated documents.

Regarding section 14.1(b), a commenter noting the text calls for use of the most current version of INM or HNM; asks, current at which point in the study? FAA's response: At the time the FAA begins its noise analysis.

Regarding section 14.1(b), a commenter notes that the text references the AEM as an appropriate screening tool. The model has not been updated for years and uses algorithms and information from Version 3 of the INM as a foundation for noise level description. It is significantly outdated given the new aircraft that have entered the fleet in the last eight years. FAA's response: See response to *Issues of Special Interest* topic AEM.

Regarding section 14.1(b), a commenter notes that the text references the ATNS as an appropriate screening tool. The document should assure the availability of the model for screening. The FAA hasn't released the model for use except for specific types of projects. FAA's response: The ATNS is available upon request. Requests may be made to the Federal Aviation Administration, Noise Division (AEE–100), 800 Independence Ave., SW., Washington, DC 20591. (AEE–100 handles distribution of ATNS as a courtesy to the Air Traffic Organization which is responsible for the content and application of the ATNS.)

Regarding section 14.1(c), a commenter believes that guidance should be provided as to the justification required for deviation from INM and/or HNM standard and default data. The INM Users Manual provides guidance that should be recognized for the modification of model default data bases. FAA's response: Comment noted. See revision (section 14.2c).

Regarding sections 14.1(c) and (d), a commenter believes that these requirements, while justified, appear to discourage the modification of INM input data to better represent use-specific or locally-mandated operational techniques and mitigation actions. Not all operators fly using the same procedures, nor do all airports request the use of the standard departure procedure by all aircraft or from all runways. FAA's response: Comment noted. See revision (section 14.2c).

Regarding section 14.2(a), a commenter notes that the text states that if mitigation abates noise below significant noise impact threshold levels, an EIS need not be prepared. Elsewhere, the order says that if controversy is sufficient, an EIS must be prepared. Does controversy still take precedence, requiring an EIS be prepared? FAA's response: A reasonable disagreement concerning a project's risks of causing environmental harm is a circumstance that may warrant preparation of an EA as noted in paragraph 304i. Where there is such a disagreement, absent a well-settled threshold of significance and binding mitigation measures that reduce impacts below that threshold, the criteria for significance under 40 CFR 1508.27 must be carefully considered to determine whether an EIS is required. These criteria relate to context and intensity, and include the degree to which effects are likely to be highly controversial and the degree to which the possible effects on the human environment and highly uncertain or involve unique or unknown risks. In these circumstances, the agency would also want to consider whether the circumstances warrant making the FONSI available for 30 days before the agency makes its final determination whether to prepare an EIS under 40 CFR 1501.4(d)(2).

Regarding section 14.2(b), a commenter recommends that, following the sentence, "Use of an equivalent methodology * * *" the following sentences should be inserted: "For SUA proposals, AEE has approved the following DOD noise computer models as equivalent methodologies, as appropriate: MR NMAP (airspace, MOA's Ranges), NOISEMAP (airfield noise), BOOMMAP (sonic boom), BNOISE (blast noise and ground-dropping ordnance or weapons) and SARNAM (small arms range). AEE has approved the Noise Integrated Routing System (NIRS) computer model for quantifying the predicted change in noise exposure for noise analysis conducted for EIS's. The NIRS program is an adaptation of the INM that facilitates noise exposure analysis of Air Traffic applications. It is tailored to complex Air Traffic applications involving high altitude routing and broad area airspace modifications affecting multiple airports. NIRS may also be applied to other complex airspace modifications in the terminal or enroute environments that are difficult to assess using other methods. NIRS may be used in place of INM in cases where noise analysis requires processing capabilities that are not part of the current version of INM." FAA's response: FAA has approved the DOD-developed computer models MR_NMAP and BOOMMAP for use and analysis of SUA. See revision to section 14.2.

Regarding section 14.3, a commenter recommends that this section clearly state that an increase of 3.0 or more decibels of DNL (CNEL) between 60 and 65 decibels, where there is an increase of 1.5 decibels or more within the 65 DNL is not to be considered a significant impact. FAA's response: The purpose of section 14.3 is to define a significant impact. The omission of reference to a 3 decibel increase between DNL 60 and 65 dB means that it is not a significant impact.

Regarding section 14.3, a commenter recommends that this section clearly

state whether exposure of noise sensitive uses to a level of 65 DNL (CNEL) is or is not a significant impact, regardless of degree of change between no action and project conditions. FAA's response: While DNL or CNEL 65 dB is considered a significant level of exposure, it does not automatically signify that a proposed action is causing a significant effect. A significant effect would occur when a proposed action causes a noise sensitive land use located in the DNL 65 dBA contour to sustain at least a DNL 1.5 dBA increase, or if such an increase places the sensitive land use in the DNL 65 contour.

Further regarding section 14.3, the text was amended in the final Order to state that special consideration needs to be given to the evaluation of the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges and historic sites, including traditional cultural properties. For example, the DNL 65 dB threshold does not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

Regarding section 14.4, the EPA believes that this section should give guidance that in most cases the same INM version should be used for all analysis (current or base year, operational year and future year). The EPA believes that some guidance should be given regarding the selection of the current or base year. We have seen a number of FAA projects where the current year is four or five years earlier than the date the draft EIS is published. In general, the EPA believes that the last year in which there is actual aircraft operational data is appropriate. FAA's response: The selection of the base year is related to the timing of planning for proposed projects. Planning time lines vary from close proximity to the timing of Draft EIS's to greater distances in time. The FAA is responsible for assuring that current conditions are reasonably represented in either case. Since technical analyses used to prepare a Draft EIS usually take longer than a year, the specificity that EPA suggests would cause analyses to be considered outdated before many Draft EIS's could be issued.

Regarding section 14.4, the EPA believes that a major concern with this section is the lack of any noise mitigation guidance. This section should contain general guidance on when it is appropriate to require the use of mitigation measures such as acquisition, easements and sound proofing. This guidance should be built around the general assumption that residential housing within the DNL 65+ contours is a non-compatible land use. FAA's response: The FAA encourages and supports noise mitigation. However, there is no Federal law that requires the use of designated mitigation measures such as acquisition, easements, sound insulation. The specifics of noise mitigation are tailored to individual airport and community situations and preferences. All of the above techniques are equally available to use; none is specifically required. FAA has issued other reports on the uses of various noise mitigation techniques.

