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11–10–04 Wednesday
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 to 52

Republication

CFR Correction

Title 7, parts 27 to 52, revised as of January 1, 2004, is being republished in its entirety. The earlier issuance inadvertently omitted Table III contained in § 52.1853 and subsequent sections 52.1854 through 52.1858, 52.3181 through 52.3188, and 52.3751 through 52.3764. The omitted table and text should immediately follow § 52.1853(c) on page 576.

[FR Doc. 04–55525 Filed 11–9–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–106–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. We are also recognizing areas in Peru as free from the South American cucurbit fly. These actions will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

EFFECTIVE DATE: December 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1228; (301) 734–4382.

SUPPLEMENTARY INFORMATION:

Background

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

On December 18, 2003, we published in the **Federal Register** (68 FR 70448–70463, Docket No. 02–106–1) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We also proposed to recognize areas in Peru as free from the South American cucurbit fly.

We solicited comments concerning our proposal for 60 days ending February 17, 2004. We received five comments by that date. They were from representatives of State governments, an industry organization, and individuals. They are discussed below by topic.

Grapes From South Korea

One commenter stated that it is impossible to determine the efficacy of the proposed risk mitigation method for grapes from South Korea until a peer review of the supporting data is conducted. The commenter further stated that data on risk mitigation for Korean grapes should be published prior to rulemaking in order to increase the transparency of the regulation.

We do not agree that a peer review of the supporting data is necessary in order for the efficacy of the phytosanitary measures for grapes from South Korea to be determined. In the proposed rule, we cited the pests of concern identified in our risk assessment and described the phytosanitary measures that would be required to guard against the entry of those pests, but we did not explicitly link the role of each measure in addressing the risk presented by each identified pest of concern. We are providing those connections below.

The quarantine pests of concern for grapes grown in South Korea are yellow peach moth (*Conogethes punctiferalis*), grapevine moth (*Eupoecilia ambiguella*), leaf-rolling tortix (*Sparganothis pilleriana*), apple heliodinid (*Stathmopoda auriferella*), the plant pathogenic fungus *Monilinia fructigena* and the moth *Nippoptilia vitis*.

Each of these pests exhibits symptoms that are macroscopic and detectable upon visual inspection. Specifically:

- Yellow peach moth larvae bore into and tunnel the stems and fruits of host plants. Larvae on the fruit burrow into the green berries, causing them to split, shrivel, or fall off when damaged.
- Grapevine moth larvae feed on flowers and later on developing fruit. Larvae cause surface damage to leaves and fruit. Additionally, larvae may produce webbing on the flower buds and newly set fruit, which often causes affected parts to drop from the vine.
- Leaf-rolling tortix and *Nippoptilia vitis* larvae cause damage to the leaves, fruit, and stem.
- Apple heliodinid larvae cause webbing of the flower buds and newly set fruit, often causing affected plant parts to drop from the vine and burrow into the green berries, which may split, shrivel, or fall off when damaged.
- *Monilinia fructigena* causes raised light brown pustules on the fruit that often expand enclosing the fruit to form a dark, wrinkled, hard mummified fruit

There are three measures in our regulatory approach that individually and collectively mitigate the risk posed by each of the six pests. First, field inspections have proven effective since, as detailed above, the damage these pests cause makes their presence obvious. Second, fruit is bagged from the time the fruit sets until harvest. Since bagging is done when the fruit is very young, the risk of exposure to arthropods and diseases is reduced. Third, fruit is inspected and certified to be free of the pests of concern by South Korea's national plant protection organization (NPPO). In addition, an

additional inspection of a sample of fruit from each consignment will be conducted upon its arrival in the United States.

These measures have proven to be effective in guarding against similar pests of concern on sandpears from South Korea and Japan (yellow peach moth and *Monilinia fructigena*, as well as two other moths and a leafroller). We have been importing Japanese and Korean sandpears under a similar systems approach for over 10 years with no significant phytosanitary problems.

Finally, we disagree with the commenter's statement that we should have published data on risk mitigation prior to publication of the proposed rule. On June 19, 2001, we published in the **Federal Register** (66 FR 32923–3928, Docket No. 00–082–1) a notice entitled "Procedures and Standards Governing the Consideration of Import Requests" wherein we established policies for the publication of risk documents, among other things. In that document we set out "routine" and "nonroutine" as the two categories of risk assessments. The terms "routine" and "nonroutine" do not necessarily connote different types of risk assessments, but nonroutine assessments are associated with issues that may require greater resources. In determining the type of risk assessment, we consider the following factors: Economic value of the affected crop(s), public interest, environmental and public health importance, level of uncertainty, local importance, and precedence (*i.e.*, whether the commodity/origin combination in question, or a similar combination, has ever been addressed in previous risk assessments and/or whether the assessment will require the use of new or different methodologies). Only for nonroutine assessments do we make the risk assessments available for public review and comment in advance of rulemaking. Since the issues addressed in our proposed rule were determined to be routine, we did not make the risk documents prepared for this proposal available in advance of the proposed rule's publication.

A second commenter said that the term *field* needs to be defined. The commenter also objected to the fact that grapes from a field found to contain evidence of infestation may be reapproved for export following one negative inspection.

A definition for the term *field* can be found in the definitions portion of the regulations at § 319.56–1. *Field* is defined as a plot of land with defined boundaries within a place of production on which a commodity is grown.

We believe one negative inspection is enough to reapprove a field for export. Under the systems approach laid out in this document and in the proposed rule, if evidence of any of the pests of concern is detected during field inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated. There are a variety of measures growers may utilize to eliminate infestation on the leaves, stems, and fruits on the vine. These measures include contact pesticides in the case of insect infestation, fungicides in the case of fungal infestation, sanitation measures, weed removal, pruning, trapping, and/or bait stations. One or more of these measures would serve to eradicate the pests of concern. As expressed previously, evidence of the presence of all of the pests of concern is readily visible; thus we believe that a single inspection would be all that is necessary to determine whether a field could be reapproved for participation in the program.

Commodity-Specific Pest Pathways

One commenter stated that beets (*Beta vulgaris*) from Mexico and turnips (*Brassica* spp.) from Peru should be removed from the list of commodities enterable subject to inspection in § 319.56–2t since they are both hosts of the potato pathotype of the false root-knot nematode (*Nacobbus aberrans*).

Of the two commodities cited by the commenter, only beets from Mexico are being added to the list in § 319.56–2t in this rulemaking. Turnips from Peru have been eligible for importation under the regulations for 11 years and were listed in the proposed rule only because we set out § 319.56–2t in its entirety due to our revision of that section's format. By International Plant Protection Convention (IPPC) standards, a quarantine pest is considered to be "a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." Since the potato pathotype of the false root-knot nematode is already present in the United States and not subject to an official control program, we do not consider it to be a quarantine pest, therefore we do not regulate imports to protect against entry of this pest.

Another commenter stated that snow peas (*Pisum sativum* subsp. *sativum*) from Columbia; cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties (*Brassica* spp.) from Ecuador, Costa Rica, El Salvador, Peru, and Jamaica; *Allium* spp. from Israel, Mexico, Belgium, and the Netherlands; Swiss chard (*Beta vulgaris*) from Peru; beets (*Beta vulgaris*) from Mexico; and cucurbits (*Cucurbitaceae*) from Mexico should be removed from the list of commodities enterable subject to inspection found at § 319.56–2t since they are hosts of the pea leaf miner (*Liriomyza huidobrensis* Blanchard), which does not occur in the United States. Another commenter stated that the regulations should specify which types of cucurbits are allowed entry into the United States from Mexico.

The only commodities listed by the commenter that are added in this rulemaking are *Allium* spp. from Mexico and beets from Mexico. The other commodities have been eligible for importation prior to this rulemaking and were listed in the proposed rule only because we set out § 319.56–2t in its entirety due to our revision of that section's format. Specifically, cucurbits from Mexico have been eligible for importation under the regulations for 30 years. With regard to *Allium* spp. and beets from Mexico, as above, our records indicate that the pea leaf miner is already present in the United States and not subject to an official control program, therefore, we do not consider it to be a quarantine pest.

The commenter additionally stated that the importation of watermelon from Korea is of concern because of the presence of the pumpkin fruit fly (*Bactrocera depressa*). The commenter asked APHIS to clarify the type of fruit fly trap required, as well as to provide evidence of its efficacy in trapping the pumpkin fruit fly.

We have considered the commenter's point and have modified the trapping procedure outlined in the proposed rule to specify that the fruit fly traps used must be McPhail traps or a similar type with a protein bait that has been shown to be efficacious in trapping the pumpkin fruit fly. APHIS has employed the McPhail trap for decades. It is a generalist trap with a food bait that catches all fruit feeding tephritids. We use these traps to catch a variety of fruit flies around the world such as various *Bactrocera* spp. that are not known to be attracted by a specific parapheromone lure.

One commenter stated that since the domestic Mexican fruit fly (Mexfly) regulations at 7 CFR 301.64–2 and the melon fruit fly regulations at 7 CFR 301.97–2 list *Annona* spp. as hosts to those flies, we should have included an analysis of the risk associated with importation of *Annona* spp. from Grenada based on the possible presence

of Mexfly and melon fruit fly in that country.

Our research indicates that neither Mexfly nor melon fruit fly occur in Grenada. Since there is no scientific evidence of the existence of these pests in the area in question, there is no need for further analysis of the risks posed by those pests in this case.

Another commenter claimed that the mitigation methods described in the proposal with regard to cucurbits (*Cucurbitaceae*) from South Korea do not provide adequate protection against cucumber green mottle mosaic virus (*tobamovirus*).

Cucumber green mottle mosaic virus is seedborne with no known biological vectors; it can also be mechanically transmitted. Symptoms of infection are yellowed leaves and shriveled fruit. These are macroscopic and detectable upon inspection. Further, the commodities in question must meet the following conditions:

- The commodities in question must be grown within pest-proof greenhouses registered with Korea's NPPO.
- The NPPO must also inspect and regularly monitor those greenhouses and plants, including fruit, at intervals of no more than 2 weeks from the time of fruit set until the end of harvest.
- Each shipment must be accompanied by a phytosanitary certificate issued by the NPPO, with an additional declaration stating that the commodities were grown in a registered greenhouse.

Growing plants in registered greenhouses will result in additional scrutiny for symptoms and infected plants will most likely be discovered and removed. The risk of seed transmission is negligible since the cucurbits will be imported only for consumption. APHIS is confident that the inspection and certification measures will serve as sufficient mitigation against cucumber green mottle mosaic virus.

Another commenter stated that the recent discovery in certain parts of Mexico of a new phytoplasma related to but distinct from lethal yellowing disease, which affects coconuts, should be taken into consideration. The commenter claimed that this new phytoplasma on coconuts was not included in our risk assessment.

The Malayan dwarf and Maypan varieties of coconut resistant to the lethal yellowing phytoplasma are also resistant to the new phytoplasma of concern. Under the requirements set out in the rule portion of this document, coconut fruit with milk and husk must be accompanied by a phytosanitary certificate issued by Mexico that includes an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety based on verification of the parent stock. This requirement provides sufficient protection against the spread of mycoplasmalike organisms.

Shipping and Importation Procedures

One commenter questioned whether roots and soil were included in our consideration of a whole plant imported specifically from Mexico.

The commodities that were listed in the proposed rule as enterable from Mexico as whole plants were *Allium* spp., asparagus, beets, carrots, eggplants, jicama, parsley, radishes, and tomatoes. All of these commodities have been previously allowed entry under permit. Their addition to the regulations is solely in order to improve transparency.

Currently, the only whole plants allowed importation from Mexico are *Allium* spp., beets, carrots, parsley, and radishes. These commodities are root crops and, as such, are enterable as whole plants intended for consumption. The other commodities listed enterable as whole plants in the proposed rule (asparagus, eggplants, jicama, and tomatoes) were listed as such in error. We have amended the listings in this final rule in order to correctly list the plant parts that, historically, have come in under permit. Soil is prohibited entry with any commodity listed at § 319.56–2t.

Another commenter claimed that the risk of pest contamination is greater in the case of commercial shipments since the amount of commodities is greater than that associated with non-commercial shipments.

Risk of pest dissemination associated with commercial shipments is generally lower since commercial growers are more likely to utilize proper phytosanitary practices, are aware of pest problems and the methods used to control them, and are generally more experienced in dealing with the importation of various commodities. By contrast, noncommercial shipments are principally comprised of commodities hand-carried into the United States by private citizens. There are far fewer safeguards and assurances associated with such commodities. By contrast, commercial shipments provide a far higher level of phytosanitary security.

One commenter stated that lack of funding at the ports of first arrival in the United States means that many shipments cannot be or are not inspected.

While the Department of Homeland Security (DHS) conducts a majority of inspections of agricultural commodities at the ports of first arrival, inspectors follow established and effective APHIS protocols regarding inspection rates and procedures. APHIS continues to work with DHS to ensure that the United States is protected against pests of concern from agricultural imports. Currently, DHS is sufficiently staffed at all ports and fully capable of providing the necessary inspection services.

Pest Risk Assessments

One commenter observed that no statistics on the pest free status of commercial shipments were included in our risk assessments. The commenter stated that such information should be available prior to any approval granted for the importation of new commodities.

Pest risk assessments are prepared for those commodities that have not been imported previously into the United States. For that reason there are no pest interception data available to include in our risk assessments.

Another commenter cited the court decision on APHIS's rule authorizing the importation of citrus from Argentina (*Harlan Land Company, et al.* vs. *United States Department of Agriculture*) (referred to below as *Harlan Land Co.*), and claimed that according to the decision in that case, APHIS must define what it considers to be a "negligible level of risk" in the context of a rule authorizing the importation of fruit from a disease and pest infested area. The commenter stated that APHIS must thus define what it considers to be an acceptable level of risk, and it must adequately explain that determination, and claimed that the proposed rule does not do so.

We disagree with this comment. In the court decision on APHIS's rule authorizing the importation of clementines from Spain (*Cactus Corner, LLC, et al.* vs. *United States Department of Agriculture*), the court concluded that, "[n]either law nor logic requires an agency to quantify a numeric threshold of 'acceptable risk' every time risk prevention is sought to be achieved by an agency rule."

The commenter went on to advise that we should consider all types of pests, not just those pests that are known to be dangerous. He argued that pests that pose no danger in their countries of origin may prove harmful to domestic plants if they become established in the differing environment in the United States.

We do not regulate imports based on unknown or speculative risks. We regulate based on sound scientific evidence, consistent with our authority under the Plant Protection Act. We are

confident that the mitigation measures detailed in the rule are sufficient to protect against the scientifically determined pests of concern.

The commenter cited our failure to consider appropriate monitoring as a mitigation against infestation and stated that the environmental assessment does not examine the necessity of monitoring at each stage of the importation process.