Regarding section 14.4(a), a commenter notes that AEM hasn't been updated for years and does not include many aircraft now common in the operating fleet, including all retrofits of Stage 2 aircraft to Stage 3 levels, as well as many recent versions of Stage 3 aircraft. Further, changes in runway use patterns may significantly modify the contour size and shape even though the ground track location and flight profile do not change. The AEM either should be updated on a regular basis or not be used as a screening tool for EIS considerations of the potential impact of aircraft noise exposure. FAA's response: AEM is now updated on a regular basis. See response to *Issues of Special Interest* topic AEM provided earlier in this preamble.

Regarding section 14.4(b), the DOI recommends that the fourth sentence be modified to read: "In general, many studies to date indicate that aircraft noise probably has a minimal long-term impact on animal populations under most circumstances. However, some studies on specific species in specific circumstances have indicated an impact, and most studies are generally not conclusive either way." The DOI believes that especially in national parks where preservation of the unimpaired natural environment means that such animal adaptations as habituation can be major impacts, the unmodified statement is inaccurate. FAA's response: Upon further review, we find that both the original proposed sentence and the proposed change by the DOI are overly generic and add nothing constructive to our procedures for assessing impacts on wildlife populations. Accordingly, the sentence is deleted in the final Order. The operative procedure is captured in the last sentence of section 14.4(b): "When instances arise in which aircraft noise is a concern with respect to wildlife impacts, available studies dealing with specific species should be reviewed and used in the analysis."

Regarding section 14.4(c), the DOI believes that the FAA needs to add a discussion on other acoustical modeling and measurements; those described are often not appropriate for national park units. FAA's response: The comment is not applicable to this section. Guidance on supplemental noise analysis is in section 14.5.

Regarding section 14.4(c), a commenter questions whether analysis according to FICON guidance "should be done" or "must be done" to consider changes of 3 decibels within 60–65 decibel range if 1.5 decibel increase occurs above 65 DNL? FAA's response: The correct text is "should be done."

Regarding section 14.4(c), the FAA modified and expanded the last sentence in the final Order to more adequately capture the 1992 FICON recommendation the consideration of mitigation of noise in certain noise sensitive areas.

Regarding section 14.4(d)(1), a commenter believes the development of a 60 DNL (CNEL) contour will be required if the 3.0 decibel increase is triggered. In practice the contour sets the out boundary of the area of exposure increase. FAA's response: If the 3 decibel increase between DNL 60 and 65 dB is triggered, noise sensitive areas that would experience that level of increase may be identified by a grid point analysis or by a contour. The DNL 60 dB contour is optional.

Regarding section 14.4(d)(2) and (3), a commenter believes the INM "contour difference" function should be required to delineate the areas exposed to 1.5 and 3.0 decibel increases between the no action and project cases. FAA's response: As long as clear identification is provided, the method of identifying such areas is not mandated.

Regarding section 14.4(e), a commenter asks; what constitutes the "current" conditions—project initiation, conclusion or some threshold year? FAA's response: The current condition is usually project initiation, but this may vary. The current condition should reasonably portray the existing environment that may be affected by the proposed project.

Regarding section 14.4(f), a commenter believes that the provision that noise monitoring is not required and should not be used to calibrate the model is important enough to be capitalized. In California, state law requires calibration by measurement for quarterly reports of noise exposure patterns submitted to CalTrans Noise Office. It is frequently very difficult to match the measured and modeled data, particularly if modifications to the model are not allowed without

significant justification and measurements cannot be part of the justification. FAA's response: Comment noted. The commenter agrees with Order 1050.1E guidance.

Regarding section 14.4(f), a commenter concurs that the noise modeling should not be required, but why does the revised order not allow monitoring to be used to calibrate the model? The commenter acknowledges that short-term monitoring cannot be used for calibration purposes. However, if an airport has a NOMS system (including a series of permanent noise monitors located within the 65 DNL) that compiles DNL information and other data for a full year, why are those data not allowed to be used to fine-tune the modeled results? The commenter has spent (and will spend) significant dollars for its NOMS and believes that this system can give excellent information to adjust future modeled results for the INM through a comparison with actual yearly levels recorded from the NOMS system. The comment is not that an airport sponsor must use the NOMS data, but that the NOMS data should be allowed to be used during the preparation of environmental documents to fine-tune the noise analysis. FAA's response: FAA recognizes the guidance documents of the SAE Aviation Noise committee as the appropriate methodology for assessing noise exposure around airports. This group performs comprehensive peer review of all recommended enhancements to modeling aircraft noise. For FAA to adopt a "blessed" procedure, an airport sponsor would need to submit a proposal for utilizing noise monitored data, have this process peer reviewed and validated, and then published as an Aviation Recommend Practice (ARP).

Regarding section 14.4(i)(1), a commenter believes that the number of persons within a contour is a very fluid number and cannot be simply identified. It is always an extrapolated value based on the number of dwellings within the contour and some population per dwelling unit factor. Population is only as accurate as the census and then only on the date of the census. Furthermore, we do not mitigate people, we mitigate dwellings. Therefore, rather than identifying the numbers and changes in people, the commenter believes that the FAA should identify the number of dwellings and estimate the population in them. FAA's response: The paragraph has been revised in the final Order to allow either the number of residences or the number of people to be provided.

Regarding sections 14.4(i)(1) and (2), a commenter asks; are population, residences and noise sensitive uses required to be identified within the area exposed to 3 decibel increases within 60–65 DNL contour range? This is not addressed by the order. FAA's response: To comply with FICON's recommendation, FAA would do supplemental grid point analysis in the DNL 60–65 contour, if FAA determines that a project would cause a significant noise impact (*i.e.*, a 1.5 dB increase over noise sensitive areas within the DNL 65 contour). The analysis is needed to determine noise sensitive land uses in the DNL 60–65 that would experience project-related DNL 3 dB noise increases. If such uses exist, FAA will identify them and consider mitigation. This guidance is in section 14.4(c), rather than 14.4(i).

Regarding section 14.4(j), a commenter believes that the last paragraph of this section might be better placed as the first paragraph of the subsequent section. FAA's response: The FAA disagrees with the suggested location change of this paragraph. This information would be part of FAA's basic noise evaluation, not supplemental noise analysis.