Monitoring, as described by the commenter, is not required in all cases. Program monitoring is required only when it is found to be necessary according to pest risk analysis. There is no need to examine the need for monitoring in the absence of an identified risk. In the case of this rule, we have determined that all risks are mitigated sufficiently by the measures described. Our risk assessments found the probability of artificial spread of pests via these commodities to be low. Therefore, monitoring at each stage of the import process as suggested by the commenter becomes unnecessary. We are confident that the mitigation measures, including port of entry inspection, described in the rule and considered in the environmental assessment are sufficient to protect against the quarantine pests of concern.

The commenter stated that a monitoring program must provide a system by which the public may review and respond to the findings of that monitoring.

Our Cooperative Agricultural Pest Survey (CAPS) reports finds and movements of damaging foreign organisms from all 50 States and U.S. territories. CAPS tracks more than 4,000 pests nationwide. The CAPS survey data collected each year are entered into the National Agricultural Pest Information System (NAPIS) database which is available on the Internet at *http://www.aphis.usda.gov/ppq/*.

Providing constant formal reports on the results of our monitoring efforts beyond what is available through CAPS/NAPIS would be costly and time-consuming. Our current rulemaking mechanism allows us to make or propose changes to the regulations that are based on our consideration of a variety of complex and changeable factors, including the findings of monitoring programs.

The commenter suggested that we alter our approach to importation by phasing in the approved fruit and vegetable imports from each country over successive years in order to ensure that any pests imported with the newly allowed commodities will not prove to be injurious once introduced into the United States.

As a signatory to the IPPC, the United States has agreed not to prescribe or adopt phytosanitary measures concerning the importation of plants, plant products, and other regulated articles unless such measures are made necessary by phytosanitary considerations and are technically justified. Based on the conclusions of our risk analyses, we do not believe that there is a technical justification for the phasing in of imports as suggested by the commenter.

Environmental Assessment

One commenter raised issues regarding the environmental assessment that we prepared to document our review and analysis of the potential environmental impacts associated with the proposed rule. A detailed analysis of the issues raised by the commenter can be found later in this document under the heading "National Environmental Policy Act."

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

Executive Order 12866 and Regulatory Flexibility Act

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

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

We are amending the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. We are also recognizing areas in Peru as free from the South American cucurbit fly. These actions will provide the United States with additional types and sources of fruits and vegetables while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

We have used all available data to estimate the potential economic effects of allowing the fruits and vegetables specified in this rule to be imported into the United States. However, some of the data we believe would be helpful in making this determination have not been available. Specifically, data are not available on: (1) The quantity of certain fruits and vegetables produced domestically; (2) the quantity of potential imports; and (3) the degree to which imported fruits and vegetables will displace existing imported or domestic products. In our proposed rule, we asked the public to provide such data for specific commodities. In addition, we invited the public to comment on the potential effects of the proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. However, we did not receive any additional information or data in response to those requests.

Effects on Small Entities

Data on the number and size of U.S. producers of the various commodities that will be eligible for importation into the United States under this rule are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities discussed below are small entities. The potential economic effects of this final rule are discussed below by commodity and country of origin.

African horned cucumber from Chile. We are to amending the regulations to allow the entry of African horned cucumber from Chile. African horned cucumber is a specialty crop that is grown in small quantities. Less than 20 acres of the fruit are cultivated in California, and less than 10 acres in Region V (Olmue) and Region X (Osorno) of Chile have been cultivated since 1996. Approximately 32,000 pounds of fruit are expected to be shipped to the United States annually from March to May. There is no reason to believe that allowing imports of African horned cucumber from Chile will have any significant economic impact on U.S. entities. In addition, we believe that U.S. consumers of African horned cucumber will benefit from the increase in its supply and availability.

Annona spp. from Grenada. We are amending the regulations to allow the entry of commercial shipments of cherimoya, soursop, custard apple, sugar apple, and atemoya, which are species of *Annona*, into the United States from Grenada. In the United States, *Annona* spp. are apparently a specialty crop produced on a small scale mainly in southern California; thus no data on the U.S. production of *Annona*

spp. are available. Although no separate data are available on the production and trade of *Annona* spp. from Grenada, data may have been included with the production of all apples. From 2001 to 2003, Grenada produced an average of 533 metric tons of apples. In addition, *Annona* spp. exports may be included under the category of "apples, not elsewhere specified," which includes wild apples. The 3-year average for exports of apples, not elsewhere specified, from Grenada is 5 metric tons. We believe that any exports to the United States will be minimal and will not have any significant economic effect on U.S. producers, whether small or large, or consumers. In addition, we believe that U.S. consumers of *Annona* spp. will benefit from the increase in their supply and availability.

Fruit and vegetables from Mexico. We are specifically listing *Allium* spp., asparagus, banana, beets, carrots, coconut fruit without husk, cucurbits, eggplant, grape, jicama, lemon, sour lime, parsley, pineapple, prickly pear pads, radish, tomato, and tuna as admissible fruits and vegetables from Mexico. Because these fruits and vegetables have been admissible into the United States from Mexico under permit, specifically listing these commodities in the regulations will not have any economic effect on U.S. producers, whether small or large, or consumers. While production and trade data are not available for jicama, prickly pear, and tuna from Mexico or the United States, data are shown for the other commodities, as available, in table 1. The data provided in table 1 are based on either a 2- or 3-year average. The averages presented for most U.S. and Mexican production and trade, as well as for tomato exports from Mexico, are for the 3-year period of 2000, 2001, and 2002. A 2-year average for 2000 and 2001 is given for exports from Mexico (except tomatoes), U.S. production of parsley and beets, and U.S. imports of parsley and cucurbits.

TABLE 1.—U.S. AND MEXICAN PRODUCTION AND TRADE DATA (IN METRIC TONS) OF FRUITS AND VEGETABLES

Commodity	U.S. production	U.S. imports from all countries	U.S. imports from Mexico	Mexican production	Mexican exports
Allum spp.:					
Shallot and green onion	444,429	257,784	159,953	1,021,605	599,491
Garlic	258,680	37,806	14,776	50,894	27,544
Leek and other alliaceous vegetables	[1]	3,040	2,752	[1]	87,455
Asparagus	103,060	75,086	38,231	57,545	44,378
Banana	12,850	4,232,383	74,560	1,961,201	126,368
Beets	101,738	20,341	15,254	[1]	775,100
Carrot	1,913,700	85,037	23,508	358,054	201,944
Coconut	0	63,075	4,854	1,058,667	87,584
Cucurbits:					
Melon and watermelons	2,969,250	882,350	363,902	1,469,700	572,529
Cucumbers and gherkins	1,078,800	15,035	1,924	416,667	7,880
Pumpkins, squash, and gourds	761,253	223,697	148,343	550,000	372,294
Eggplant	77,290	40,233	36,863	59,000	135,697
Grape	6,495,380	987,124	191,477	427,497	117,510
Lemon and lime	572,250	218,816	184,814	1,658,420	733,184
Parsley	14,210	5,897	[1]	[1]	[1]
Pineapple	302,500	348,617	19,923	598,629	117,510
Radish	53,781	15,338	14,654	[1]	[1]
Tomato	10,590,000	804,548	664,362	2,085,831	1,551,685

[1] Not available.

Coconut fruit with milk and husk from Mexico. Coconut fruit without husk have been admissible into the United States from Mexico under permit. In this final rule, we are amending the regulations to allow coconut fruit with milk and husk from Mexico to be imported into the United States. While the data on coconut production and trade do not differentiate between coconut fruit with or without husk and milk, it is possible that an increase in imports of coconuts into the United States from Mexico will occur, since coconut fruit with milk and husk have previously been inadmissible from Mexico. Because the U.S. production of coconut fruit with milk and husk is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of coconut fruit with milk and husk from Mexico will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers will benefit from the increase in the supply and availability of coconut fruit with milk and husk from Mexico.

Pitaya from Mexico. In the United States, pitaya are a specialty crop produced on a small scale; thus no data on the U.S. production of pitaya are available. Mexican production and trade data are also not available.

Melon and watermelon from Peru. We are amending the regulations to allow the entry of commercial shipments of watermelon and several varieties of melon (*Cucumis melo* L. subsp. *melo*) into the United States from Peru. The specific varieties of melons that will be considered for importation include cantaloupe, netted melon (muskmelon, nutmeg melon, and Persian melon), vegetable melon (snake melon and oriental pickling melon), and winter melon (honeydew and casaba melon). The melon and watermelon from Peru will be admissible from the Departments of Lima, Ica, Arequipa, Moquegua, and Tacna, which we recognize as free of the South American cucurbit fly.

From 2001 to 2003, the United States produced an average of almost 3 million metric tons of melon and watermelon and imported an average of 882,350 metric tons. For that same 3-year period, Peru produced an average of 72,337 metric tons of melon and watermelon. For the 2-year period of 2000 and 2001, Peru exported an average of 1,393 metric tons of melon and watermelon. Because the U.S. production of melon and watermelon is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of melon and watermelon from certain areas of Peru

will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of melon and watermelon will benefit from the increase in its supply and availability.

Watermelon, squash, cucumber, and oriental melon from the Republic of Korea. We are amending the regulations to allow watermelon, squash, cucumber, and oriental melon to be imported into the United States from the Republic of Korea (South Korea) under certain conditions. Table 2 shows the average U.S. and South Korean production and trade data available for the 3-year period of 2000, 2001, and 2002, with a 2-year average for 2000 and 2001 for exports from South Korea. Note that the data include a broader category than what is actually eligible to be imported; *e.g.*, we are allowing for the importation of cucumber, but the data are available under the broader category of cucumber and gherkins.

TABLE 2.—PRODUCTION AND TRADE DATA (IN METRIC TONS) FOR U.S. AND SOUTH KOREAN FRUITS AND VEGETABLES

Commodity	U.S. production	U.S. imports from all countries	U.S. imports from South Korea	South Korean production	South Korean exports
Melon and watermelons	2,969,250	882,350	0	324,260	428
Cucumbers and gherkins	1,078,800	15,035	0	451,175	7,030
Pumpkins, squash, and gourds	761,253	223,697	0	240,161	515

Grapes from South Korea. We are amending the regulations to allow the importation of grapes into the United States from South Korea under certain conditions. From 2001 to 2003, the United States produced an average of almost 6.5 million metric tons of grapes and imported an average of 987,124 metric tons. For that same 3-year period, South Korea produced an average of 461,198 metric tons of grapes (approximately 7 percent of the total U.S. production) with an average export of 101 metric tons. Because the U.S. production of grapes is supplemented with imports in order to satisfy the domestic demand, we do not believe that allowing the importation of grapes from South Korea will have a significant effect on either U.S. consumers or producers. In addition, we believe that U.S. consumers of grapes will benefit from the increase in its supply and availability.

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

Executive Order 12988

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

National Environmental Policy Act

We have prepared an environmental assessment for this rule. The environmental assessment, entitled "Rule for the 12th Periodic Amendment of the Fruits and Vegetables Regulations" (September 2004), analyzes alternatives to amending the regulations to allow the importation into the United States of a number of fruits and vegetables from various areas of the world under certain conditions. The environmental assessment may be accessed on the Internet at *http://www.aphis.usda.gov/ppq/enviro_docs/*. Copies of the environmental assessment are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The environmental assessment for this rule analyzes two alternatives, no action and amending the fruits and vegetables regulations. The no action alternative would be to leave the fruits and vegetables regulations unchanged. Under the no action alternative, (1) certain fruits and vegetables from Mexico (*i.e., Allium* spp., asparagus, banana, beets, carrots, coconuts, cucurbits, eggplant, grape, jicama, lemon, sour lime, parsley, pineapple, prickly pear pads, radish, tomato, tuna, coconut [fruit without husk], and pitaya) would continue to be eligible for importation under permit, and (2) cucurbits and grapes from South Korea, melon from Peru, pitaya and coconut with milk and husk from Mexico, *Annona* spp. from Grenada, and African horned cucumber from Chile would not be approved for importation into the United States. Under the second alternative—amending the fruits and vegetables regulations—the previously named fruits and vegetables from Mexico that have been enterable under permit would be listed as enterable in the regulations, and the listed fruits and vegetables from South Korea, Peru, Mexico, Grenada, and Chile would become eligible for importation into the United States under certain phytosanitary conditions.

The environmental assessment describes the potential environmental effects associated with each alternative. The environmental assessment also describes the phytosanitary measures required for the importation of each commodity, including treatment, specified growing conditions, limits on dates of shipping, inspection and monitoring of growing areas by the plant protection organization of the country where grown, trapping in the growing areas, fruit cutting, safeguarding during transport, and/or permits and phytosanitary certificates. These measures have been designed to safeguard all potentially affected aspects of the human environment, including human health and safety, non-target species, and protected species and habitat.

We omitted one commodity, coconut with milk and husk of the Malayan Dwarf and Maypan hybrid varieties from Mexico, from the environmental assessment that was prepared for the proposed rule and made available to the public for comment. An analysis of this commodity has been added to the environmental assessment prepared for this final rule. Two quarantine pests of

concern were identified in the proposed rule as being associated with this commodity, the red ring nematode and lethal yellowing disease. We have determined that the risk associated with red ring nematode is low since nuts on infected trees fall prematurely and would not be harvested. The risk of introduction of lethal yellowing disease would also be low since coconuts with husk and milk of the Malayan Dwarf and Maypan hybrids do not harbor lethal yellowing disease, including the new phytoplasma mentioned by one of the commenters and discussed earlier in this final rule.

As stated in the background section of this final rule, one commenter raised objections to the review and analysis of potential environmental impacts contained in the environmental assessment prepared for the proposed rule. The commenter raised several issues, which are discussed below.

The commenter stated that, under the Endangered Species Act, Federal agencies are required to consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to ensure that their actions will not prove harmful to any listed species. He further stated that APHIS had not performed such consultations and asked that we do so.

Section 7(a)(2) of the Endangered Species Act of 1973 requires that Federal agencies ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Consultation with FWS and/or NMFS is required only if the proposed action "may affect" listed species or critical habitat.

Prior to the publication of the proposed rule, APHIS prepared a biological assessment to consider the potential risks to federally listed threatened and endangered species and species proposed for listing that could be posed by the proposed importation of certain fruits and vegetables from Mexico, Chile, Grenada, South Korea, and Peru. Based upon the ability of the phytosanitary measures described in the proposed rule to eliminate risks from shipments of these fruits and vegetables, we determined that the importation of those commodities would not affect any endangered and threatened species or their habitats. This "no effect" determination is the appropriate conclusion when an agency determines that its proposed action will not affect listed species or designated critical habitats. Consultation with FWS and/or NMFS is not required if the agency has considered the effects of the proposed action on threatened, endangered, and proposed species and determined that it will have no effect on those species or their critical habitats.

The commenter asked that APHIS, in its environmental assessment, address the cumulative impacts of pesticides and pests on the commodities in question, the environment, and on humans. He additionally stated that it is necessary to investigate the infestation potential of pests when introduced into a new environment, to identify those undesirable qualities in pests that may be triggered by environmental factors, and to consider the possibility of destructive hybridization occurring between native and non-native pests.