Regarding section 14.5, the DOI comments that "time above" A-weighted sound level is not as valuable as "time audible" in many national park situations. Both metrics should be listed; they are usually not equivalent in parks. In addition, the L90 value should also be listed as one measure of the natural ambient sound level. FAA's response: The FAA does not agree that the L90 value is an appropriate NEPA noise threshold since L90 represents the quietest 10 percent of monitored noise. In addition, the final Order provides a list of several supplemental noise metrics, including both "time above" and audibility ("time audible"), and notes that supplemental noise analysis is not, by itself, a measure of adverse aircraft noise or significant aircraft noise impact.

The FAA added a new section 14.5(d) to the final Order to emphasize that the Air Traffic Noise Screening procedure (ATNS) must be used for proposed air traffic or special use airspace actions above 3,000 feet above ground level. The ATNS determines if a proposed action would increase the community noise level by 5 decibels or more. Where the proposed action triggers the 5 decibel criterion, the FAA then considers whether there are extraordinary circumstances (paragraph 304) that warrant preparation of an environmental assessment.

The FAA added a new section 14.5e to the final Order specifying that the Noise Integrated Routing System model must be used for air traffic airspace actions where the study area is larger than the immediate area of an airport, incorporates more than one airport, or includes actions above 3,000 feet above ground level.

Regarding section 14.5(f)(1), a commenter notes that INM cannot compute contours or simple grid point analysis of the highest SEL to which an area is exposed. To obtain meaningful data, a much more costly and time-consuming detailed grid analysis is required. SEL contours can be computed for single aircraft events, but when more than one event is included in the assessment, the SEL is the cumulative noise resulting from the several events, without averaging across a period of time. FAA's response: Maximum SEL is not a required metric for policy decision or environmental disclosure. Users familiar with INM are able to obtain this value for grid point analysis. Maximum SEL contours are not defined.

Regarding section 14.5(f)(2), a commenter believes that "Lmax" can also provide the highest noise level achieved at a location during a period of time assessed, *e.g.*, the loudest event during an average day. FAA's response: Lmax is a single event noise metric that is the highest A-weighted sound level measured during an event. It is included as a supplemental metric in section 14.5(f)(2).

Regarding section 14.5(g), a commenter believes that the converse of the last sentence of the section implies that single events below 85 dB may be assumed not to have some effect on communication in the classroom. This statement is too broad. FAA's response: The FAA concurs. The last two sentences in question have been deleted in the final Order and a reference to FICON substituted in lieu thereof. Further regarding section 14.5(g), the word "community" was deleted from the first sentence to broaden the applicability of the section to National Parks. Wording was added to the end of section 14.5(g) to emphasize that the "FAA will consider use of appropriate supplemental noise analysis in consultation with the officials having jurisdiction for national parks, national wildlife refuges, and historic sites including traditional cultural properties where a quiet setting is a generally recognized purpose and attribute that FAA identifies within the study area of a proposed action."

The FAA changed the title of section 14.8 in the final Order to "Facility and Equipment Noise Emissions." This

change better relates the title to the intent of the section, which is to consider only those local noise emissions from the facility and associated equipment and machinery.

Section 15 Comments. The DOI comments that secondary (induced) impacts can often be extremely important where national park lands are involved. A nearby airport can significantly change park visitation patterns and numbers. FAA's response: Secondary impacts are always considered.

The Wisconsin DOT recommends that a discussion of "cumulative impacts" should be added to this section. FAA's response: Cumulative impacts are described and discussed in Chapter 5, paragraph 500c of Order 1050.1E. Cumulative impacts are not a separate impact, but may potentially occur with respect to the other impact topics in Appendix A. Cumulative impacts have been removed from the title of Section 15 of Appendix A in the final Order.

Section 16 Comments. A commenter noted that while the U.S. EPA has no Environmental Justice (EJ) authority or guidance that specifically applies to other Federal agencies, it may be useful in this section to alert FAA staff preparing NEPA EJ sections to review the guidance EPA uses when it prepares its own NEPA documents and guidance that EPA uses when it reviews NEPA EJ sections of other Federal agencies' EIS's. FAA's response: DOT issued its own instructions (Order DOT 5610.2) instructing FAA and other DOT agencies how to assess EJ issues. FAA bases its analysis on that Order, but will use the EPA guidance mentioned in section 16.1 or other guidance as the responsible FAA official deems appropriate. In addition, EPA's Guidance has been cited in the table at the beginning of section 16.

A commenter noted that Order DOT 5610.2, Environmental Justice, refers to the Health and Human Services definition of low-income, which is limited. The draft FAA order refers to the Census Bureau's definition of low-income when it refers to the EPA and CEQ's recent guidance on environmental justice (section 16 of appendix A). The Census Bureau definition is broader. As these definitions differ, FAA should consider revising the order to note the discrepancy and address the need to do the analyses using both definitions. FAA's response: The FAA agrees that the Health and Human Services (HHS) definition (poverty guidelines) is "limited." The Census Bureau's poverty threshold is inclusive of the HHS guideline, although the two numbers are essentially the same from an analytical standpoint considering the type of demographic data that is most readily available for such analyses (*i.e.*, decennial census data). Consequently, the Census Bureau's poverty threshold appears to be generally the most conservative and, therefore, appropriate for NEPA analysis of environmental justice effects, which FAA suggests follow the CEQ and EPA guidance. FAA does not believe that the small difference in the HHS and Census Bureau's numbers warrant two separate analyses of environmental justice impacts. Section 16.1(a) has been supplemented in the final Order to note the difference in the HHS and Census Bureau's numbers, and provide the responsible FAA official with the option to use what is deemed the most appropriate given the available data and circumstances of the proposed action being assessed.

A commenter notes that the purpose of section 16 is to incorporate relevant E.O.'s addressing environmental justice and children's health issues. While these are important concerns, it should be emphasized that E.O.'s relate to the faithful execution of existing laws, and do not create substantive or procedural rights and entitlements. FAA needs to make it clear that the order does not create substantive rights that are not already established by actual referenced policies or laws. FAA's response: Order 1050.1E is intended to provide practical guidance on how the FAA implements environmental requirements that apply to proposed FAA actions. The order is not intended to provide legal differentiation among laws, regulations, executive orders, etc.

A commenter believes that the FAA's adoption of ANSI/IEEE standards for electromagnetic radiation is a sensible and valid change. FAA's response: Comment noted.

Regarding section 16.2, the DOI recommends adding a sentence to the first paragraph that says, "The environmental document also needs to address impacts to park resources and visitors where national park units are involved." FAA's response: Section 16.2 deals with environmental justice, children's health and safety risks, and Federal acquisition policies for private property. It does not apply to park resources and visitors.