Our environmental assessments are uniformly prepared subsequent to our consideration of the best and most up-to-date scientific data. No scientific evidence exists to support the commenter's requests. As stated previously, in the unlikely event of a non-native pest being introduced into the United States via an imported fruit or vegetable, we have the authority to immediately prohibit or further restrict the importation of that commodity. Such action would almost certainly be taken if a pest were to display new and destructive characteristics following its introduction into the United States.

APHIS has considered the potential effects of this final rule on the quality of the human environment. The exclusionary nature of the phytosanitary measures required by this rule will prevent entry of invasive species of concern that are associated with the fruits and vegetables, and this exclusion precludes any effects on native species or their habitats. Based on the analysis provided in the environmental assessment and our assessment of the comments submitted on the proposed rule and its accompanying environmental assessment, implementation of the rule will not significantly impact the quality of the human environment and an environmental impact statement does not need to be prepared.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0236.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR part 319 to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. Section 319.56–1 is amended by adding, in alphabetical order, a new definition for *country of origin* to read as follows:

§ 319.56–1 Definitions.

* * * * *

Country of origin. Country where the plants from which the plant products are derived were grown.

* * * * *

■ 3. Section 319.56–2t is revised to read as follows:

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

(a) The following commodities may be imported into all parts of the United States, unless otherwise indicated, from the places specified, in accordance with § 319.56–6 and all other applicable requirements of this subpart:

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (see paragraph (b) of this section)
Argentina	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Basil	*Ocimum* spp	Above ground parts.	
	Currant	*Ribes* spp	Fruit.	
	Endive	*Cichorium endivia*	Leaf and stem.	
	Gooseberry	*Ribes* spp	Fruit.	
	Marjoram	*Origanum* spp	Above ground parts.	
	Oregano	*Origanum* spp	Above ground parts.	
Australia	Currant	*Ribes* spp	Fruit.	
	Gooseberry	*Ribes* spp	Fruit.	
Austria	Asparagus, white	*Asparagus officinalis*	Shoot (no green may be visible on the shoot).	
Barbados	Banana	*Musa* spp	Flower.	
Belgium	Leek	*Allium* spp	Whole plant	(b)(5)(i)
	Pepper	*Capsicum* spp	Fruit.	
Belize	Banana	*Musa* spp	Flower in bracts with stems.	
	Bay leaf	*Laurus nobilis*	Leaf and stem.	
	Mint	*Mentha* spp	Above ground parts.	
	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii).
	Sage	*Salivia officinalis*	Leaf and stem.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Bermuda	Avocado	*Persea americana*	Fruit.	
	Carambola	*Averrhoa carambola*	Fruit.	
	Grapefruit	*Citrus paradisi*	Fruit.	
	Guava	*Psidium guajava*	Fruit.	
	Lemon	*Citrus limon*	Fruit.	
	Longan	*Dimocarpus longan*	Fruit.	
	Loquat	*Eriobotrya japonica*	Fruit.	
	Mandarin orange	*Citrus reticulata*	Fruit.	
	Natal plum	*Carissa macrocarpa*	Fruit.	
	Orange, sour	*Citrus aurantium*	Fruit.	
	Orange, sweet	*Citrus sinensis*	Fruit.	
	Papaya	*Carica papaya*	Fruit.	
	Passion fruit	*Passiflora* spp	Fruit.	
	Peach	*Prunus persica*	Fruit.	
	Pineapple guava	*Feijoa* spp	Fruit.	
	Suriname cherry	*Eugenia uniflora*	Fruit.	
Bolivia	Belgian endive	*Cichorium intybus*	Leaf.	
Chile	African horned cucumber	*Cucumis metuliferus*	Fruit	(b)(2)(i).
	Babaco	*Carica* x *heilborni* var. *pentagona.*	Fruit	(b)(1)(i).
	Basil	*Ocimum* spp	Above ground parts.	
	Lucuma	*Manilkara sapota* (=*Lucuma mammosa*).	Fruit	(b)(1)(i).
	Mountain papaya	*Carica pubescens* (=*C. candamarcensis*).	Fruit	(b)(1)(ii).
	Oregano	*Origanum* spp	Leaf and stem.	
	Pepper	*Capsicum annuum*	Fruit	(b)(1)(i).
	Sandpear	*Pyrus pyrifolia*	Fruit	(b)(1)(ii).
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
China	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
Colombia	Rhubarb	*Rheum rhabarbarum*	Stalk.	
	Snow pea	*Pisum sativum* subsp. *sativum.*	Flat, immature pod.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Cook Islands	Banana	*Musa* spp	Green fruit	(b)(4)(i).
	Cucumber	*Cucumis sativus*	Fruit.	
	Drumstick	*Moringa pterygosperma*	Leaf.	
	Ginger	*Zingiber officinale*	Root	(b)(2)(ii).
	Indian mulberry	*Morinda citrifolia*	Leaf.	
	Lemongrass	*Cymbopogon* spp	Leaf.	
	Tossa jute	*Corchorus olitorius*	Leaf.	
Costa Rica	Basil	*Ocimum* spp	Whole plant.	
	Chinese kale	*Brassica alboglabra*	Leaf and stem.	
	Chinese turnip	*Raphanus sativus*	Root.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (see paragraph (b) of this section)
	Jicama	*Pachyrhizus tuberosus* or *P. erosus.*	Root.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii).
Dominican Republic	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Durian	*Durio zibethinus*	Fruit.	
Ecuador	Banana	*Musa* spp	Flower.	
	Basil	*Ocimum* spp	Above ground parts.	
	Chervil	*Anthriscus* spp	Leaf and stem.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Radicchio	*Cichorium* spp	Above ground parts.	
El Salvador	Basil	*Ocimum* spp	Above ground parts.	
	Cilantro	*Coriandrum sativum*	Above ground parts..	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit with stem	(b)(3).
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i).
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla.*	Flower and leaf	(b)(2)(i).
	Loroco	*Fernaldia* spp	Flower, leaf, and stem.	
	Oregano or sweet marjoram	*Origanum* spp	Leaf and stem	(b)(2)(i).
	Parsley	*Petroselinum crispum*	Leaf and stem	(b)(2)(i).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii).
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i).
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i).
	Yam-bean or Jicama	*Pachyrhizus* supp	Roots without soil	(b)(2)(i).
France	Tomato	*Lycopersicon esculentum*	Fruit, stem, and leaf	(b)(4)(ii).
Great Britain	Basil	*Ocimum* spp	Leaf and stem.	
Grenada	Abiu	*Pouteria caimito*	Fruit.	
	Atemoya	*Annona squamosa* x *A. cherimola.*	Fruit	(b)(3).
	Bilimbi	*Averrhoa bilimbi*	Fruit.	
	Breadnut	*Brosimum alicastrum*	Fruit.	
	Cherimoya	*Annona cherimola*Fruit	(b)(3).	
	Cocoplum	*Chrysobalanus icaco*	Fruit.	
	Cucurbits	*Cucurbitaceae*	Fruit.	
	Custard apple	*Annona reticulata*Fruit	(b)(3).	
	Durian	*Durio zibethinus*	Fruit.	
	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
	Jambolan	*Syzygium cumini*	Fruit.	
	Jujube	*Ziziphus* spp	Fruit.	
	Langsat	*Lansium domesticum*	Fruit.	
	Litchi	*Litchi chinensis*	Fruit.	
	Malay apple	*Syzygium malaccense*	Fruit.	
	Mammee apple	*Mammea americana*	Fruit.	
	Peach palm	*Bactris gasipaes*	Fruit.	
	Piper	*Piper* spp	Fruit.	
	Pulasan	*Nephelium ramboutan-ake*	Fruit.	
	Rambutan	*Nephelium lappaceum*	Fruit.	
	Rose apple	*Syzygium jambos*	Fruit.	
	Santol	*Sandoricum koetjape*	Fruit.	
	Sapote	*Pouteria sapota*	Fruit.	
	Soursop	*Annona muricata*	Fruit.	(b)(3).
	Supar apple	*Annona squamosa*	Fruit.	(b)(3).
Guatemala	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Basil	*Ocimum* spp	Above ground parts.	
	Dill	*Anethum graveonlens*	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit with stem.	
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i).
	German chamomile	*Matricaria chamomilla* and *Matricaria recutita.*	Flower and leaf	(b)(2)(i).
	Jicama	*Pachyrhizus tuberosus* or *P. erosus.*	Root.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (see paragraph (b) of this section)
	Loroco	*Fernaldia* spp	Flower and leaf.	
	Mint	*Mentha* spp	Above ground parts.	
	Oregano	*Origanum* spp	Leaf and stem.	
	Papaya	*Carica papaya*	Fruit	(b)(1)(i), (b)(2)(iii).
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii).
	Rhubarb	*Rheum rhabarbarum*	Above ground parts.	
	Rosemary	*Rosmarinus officinalis*	Leaf and stem	(b)(2)(i).
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i).
Haiti	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
Honduras	Banana	*Musa spp*	Flower.	
	Basil	*Ocimum basilicum*	Leaf and stem	(b)(2)(i), (b)(5)(iv).
	Chicory	*Cichorium* spp	Leaf and stem.	
	Cilantro	*Coriandrum sativum*	Above ground parts.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	German chamomile	*Matricaria recutita* and *Matricaria chamomilla.*	Flower and leaf	(b)(2)(i).
	Loroco	*Fernaldia* spp	Flower and leaf.	
	Oregano or sweet marjoram	*Origanum* spp	Leaf and stem	(b)(2)(i).
	Radish	*Raphanus sativus*	Root.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii).
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil	(b)(2)(i)
	Yam-bean or Jicama	*Pachyrhizus* spp	Roots without soil	(b)(2)(i).
Indonesia	Dasheen	*Colocasia* spp, *Alocasia* spp, and *Xanthosoma* spp.	Tuber	(b)(2)(iv).
	Onion	*Allium cepa*	Bulb.	
	Shallot	*Allium ascalonicum*	Bulb.	
Israel	Arugula	*Eruca sativa*	Leaf and stem.	
	Chives	*Allium schoenoprasum*	Leaf.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Mint	*Mentha* spp	Above ground parts.	
	Parsley	*Petroselinum crispum*	Above ground parts.	
	Watercress	*Nasturtium officinale*	Leaf and stem.	
Jamaica	Fenugreek	*Tirgonella foenum-graceum*	Leaf, stem, root.	
	Jackfruit	*Artocarpus heterophyllus*	Fruit.	
	Ivy gourd	*Coccinia grandis*	Fruit.	
	Pak choi	*Brassica chinensis*	Leaf and stem.	
	Pointed gourd	*Trichosanthes dioica*	Fruit.	
Japan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Mioga ginger	*Zingiber mioga*	Above ground parts.	
	Mung bean	*Vigna radiata*	Seed sprout.	
	Soybean	*Glycine max*	Seed sprout.	
Liberia	Jute	*Corchorus capsularis*	Leaf.	
	Potato	*Solanum tuberosum*	Leaf.	
Mexico	Allium	*Allium* spp	Whole plant.	
	Anise	*Pimpinella anisum*	Leaf and stem.	
	Apple	*Malus domestica*	Fruit	(b)(1)(iii).
	Apricot	*Prunus armeniaca*	Fruit	(b)(1)(iii).
	Arugula	*Eruca sativa*	Leaf and stem.	
	Asparagus	*Asparagus officinalis*	Shoot.	
	Banana	*Musa* spp	Flower and fruit.	
	Bay leaf	*Laurus nobilis*	Leaf and stem.	
	Beet	*Beta vulgaris*	Whole plant.	
	Blueberry	*Vaccinium* spp	Fruit.	
	Carrot	*Daucus carota*	Whole plant.	
	Coconut	*Cocos nucifera*	Fruit without husk.	
			Fruit with milk and husk	(b)(5)(v).
	Cucurbits	*Cucurbitaceae*	Inflorescence, flower, and fruit.	
	Eggplant	*Solanum melongena*	Fruit with stem.	
	Fig	*Ficus carica*	Fruit	(b)(1)(iii), (b)(2)(i).
	Grape	*Vitis* spp	Fruit, cluster, and leaf.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (see paragraph (b) of this section)
	Grapefruit	*Citrus paradisi*	Fruit	(b)(1)(iii).
	Jicama	*Pachyrhizus tuberosus*	Root.	
	Lambsquarters	*Chenopodium* spp	Above ground parts.	
	Lemon	*Citrus limon*	Fruit.	
	Lime, sour	*Citrus aurantiifolia*	Fruit.	
	Mango	*Mangifera indica*	Fruit	(b)(1)(iii).
	Orange	*Citrus sinensis*	Fruit	(b)(1)(iii).
	Parsley	*Petroselinum crispum*	Whole plant.	
	Peach	*Prunus persica*	Fruit	(b)(1)(iii).
	Persimmon	*Diospyros* spp	Fruit	(b)(1)(iii).
	Pineapple	*Ananas comosus*	Fruit.	
	Pitaya	*Hylocereus* spp	Fruit	(b)(1)(iv), (b)(2)(i).
	Piper	*Piper* spp	Leaf and stem.	
	Pomegranate	*Punica granatum*	Fruit	(b)(1)(iii).
	Porophyllum	*Porophyllum* spp	Above ground parts.	
	Prickly-pear pad	*Opuntia* spp	Pad.	
	Radish	*Raphanus sativus*	Whole plant.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii).
	Rosemary	*Rosmarinus officinalis*	Above ground parts.	
	Salicornia	*Salicornia* spp	Above ground parts.	
	Tangerine	*Citrus reticulata*	Fruit	(b)(1)(iii).
	Tepeguaje	*Leucaena* spp	Fruit.	
	Thyme	*Thymus vulgaris*	Above ground parts.	
	Tomato	*Lycopersicon lycopersicum*	Fruit, stem, and leaf.	
	Tuna	*Opuntia* spp	Fruit.	
Morocco	Strawberry	*Fragaria* spp	Fruit.	
Morocco and Western Sahara	Tomato	*Lycopersicon esculentum*	Fruit, stem, and leaf	(b)(4)(ii)
Netherlands	Leek	*Allium* spp	Whole plant	(b)(5)(i).
	Radish	*Raphanus sativus*	Root.	
New Zealand	Avocado	*Persea americana*	Fruit.	
	Fig	*Ficus carica*	Fruit.	
	Oca	*Oxalis tuberosa*	Tuber.	
Nicaragua	Cilantro	*Coriandrum sativum*	Above ground parts.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Eggplant	*Solanum melongena*	Fruit with stem	(b)(3).
	Fennel	*Foeniculum vulgare*	Leaf and stem	(b)(2)(i).
	German chamomile	*Matricaria recutita* and *M. chamomilla.*	Flower and leaf	(b)(2)(i).
	Loroco	*Fernaldia* spp	Leaf and stem.	
	Mint	*Mentha* spp	Above ground parts.	
	Parsley	*Petroselinum crispum*	Above ground parts.	
	Radicchio	*Cichorium* spp	Above ground parts.	
	Rambutan	*Nephelium lappaceum*	Fruit	(b)(2)(i), (b)(5)(iii).
	Rosemary	*Rosmarinus officinalla*	Above ground parts.	
	Waterlily or lotus	*Nelumbo nucifera*	Roots without soil.	(b)(2)(i).
	Yam-bean or Jicama	*Pachyrhizus* spp	Roots without soil.	(b)(2)(i).
Panama	Basil	*Ocimum* spp	Above ground parts.	
	Bean, green and lima	*Phaseolus vulgaris* and *P. lunatus.*	Seed.	
	Belgian endive	*Cichorium* spp	Above ground parts.	
	Chervil	*Anthriscus cerefolium*	Above ground parts.	
	Chicory	*Cichorium* spp	Above ground parts.	
	Eggplant	*Solanum melongena*	Fruit with stem.	
	Endive	*Cichorium* spp	Above ground parts.	
	Fenugreek	*Tirgonella foenum-graceum*	Leaf and stem.	
	Lemon thyme	*Thymus citriodorus*	Leaf and stem.	
	Mint	*Mentha* spp	Above ground parts.	
	Oregano	*Origanum* spp	Above ground parts.	
	Rambutan	*Nephelium lappaceum*	Fruit.	(b)(2)(i), (b)(5)(iii).
	Rosemary	*Rosmarinus officinalis*	Above ground parts.	
	Tarragon	*Artemisia dracunculus*	Above ground parts.	
Peru	Arugula	*Eruca sativa*	Leaf and stem.	
	Basil	*Ocimum* spp	Leaf and stem.	
	Carrot	*Daucus carota*	Root.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (see paragraph (b) of this section)
	Chervil	*Anthriscus* spp	Leaf and stem.	
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.	
	Cornsalad	*Valerianella* spp	Whole plant.	
	Dill	*Anethum graveolens*	Above ground parts.	
	Lambsquarters	*Chenopodium album*	Above ground parts.	
	Lemongrass	*Cymbopogon* spp	Leaf and stem.	
	Marjoram	*Origanum* spp	Above ground parts.	
	Mustard greens	*Brassica juncea*	Leaf.	
	Oregano	*Origanum* spp	Leaf and stem.	
	Parsley	*Petroselinum crispum*	Leaf and stem.	
	Radicchio	*Cichorium* spp	Leaf.	
	Swiss chard	*Beta vulgaris*	Leaf and stem.	
	Thyme	*Thymus vulgaris*	Above ground parts.	
Philippines	Jicama	*Pachyrhizus tuberosus* or *P. erosus.*	Root.	
Poland	Pepper	*Capsicum* spp	Fruit.	
	Tomato	*Lycopersicon esculentum*	Fruit, stem, and leaf.	
Republic of Korea	Angelica	*Aralia elata*	Edible shoot.	
	Aster greens	*Aster scaber*	Leaf and stem.	
	Bonnet bellflower	*Codonopsis lanceolata*	Root.	
	Chard	*Beta vulgaris* subsp. *cicla*	Leaf.	
	Chinese bellflower	*Platycodon grandiflorum*	Root.	
	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Root	(b)(2)(iv).
	Eggplant	*Solanum melongena*	Fruit with stem.	
	Kiwi	*Actinidia deliciosa*	Fruit.	
	Lettuce	*Lactuca sativa*	Leaf.	
	Mugwort	*Artemisia vulgaris*	Leaf and stem.	
	Onion	*Allium cepa*	Bulb.	
	Shepherd's purse	*Capsella bursa-pastoris*	Leaf and stem.	
	Strawberry	*Fragaria* spp.	Fruit	(b)(5)(ii).
	Watercress	*Nasturtium officinale*	Leaf and stem.	
	Youngia greens	*Youngia sonchifolia*	Leaf, stem, and root.	
Sierra Leone	Cassava	*Manihot esculenta*	Leaf.	
	Jute	*Corchorus capsularis*	Leaf.	
	Potato	*Solanum tuberosum*	Leaf.	
St. Vincent and the Grenadines.	Turmeric	*Curcuma longa*	Rhizome.	
South Africa	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Pineapple	*Ananas* spp.	Fruit.	
Spain	Eggplant	*Solanum melongena*	Fruit with stem	(b)(3).
	Tomato	*Lycopersicon esculentum*	Fruit, stem, and leaf	(b)(4)(ii).
	Watermelon	*Citrullus lanatus*	Fruit	(b)(3).
Suriname	Amaranth	*Amaranthus* spp	Leaf and stem.	
	Black palm nut	*Astrocaryum* spp	Fruit.	
	Jessamine	*Cestrum latifolium*	Leaf and stem.	
	Malabar spinach	*Bassella alba*	Leaf and stem.	
	Mung bean	*Vigna radiata*	Seed sprout.	
	Pak choi	*Brassica chinensis*	Leaf and stem.	
Sweden	Dill	*Anethum graveolens*	Above ground parts.	
Taiwan	Bamboo	*Bambuseae* spp	Edible shoot, free of leaves and roots.	
	Burdock	*Arctium lappa*	Root.	
	Wasabi (Japanese horseradish).	*Wasabia japonica*	Root and stem.	
Thailand	Dasheen	*Alocasia* spp., *Colocasia* spp., and *Xanthosoma* spp.	Leaf and stem.	
	Tumeric	*Curcuma domestica*	Leaf and stem.	
Tonga	Burdock	*Arctium lappa*	Root, stem, and leaf.	
	Jicama tuberosus	*Pachyrhizus tuberosus*	Root.	
	Pumpkin	*Cucurbit maximaa*	Fruit.	
Trinidad and Tobago	Lemongrass	*Cymbopogon citratus*	Leaf and stem.	
	Leren	*Calathea allouia*	Tuber.	
	Shield leaf	*Cecropia peltata*	Leaf and stem.	
Zambia	Snow pea	*Pisum sativum* spp. *sativum*	Flat, immature pod.	