Section 17 Comments. The DOI comments that in many large urban areas, water bodies that violate Water Quality Standards are listed by State under Clean Water Act (CWA) section 303(d), subject to approval by the EPA. These water bodies have TMDL analysis performed for the pollutant(s) in violation of standards. Certain airport pollutants may be subject to these TMDL's and could require reduction of pollutant loadings from both point and non-point sources at airport facilities. Point source reductions would be administered through CWA section 402 NPDES permits. FAA's response: Comment noted. See revision to table of statutes and regulations heading the section.

Regarding section 17.2, a commenter believes that ensuring the applicable water quality (WC) certificate is issued before FAA approves the proposed action is an unnecessary requirement. In the commenter's experience, WQ certifications are typically associated with wetland impacts and are issued by the State along with the permit for wetlands disturbance. The commenter is concerned that the requirement that a FONSI cannot be awarded without having a WQ certification in hand will significantly delay most actions that involve WQ impacts. It is not unusual for wetland impacts to occur in year 3 or 4 of a multiyear project and permit-suitable design drawings are generally not available years in advance of project implementation * * * the NEPA process would be delayed until suitable design drawings could be prepared. The commenter believes the existing requirement for description of a proposed action's design, mitigation measures, best management practices, etc. works well and is more than sufficient to provide insight into whether permit requirements will be met. The commenter contends that a requirement that a WQ certificate be issued prior to FAA approval of an action will tie the approval of an EA to receipt of various permits, significantly delay the development of airport projects, and result in the analysis of much more finalized project development plans than recommended by NEPA. The requirement should be deleted from the order. FAA's response: The commenter has identified the need for FAA to clarify the text of this paragraph. The water quality certificate referred to in the draft Order 1050.1E is the governor's water quality certificate that has been required for certain proposals under the Airport Improvement Act. The most recent Act, "Vision 100—Century of Aviation Reauthorization Act," Signed into law December 12, 2003, eliminates the governor's water quality certificate, as well as the governor's air quality certificate, because they are duplicative of protections in the Clean Water Act and Clean Air Act. Accordingly, these

certificates have been eliminated from final Order 1050.1E.

Regarding section 17.2, the Wisconsin DOT comments that the last sentence should read: "The responsible FAA Official must ensure the environmental document contains the water quality certification mentioned in section 17.1." FAA's response: See above response.

Section 18 Comments. A commenter notes that the section encourages a new approach to complying with NEPA and section 404 of the CWA and the commenter believes that this is a sensible approach. FAA's response: Comment noted.

Regarding section 18.1, a commenter suggests that the sentence that reads "The purchase of credits from an approved bank signifies that the section 404 permittee has satisfied its permit required mitigation obligations" be revised to read "The purchase of credits from an approved bank can be used by a section 404 permittee to satisfy its permit required mitigation obligations." FAA's response: We concur and have adopted the suggested text in section 18.1(d) of the final Order.

Regarding section 18.1, the Department of Agriculture notes that the text states the FAA will consult with federal agencies with interest in wetlands. However, the creation or maintenance of wetlands is inconsistent with 14 CFR 139.337 and advisory circular 5200–33. Wildlife Services (WS) should be consulted regarding wetlands since this habitat may become or may already be a wildlife attractant. WS input should be considered under this section since WS assists airports in avoiding the creation of or ameliorating wildlife attractants. The FAA should add Wildlife Services to this section. FAA's response: We concur and have added a reference to Wildlife Services to section 18.2(a) of the final Order.

Section 19 Comments. The DOI comments that Wild and Scenic Rivers is an appropriate impact topic; similarly, "National Park System Units," which have greater levels of protection and stronger mandates, should be a separate impact topic. FAA's response: Legislation directing all Federal agencies to take specific actions with respect to Wild and Scenic Rivers causes FAA to address these rivers under a separate impact topic to provide for clarity of the governing requirements. There is no similar legislation with respect to National Park System units per se, although a number of different pieces of legislation, regulations, and policies relate to the consideration of impacts on national parks. Impacts on national parks are addressed under several impact topics in Appendix A.

Proposed Appendix 3 Comments

The Wisconsin DOT commented that including Order 5050.4A as (proposed) Appendix 3 is desirable; however, this order has not been updated. The commenter recommends some direction to handle the areas where there are differences between the two orders until Order 5050.4A is updated. FAA's response: We concur and have added text to paragraph 5e of Chapter 1 that until Order 5050.4A is revised, if a conflict between orders occurs, Order 1050.1E takes precedence. The substance of what was to be appendix 3 was incorporated under paragraph 214 of the order. The proposed Appendix 3, now redundant with paragraph 214, is removed from the final Order.

Appendix B Comments

Regarding paragraph 2f, a commenter believes that this paragraph needs to clearly state that in third party contract situations, FAA maintains the same oversight control as it would if FAA were paying the contractor. FAA's response: We concur and have added clarification to this effect to paragraph 2b of Appendix B.

Regarding paragraph 2d, a commenter believes that editorial work is needed. The commenter notes and appreciates the efforts of the FAA to clarify conflict of interest for third-party contractors. The order should reflect guidelines for identifying potential conflict of interest, as well as the requirements to be placed on contracting consultants with respect to eligibility for follow-on work or coincidental work on independent projects. FAA's response: The primary guidance in CEQ regulations and "Forty Most Asked Questions" is cited in Appendix B. Otherwise, the commenter is asking for a greater level of detail than is appropriate for Order 1050.1E.

In addition to the foregoing comments, many comments were received identifying typographical errors, missing or incorrect paragraph identifiers, incorrect internal references, and other minor grammatical inconsistencies. All such corrections are adopted unless stated otherwise in this preamble.

Issued in Washington DC on June 8, 2004.

Carl E. Burleson,

Director, Office of Environment and Energy.

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Federal Register

Wednesday,
June 16, 2004

Part V

Department of Health and Human Services

Centers for Disease Control and Prevention

Proposed Revision of Interim HIV Content Guidelines for AIDS-Related Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, Marketing, Advertising and Web site Materials, and Educational Sessions in CDC Regional, State, Territorial, Local, and Community Assistance Programs; Notice

Interim HIV Content Guidelines for AIDS-Related Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, Marketing, Advertising and Web site Materials, and Educational Sessions in CDC School-Based Assistance Programs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Revision of Interim HIV Content Guidelines for AIDS-Related Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, Marketing, Advertising and Web Site Materials, and Educational Sessions in CDC Regional, State, Territorial, Local, and Community Assistance Programs

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice for public comment.

SUMMARY: The purpose of this document is to seek public comment on proposed revision of the Interim HIV Content Guidelines, entitled "Content of AIDS-Related written materials, pictorials, audiovisuals, questionnaires, survey instruments, and educational sessions in CDC assistance programs" and to seek public comment on the proposed revisions. The HIV Content Guidelines were last revised in 1992. The purpose of these revisions are to (1) address advances in technology (mainly the advent of the Internet and the World Wide Web); (2) increase grantee accountability; (3) be consistent with new public law; and (4) improve clarity. Additionally, CDC has developed a separate guidance document for school-based assistance programs.

DATES: Submit comments on or before August 16, 2004.

ADDRESSES: Address all comments concerning this notice to HIV Content Guidelines Comments, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E56, Atlanta, Georgia 30333. Comments may be e-mailed to *HIVComments@cdc.gov* or faxed to (404) 639–3125.

FOR FURTHER INFORMATION CONTACT: David Hale, Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E07, Atlanta, Georgia 30333. Telephone: (404) 639–8008.

SUPPLEMENTARY INFORMATION: The Centers for Disease Control and Prevention (CDC) has provided funds for HIV prevention programs since 1985. Since then, CDC, as part of the terms and conditions for receiving these funds, has required that all HIV educational and related materials must be reviewed by a Program Review Panel (PRP) designated by the recipient. The purpose of this requirement is to ensure a careful consideration of the content and intended audience of the materials and programs because education about preventing HIV transmission involves effectively presenting information appropriate for the specific audience. On June 15, 1992, CDC published in the **Federal Register** (57 FR 26742) a guidance document for this review entitled "Content of AIDS-related written materials, pictorial, audiovisuals, questionnaires, survey instruments, and educational sessions in Centers for Disease Control assistance programs". These guidelines are currently in effect.

In this notice, CDC is proposing to revise the 1992 HIV Content Guidelines. The purpose of these revisions are to (1) Address advances in technology (mainly the advent of the Internet and the World Wide Web); (2) increase grantee accountability; (3) be consistent with new public law; and (4) improve clarity. CDC anticipates publishing a Final Guidance document within 120 days after the conclusion of the comment period. Additionally, CDC has developed a separate guidance document for school-based assistance programs.

Summary and Explanation of Revisions for Regional, State, Territorial, or Local, and Community Assistance Programs

The proposed HIV Content Guidelines now:

(1) *Require review and approval of HIV/AIDS educational materials placed on an organization's Web site.* When the requirements were developed for local review of HIV/AIDS education materials, the Internet and World Wide Web were not used by the general public as a major source of information as it is today. As a result, CDC is proposing revisions to the *Guidelines* to require that HIV/AIDS educational materials placed on a grantee's Web site be reviewed and approved by the organization's designated Program Review Panel (PRP). This requirement will not apply to materials developed by the U.S. Department of Health and Human Services.

(2) *Require that funded recipients ensure the PRP has determined that the materials comply with Section 317P of the Public Health Service Act.* Section 317P was added to the Public Health Service Act in 2000. This Section states, in part, that "education materials * * * that are specifically designed to address sexually transmitted diseases * * * shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the sexually transmitted disease the materials are designed to address."

(3) *Clarify the requirement of the PRP by requiring identification of a PRP of no less than five persons who represent a reasonable cross-section of the jurisdiction in which the program is based to ensure better representation of the community to be served.* The current Guidelines require the identification of a PRP of no less than five persons who represent a reasonable cross-section of the *general population.* The proposed Guidelines require the identification of a PRP of no less than five persons who represent a reasonable cross-section of the *jurisdiction in which the program is based.* This clarification should ensure better representation of the community to be served.

(4) *Require each recipient to identify at least one PRP, established by a state, territory, or local health department or educational agency from the jurisdiction of the recipient.* This revision provides jurisdictions with the flexibility to establish the number of PRPs to meet demand.

(5) *Require PRPs to ensure that the title of materials developed and submitted for review reflects the content of the activity or program.* This revision will ensure that materials and their contents are clearly stated to the audience.

(6) *Require funded recipients to include a certification that accountable state, territorial or local health officials have independently reviewed educational materials for compliance with Sections 2500 and 317P of the Public Health Service Act.* This is a new requirement in the revised Guidelines and follows the same rationale of *Miller* v. *California*, 413 U.S. 15, 93 S.Ct. 2607 (1973) that defines "obscenity" by looking to the average person, applying contemporary community standards, as a way to ensure that material would be judged by its impact on an average person, rather than a particularly susceptible or sensitive person, or a totally insensitive one. The review responsibility, in the proposed Guidelines, is placed at the state and local level, specifically with state and local health officials.

(7) *Develop a separate guidance document for school-based assistance programs.* The current Guidelines apply to school-based assistance programs as well as regional, state, territorial, local, and community assistance programs. The proposed Guidelines separate the guidance into two documents for ease of use and clarity.

Summary and Explanation of Revision Applicable Only to Community-Based Programs

(8) *Require funded community-based organizations to identify a program review panel established by a state or local health department.* While the current Guidelines allow CDC-funded organizations to establish their own PRP, they are encouraged to use a PRP established by a health department or another CDC-funded organization. The proposed Guidelines will no longer permit organizations to establish their own PRP. Instead, recipients of HIV/AIDS funds are required to identify a PRP established by a state or local health department within their state's jurisdiction.

Dated: June 7, 2004.

James D. Seligman,

Associate Director for Program Support, Centers for Disease Control and Prevention.

Interim HIV Content Guidelines for AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions for CDC Assistance Programs

I. Basic Principles

Controlling the spread of HIV infection and the occurrence of AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can protect themselves from acquiring the virus. These methods include abstinence from illegal use of IV drugs as well as from sexual intercourse except in a mutually monogamous relationship with an uninfected partner.

For those individuals who do not or cannot cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages are often controversial. The principles contained in this document are intended to provide guidance for the development and use of HIV/AIDS-related educational materials developed or acquired in whole or in part using CDC HIV prevention funds, and to require the establishment of at least one Program Review Panel by state and local health departments, to consider the appropriateness of messages designed to communicate with various groups. State and local health departments may, if they deem it appropriate, establish multiple Program Review Panels to consider the appropriateness of messages designed to communicate with various groups.