(b) Additional restrictions for applicable fruits and vegetables as specified in paragraph (a) of this section.

(1) *Free areas.* (i) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of the country of origin with an additional declaration stating that the commodity originated in a Medfly-free area.

(ii) The commodity must be from a Medfly-free area listed in § 319.56–2(j) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area. Fruit from outside Medfly-free areas must be treated in accordance with § 319.56–2x of this subpart.

(iii) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity originated in a free area.

(iv) The commodity must be from a fruit-fly free area listed in § 319.56–2(h) and must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating: "These regulated articles originated in an area free from pests as designated in 7 CFR 319.56–2(h) and, upon inspection, were found free of *Dysmicoccus neobrevipes* and *Planococcus minor.*"

(2) *Restricted importation and distribution.* (i) Prohibited entry into Puerto Rico, Virgin Islands, Hawaii, and Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within PR, VI, HI, or Guam."

(ii) Prohibited entry into Puerto Rico, Virgin Islands, and Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within PR, VI, or Guam."

(iii) Prohibited entry into Hawaii. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within HI."

(iv) Prohibited entry into Guam. Cartons in which commodity is packed must be stamped "Not for importation into or distribution within Guam."

(3) Commercial shipments only.

(4) *Stage of fruit.* (i) The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if:

(A) Bananas shipped by air are still green upon arrival in the United States; and

(B) Bananas shipped by sea are either still green upon arrival in the United States or yellow but firm.

(ii) The tomatoes must be green upon arrival in the United States. Pink or red fruit may only be imported in accordance with § 319.56–2dd of this subpart.