A. Written materials (*e.g.*, pamphlets, brochures, curricula, fliers), audiovisual materials (*e.g.*, motion pictures and videotapes), pictorials (*e.g.*, posters and similar educational materials using photographs, slides, drawings, or paintings) and marketing, advertising, Web site-based HIV/AIDS educational materials, questionnaires or survey instruments should use terms, descriptors, or displays necessary for the intended audience to understand dangerous behaviors and explain practices that eliminate or reduce the risk of HIV transmission.

B. Written materials, audiovisual materials, pictorials, and marketing, advertising, Web site-based HIV/AIDS educational materials, questionnaires or survey instruments should be reviewed by a Program Review Panel established by a state or local health department, consistent with the provisions of section 2500(b), (c), and (d) of the Public Health Service Act, 42 U.S.C. Section 300ee(b), (c), and (d), as follows:

"SEC. 2500. USE OF FUNDS.

(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction.—Subsection (c) may not be construed to restrict the ability of an educational program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or to transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene."

C. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

D. Program Review Panels must ensure that the title of materials developed and submitted for review reflects the content of the activity or program.

E. When HIV materials include a discussion of condoms, the materials must comply with Section 317P of the Public Health Service Act, 42 U.S.C. Section 247b–17, which states in pertinent part:

"educational materials * * * that are specifically designed to address STDs * * * shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the STD the materials are designed to address."

II. Program Review Panel

Each recipient will be required to identify at least one Program Review Panel, established by a state or local health department from the jurisdiction of the recipient. These Program Review Panels will review and approve all written materials, pictorials, audiovisuals, marketing, advertising, and Web site materials, questionnaires or survey instruments (except questionnaires or survey instruments previously reviewed by an Institutional Review Board—these questionnaires or survey instruments are limited to use in the designated research project). The requirement applies regardless of whether the applicant plans to conduct the total program activities or plans to have part of them conducted through other organization(s) and whether program activities involve creating unique materials or using/distributing modified or intact materials already developed by others. Materials developed by the U.S. Department of Health and Human Services do not need to be reviewed by a panel. Members of a Program Review Panel should understand how HIV is and is not transmitted and understand the epidemiology and extent of the HIV/AIDS problem in the local population and the specific audiences for which materials are intended.

A. The Program Review Panel will be guided by the CDC Basic Principles (see Section I above) in conducting such reviews. The panel is authorized to review materials only and is not empowered either to evaluate the proposal as a whole or to replace any internal review panel or procedure of the recipient organization or local governmental jurisdiction.

B. Applicants for CDC assistance will be required to include in their applications the following:

1. Identification of at least one panel, established by a state or local health department, of no less than five persons who represent a reasonable cross-section of the jurisdiction in which the program is based. Since Program Review Panels review materials for many intended audiences, no single intended audience shall dominate the composition of the Program Review Panel, except as provided in subsection d below. In addition:

a. Panels that review materials intended for a specific audience should draw upon the expertise of individuals who can represent cultural sensitivities

and language of the intended audience, either through representation on the panel or as consultants to the panels.

b. Panels must ensure that the title of materials developed and submitted for review reflect the content of the activity or program.

c. The composition of Program Review Panels must include an employee of a state or local health department with appropriate expertise in the area under consideration, who is designated by the health department to represent the department on the panel.

d. Panels reviewing materials intended for racial and ethnic minority populations must comply with the terms of a–c above. However, membership of the Program Review Panel may be drawn predominantly from such racial and ethnic populations.

2. A letter or memorandum to the applicant from the state or local health department, which includes:

a. Concurrence with this guidance and assurance that its provisions will be observed.

b. The identity of members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the panel.

C. When a cooperative agreement/grant is awarded and periodically thereafter, the recipient will:

1. Present for the assessment of the appropriately identified Program Review Panel(s) established by a state or local health department, copies of written materials, pictorials, audiovisuals, and marketing, advertising, Web site HIV/AIDS educational materials, questionnaires, and surveys proposed to be used. The Program Review Panel shall pay particular attention to ensure that none of the above materials violate the provisions of Sections 2500 and 317P of the Public Health Service Act.

2. Provide for assessment by the appropriately identified Program Review Panel(s) established by a state or local health department, the text, scripts, or detailed descriptions for written materials, pictorials, audiovisuals, and marketing, advertising, and Web site materials that are under development.

3. Prior to expenditure of funds related to the ultimate program use of these materials, assure that its project files contain a statement(s) signed by the chairperson of the appropriately identified Program Review Panel(s) established by a state or local health department, specifying the vote for approval or disapproval for each proposed item submitted to the panel.

4. Include a certification that accountable state or local health officials have independently reviewed written materials, pictorials, audiovisuals, and marketing, advertising, and Web site materials for compliance with Section 2500 and 317P of the Public Health Service Act and approved the use of such materials in their jurisdiction for directly and indirectly funded community-based organizations.

5. As required in the notice of grant award, provide to CDC in regular progress reports, signed statement(s) of the chairperson of the Program Review Panel(s) specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

D. CDC-funded organizations, which are national or regional (multi-state) in scope, or that plan to distribute materials as described above to other organizations on a national or regional basis, must identify a single Program Review Panel to fulfill this requirement. Those guidelines identified in Sections I.A. through I.D. and II.A. through II.C. outlined above also apply. In addition, such national/regional panels must include, as a member, an employee of a state or local health department.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interim HIV Content Guidelines for AIDS-Related Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, Marketing, Advertising and Web Site Materials, and Educational Sessions in CDC School-Based Assistance Programs

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice for public comment.

SUMMARY: The purpose of this document is to seek public comment on proposed Interim HIV Content Guidelines, entitled "Content of AIDS-Related written materials, pictorials, audiovisuals, questionnaires, survey instruments, and educational sessions in CDC school-based assistance programs" and to seek public comment on the Interim Guidelines. The purpose of these Guidelines are to (1) Address advances in technology (mainly the advent of the Internet and the World Wide Web); (2) increase grantee accountability; (3) be consistent with new public law; and (4) provide clarification for school-based assistance programs in the development of AIDS-related materials, pictorials, audiovisuals, questionnaires, survey instruments, marketing, advertising, and Web site materials, and educational sessions.

DATES: Submit comments on or before August 16, 2004.

ADDRESSES: Address all comments concerning this notice to Interim HIV Content Guidelines Comments (School-based Assistance Programs), Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E56, Atlanta, Georgia 30333. Comments may be e-mailed to *HIVComments@cdc.gov* or faxed to (404) 639–3125.

FOR FURTHER INFORMATION CONTACT: Tim Hack, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 1600 Clifton Road, NE., Mailstop K29, Atlanta, Georgia 30333. Telephone: (770) 488–3249.

SUPPLEMENTARY INFORMATION: The Centers for Disease Control and Prevention (CDC) has provided funds for HIV prevention programs since 1985. Since then, CDC, as part of the terms and conditions for receiving these funds, has required that all HIV educational and related materials must be reviewed by a Program Review Panel (PRP) designated by the recipient. The purpose of this requirement is to ensure a careful consideration of the content and intended audience of the materials and programs because education about preventing HIV transmission involves effectively presenting information appropriate for the specific audience. On June 15, 1992, CDC published in the **Federal Register** (57 FR 26742) a guidance document for this review entitled "Content of AIDS-related written materials, pictorial, audiovisuals, questionnaires, survey instruments, and educational sessions in Centers for Disease Control assistance programs". Currently, those Guidelines are in effect for school based assistance programs.

In this notice, CDC is proposing a separate guidance document for school-based assistance programs. The purpose of this document is to (1) address advances in technology (mainly the advent of the Internet and the World Wide Web); (2) increase grantee accountability; (3) be consistent with new public law; and (4) provide clarification for school-based assistance programs. CDC anticipates publishing a Final Guidance document for school-based assistance programs within 120

days after the conclusion of the comment period.

Summary and Explanation of Guidelines for School-Based Assistance Programs

The Interim HIV Content Guidelines for school-based assistance programs:

(1) *Require review and approval of HIV/AIDS educational materials placed on an organization's Web site.* When the requirements were developed for local review of HIV/AIDS education materials, the Internet and World Wide Web were not used by the general public as a major source of information as it is today. As a result, CDC is proposing revisions to the Guidelines to require that HIV/AIDS educational materials placed on a grantee's Web site be reviewed and approved by the organization's designated Program Review Panel (PRP). This requirement will not apply to materials developed by the U.S. Department of Health and Human Services.

(2) *Require that funded recipients ensure the PRP has determined that the materials comply with section 317P of the Public Health Service Act.* Section 317P was added to the Public Health Service Act in 2000. This section states, in part, that "education materials * * * that are specifically designed to address sexually transmitted diseases * * * shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the sexually transmitted disease the materials are designed to address."

(3) *Clarify the requirement of the PRP by requiring identification of a PRP of no less than five persons who represent a reasonable cross-section of the jurisdiction in which the program is based to ensure better representation of the community to be served.* The current Guidelines require the identification of a PRP of no less than five persons who represent a reasonable cross-section of the *general population.* The proposed Guidelines require the identification of a PRP of no less than five persons who represent a reasonable cross-section of the *jurisdiction in which the program is based.* This clarification should ensure better representation of the community to be served.

(4) *Require each recipient to identify at least one PRP, established by a State, territory, or local educational agency from the jurisdiction of the recipient.* This revision provides jurisdictions with the flexibility to establish the number of PRPs to meet demand.

(5) *Require PRPs to ensure that the title of materials developed and submitted for review reflects the content of the activity or program.* This revision will ensure that materials and their contents are clearly stated to the audience.

(6) *Require funded recipients to include a certification that accountable State, territorial or local education officials have independently reviewed education materials for compliance with sections 2500 and 317P of the Public Health Service Act.* This is a new requirement in the revised Guidelines and follows the same rationale of *Miller* v. *California,* 413 U.S. 15, 93 S.Ct. 2607 (1973) that defines 'obscenity' by looking to the average person, applying contemporary community standards, as a way to ensure that material would be judged by its impact on an average person, rather than a particularly susceptible or sensitive person, or a totally insensitive one. The review responsibility, in the proposed Guidelines, is placed at the State and local level, specifically with State and local educational officials.

(7) *Develop a separate guidance document for school-based assistance programs.* The current Guidelines apply to school-based assistance programs as well as regional, state, territorial, local, and community assistance programs. The Interim Guidelines separate the guidance into two documents for ease of use and clarity.

Dated: June 7, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

Interim HIV Content Guidelines for AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions for CDC School-Based Assistance Programs

I. Basic Principles

Controlling the spread of HIV infection and the occurrence of AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can protect themselves from acquiring the virus. These methods include abstinence from illegal use of IV drugs as well as from sexual intercourse except in a mutually monogamous relationship with an uninfected partner.

For those individuals who do not or cannot cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages are often controversial. The principles contained in this document are intended to provide guidance for the development and use of HIV/AIDS-related educational materials developed or acquired in whole or in part using CDC HIV prevention funds, and to require the establishment of at least one Program Review Panel by State, territorial, or local education agencies to consider the appropriateness of educational materials developed for use by, or used in, school settings. State, territorial, and local education agencies may, if they deem it appropriate, establish multiple Program Review Panels to consider the appropriateness of educational materials developed for use by, or used in, school settings.

A. Written materials (*e.g.*, pamphlets, brochures, curricula, fliers), audiovisual materials (*e.g.*, motion pictures and videotapes), pictorials (*e.g.*, posters and similar educational materials using photographs, slides, drawings, or paintings) and marketing, advertising, Web site-based HIV/AIDS educational materials, questionnaires or survey instruments should use terms, descriptors, or displays necessary for the intended audience to understand dangerous behaviors and explain practices that eliminate or reduce the risk of HIV transmission.

B. Written materials, audiovisual materials, pictorials, and marketing, advertising, Web site-based HIV/AIDS educational materials, questionnaires or survey instruments should be reviewed by a Program Review Panel established by State, territorial or local education agencies, consistent with the provisions of section 2500(b),(c), and (d) of the Public Health Service Act, 42 U.S.C. section 300ee(b), (c), and (d), as follows:

"SEC. 2500. USE OF FUNDS.

(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction.—Subsection (c) may not be construed to restrict the ability of an educational program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or to transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene."

C. Educational sessions should not include activities in which attendees

participate in sexually suggestive physical contact or actual sexual practices.

D. Program Review Panels must ensure that the title of materials developed and submitted for review reflects the content of the activity or program.

E. When HIV materials include a discussion of condoms, the materials must comply with section 317P of the Public Health Service Act, 42 U.S.C. section 247b–17, which states in pertinent part:

"educational materials * * * that are specifically designed to address STDs * * * shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the STD the materials are designed to address."

F. Messages provided to young people in schools and in other settings should be guided by principles contained in "Guidelines for Effect School Health Education to Prevent the Spread of AIDS" *http://www.cdc.gov/HealthyYouth/sexualbehaviors/guidelines/guidelines.htm.*

II. Program Review Panel

Each recipient will be required to establish at least one Program Review Panel. These Program Review Panels will review and approve all written materials, pictorials, audiovisuals, marketing, advertising, and Web site materials, questionnaires or survey instruments (except questionnaires or survey instruments previously reviewed by an Institutional Review Board), and proposed educational group session activities to be used under the project plan. The requirement applies regardless of whether the applicant plans to conduct the total program activities or plans to have part of them conducted through other organization(s) or the program activities involve creating unique materials or using/distributing modified or intact materials already developed by others. Materials developed by the U.S. Department of Health and Human Services do not need to be reviewed by a panel. Members of a Program Review Panel should understand how HIV is and is not transmitted and understand the epidemiology and extent of the HIV/AIDS problem in the local population and the specific audiences for which materials are intended.

A. The Program Review Panel(s) will be guided by the CDC Basic Principles (*see* section I above) in conducting such reviews. The panel is authorized to review materials only and is not empowered either to evaluate the proposal as a whole or to replace any internal review panel or procedure of the recipient organization or local governmental jurisdiction.

B. Panels established by CDC-funded state, territorial and local education agencies, which review materials for use with school-based populations shall include a designated representative from the state, territorial, or local health department and should include representatives from each of these groups: teachers, school administrators, parents, and students. The identity of members of the Program Review Panel(s), including their names, occupations and any organizational affiliations that were considered in their selection for the panel shall be submitted to CDC when a cooperative agreement/grant is awarded.

1. Since Program Review Panels review materials for many intended audiences, no single intended audience shall dominate the composition of the Program Review Panel, except as provided in subsection c below. In addition:

a. Panels that review materials intended for a specific audience should draw upon the expertise of individuals who can represent cultural sensitivities and language of the intended audience, either through representation on the panel or as consultants to the panels.

b. Panels must ensure that the title of materials developed and submitted for review reflect the content of the activity or program.

c. Panels reviewing materials intended for racial and ethnic minority populations must comply with the terms of a and b above. However, membership of the Program Review Panel may be drawn predominantly from such racial and ethnic populations.

2. Applicants for CDC assistance will also be required to include in their applications a letter or memorandum from the State, territorial, or local education agency concurring with this guidance and assuring that its provisions will be observed.

C. When a cooperative agreement/grant is awarded and periodically thereafter, the recipient will:

1. Present for the assessment of the appropriately identified Program Review Panel(s) established by a State, territorial or local education agency, copies of written materials, pictorials, audiovisuals, and marketing, advertising, Web site HIV/AIDS educational materials, questionnaires, and surveys proposed to be used. The Program Review Panel(s) shall pay particular attention to ensure that none of the above materials violate the provisions of sections 2500 and 317P of the Public Health Service Act.

2. Provide for assessment by the appropriately identified Program Review Panel(s) established by a State, territorial or local education agency, the text, scripts, or detailed descriptions for written materials, pictorials, audiovisuals, and marketing, advertising, and Web site materials that are under development.

3. Prior to expenditure of funds related to the ultimate program use of these materials, assure that its project files contain a statement(s) signed by the chairperson of the appropriately identified Program Review Panel(s) established by a State or local education agency, specifying the vote for approval or disapproval for each proposed item submitted to the panel.

4. Include a certification that accountable State, territorial, or local education agency officials have independently reviewed written materials, pictorials, audiovisuals, and marketing, advertising, and Web site materials for compliance with section 2500 and 317P of the Public Health Service Act and approved the use of such materials in their jurisdiction.

5. As required in the notice of grant award, provide to CDC in regular progress reports, signed statement(s) of the chairperson of the Program Review Panel(s) specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

D. CDC-funded organizations, which are national or regional (multi-State) in scope, or that plan to distribute materials as described above to other organizations on a national or regional basis, must identify a single Program Review Panel to fulfill this requirement. Those guidelines identified in sections I.A. through I.E. and II.A. through II.C. outlined above also apply. In addition, such national/regional panels must include, as a member, an employee of a State or local education agency and an employee of a State or local health department.

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Federal Register

Wednesday,
June 16, 2004

Part VI

The President

Proclamation 7796—Flag Day and National Flag Week, 2004

Federal Register
Vol. 69, No. 115
Wednesday, June 16, 2004

Presidential Documents

Title 3—

The President

Proclamation 7796 of June 12, 2004

Flag Day and National Flag Week, 2004

By the President of the United States of America

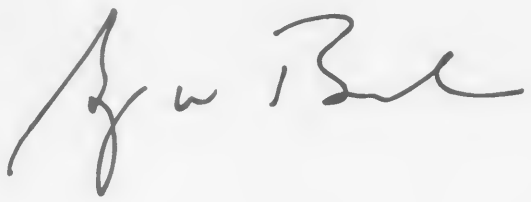
A Proclamation

For more than 200 years, the American flag has served as a symbol of our country's enduring freedom and unity. Old Glory has welcomed generations of immigrants to America's shores and is displayed proudly on homes, at schools, and over businesses across our country. During times of war, our flag has rallied our citizens to defend the blessings of liberty at home and abroad. It has accompanied our troops into battle and been given to grieving families at the grave sites of fallen heroes. Today, as our brave men and women in uniform fight terrorism and advance freedom, the flag inspires patriotism and pride across our Nation and around the world.

Each year on June 14, we honor the American flag and recall the adoption of our first official national flag by the Continental Congress in 1777. The first Flag Day observances began quietly in the 19th century as State and local celebrations recognizing the anniversary of the Stars and Stripes. Inspired by these patriotic gatherings, President Woodrow Wilson established the first national observance by proclamation in 1916. To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as "Flag Day" and requested that the President issue an annual proclamation calling for its observance and for the display of the Flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as "National Flag Week" and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 14, 2004, as Flag Day and the week beginning June 13, 2004, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes from their homes and other suitable places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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S. 2092/P.L. 108–235

To address the participation of Taiwan in the World Health Organization. (June 14, 2004; 118 Stat. 656)

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