(5) *Other conditions.* (i) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the commodity is apparently free of *Acrolepiopsis assectella.*

(ii) Entry permitted only from September 15 to May 31, inclusive, to prevent the introduction of a complex of exotic pests including, but not limited to a thrips (*Haplothrips chinensis*) and a leafroller (*Capua tortrix*).

(iii) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is free from *Coccus moestus, C. viridis, Dysmicoccus neobrevipes, Planococcus lilacinus, P. minor,* and *Psedococcus landoi*; and all damaged fruit was removed from the shipment prior to export under the supervision of the NPPO.

(iv) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is free from *Planococcus minor.*

(v) Must be accompanied by a phytosanitary certificate issued by the NPPO of the country of origin with an additional declaration stating that the fruit is of the Malayan dwarf variety or Maypan variety (=F_1 hybrid, Malayan Dwarf×Panama Tall) (which are resistant to lethal yellowing disease) based on verification of the parent stock.

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

■ 4. Sections 319.56–2y and 319.56–2aa are revised and a new § 319.56–2ll is added to read as follows:

§ 319.56–2y Conditions governing the entry of melon and watermelon from certain countries in South America.

(a) *Cantaloupe and watermelon from Ecuador.* Cantaloupe (*Cucumis melo*) and watermelon (fruit) (*Citrullus lanatus*) may be imported into the United States from Ecuador only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe or watermelon may be imported in commercial shipments only.

(2) The cantaloupe or watermelon must have been grown in an area where trapping for the South American cucurbit fly (*Anastrepha grandis*) has been conducted for at least the previous 12 months by the national plant protection organization (NPPO) of Ecuador, under the direction of APHIS, with no findings of the pest.[7]

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar.

(4) The cantaloupe or watermelon may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe or watermelon is packed must be stamped with the name of the commodity followed by the words "Not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI".

(b) *Cantaloupe, honeydew melons, and watermelon from Brazil.* Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Brazil only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Brazil considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Brazil is considered free of the South American cucurbit fly: That portion of Brazil bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN–015

[7] Information on the trapping program may be obtained by writing to the Animal and Plant Health Inspection Service, International Services, Stop 3432, 1400 Independence Avenue SW., Washington, DC 20250–3432.

from Mossoro to the Ceara State line; and on the west by the Ceara State line to the Atlantic Ocean.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Brazil that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(c) *Cantaloupe, honeydew melons, and watermelon from Venezuela.* Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Venezuela only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Venezuela considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The following area in Venezuela is considered free of the South American cucurbit fly: The Paraguana Peninsula, located in the State of Falcon, bounded on the north and east by the Caribbean Ocean, on the south by the Gulf of Coro and an imaginary line dividing the autonomous districts of Falcon and Miranda, and on the west by the Gulf of Venezuela.

(ii) All shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued by the NPPO of Venezuela that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly.

(2) The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(3) All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

(d) *Cantaloupe, netted melon, vegetable melon, winter melon, and watermelon from Peru.* Cantaloupe, netted melon, vegetable melon, and winter melon (*Cucumis melo* L. subsp. *melo*); and watermelon may be imported into the United States from Peru only in accordance with this paragraph and all other applicable requirements of this subpart:

(1) The fruit may be imported in commercial shipments only.

(2) The fruit must have been grown in the area of Peru considered by APHIS to be free of the South American cucurbit fly in accordance with § 319.56–2(e)(4) of this subpart.

(i) The Departments of Lima, Ica, Arequipa, Moquegua, and Tacna in Peru are considered free of the South American cucurbit fly.

(ii) All shipments must be accompanied by a phytosanitary certificate issued by the NPPO of Peru that includes a declaration indicating that the fruit was grown in an area recognized to be free of the South American cucurbit fly, and upon inspection, was found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*).

(3) The fruit must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(4) All shipments of fruit must be labeled in accordance with § 319.56–2(g) of this subpart, and the boxes in which the fruit is packed must be labeled "Not for distribution in HI, PR, VI, or Guam."

(Approved by the Office of Management and Budget under control number 0579–0236)

§ 319.56–2aa Conditions governing the entry of watermelon, squash, cucumber, and oriental melon from the Republic of Korea.

Watermelon (*Citrullus lanatus*), squash (*Curcurbita maxima*), cucumber (*Cucumis sativus*), and oriental melon (*Cucumis melo*) may be imported into the United States from the Republic of Korea only in accordance with this paragraph and all other applicable requirements of this subpart:

(a) The fruit must be grown in pest-proof greenhouses registered with the Republic of Korea's national plant protection organization (NPPO).

(b) The NPPO must inspect and regularly monitor greenhouses for plant pests. The NPPO must inspect greenhouses and plants, including fruit, at intervals of no more than 2 weeks, from the time of fruit set until the end of harvest.

(c) The NPPO must set and maintain McPhail traps (or a similar type with a protein bait that has been approved for the pests of concern) in greenhouses from October 1 to April 30. The number of traps must be set as follows: Two traps for greenhouses smaller than 0.2 hectare in size; three traps for greenhouses 0.2 to 0.5 hectare; four traps for greenhouses over 0.5 hectare and up to 1.0 hectare; and for greenhouses greater than 1 hectare, traps must be placed at a rate of four traps per hectare.

(d) The NPPO must check all traps once every 2 weeks. If a single pumpkin fruit fly is captured, that greenhouse will lose its registration until trapping shows that the infestation has been eradicated.

(e) The fruit may be shipped only from December 1 through April 30.

(f) Each shipment must be accompanied by a phytosanitary certificate issued by NPPO, with the following additional declaration: "The regulated articles in this shipment were grown in registered greenhouses as specified by 7 CFR 319.56–2aa."

(g) Each shipment must be protected from pest infestation from harvest until export. Newly harvested fruit must be covered with insect-proof mesh or a plastic tarpaulin while moving to the packinghouse and awaiting packing. Fruit must be packed within 24 hours of harvesting, in an enclosed container or vehicle or in insect-proof cartons or cartons covered with insect-proof mesh or plastic tarpaulin, and then placed in containers for shipment. These safeguards must be intact when the shipment arrives at the port in the United States.

(Approved by the Office of Management and Budget under control number 0579–0236)

§ 319.56–2ll Conditions governing the entry of grapes from the Republic of Korea.

Grapes (*Vitis* spp.) may be imported into the United States from the Republic of Korea under the following conditions:

(a) The fields where the grapes are grown must be inspected during the growing season by the Republic of Korea's national plant protection organization (NPPO). The NPPO will inspect 250 grapevines per hectare, inspecting leaves, stems, and fruit of the vines.

(b) If evidence of *Conogethes punctiferalis, Eupoecilia ambiguella, Sparganothis pilleriana, Stathmopoda auriferella,* or *Monilinia fructigena* is detected during inspection, the field will immediately be rejected, and exports from that field will be canceled until visual inspection of the vines shows that the infestation has been eradicated.

(c) Fruit must be bagged from the time the fruit sets until harvest.

(d) Each shipment must be inspected by the NPPO before export. For each shipment, the NPPO must issue a phytosanitary certificate with an additional declaration stating that the fruit in the shipment was found free from *C. punctiferalis, E. ambiguella, S. pilleriana, S. auriferella, or M. fructigena, and Nippoptilia vitis.*

(Approved by the Office of Management and Budget under control number 0579–0236)

Done in Washington, DC, this 4th day of November 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–25042 Filed 11–9–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 04–24]

RIN 1557–AC82

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The OCC is also making a technical correction to resolve an error in the numbering of sections in part 19.

DATES: *Effective Date:* December 10, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, or Carolyn Amundson, Counsel, Enforcement and Compliance Division, (202) 874–4800, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Inflation Adjustment Act (Act), 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on December 11, 2000, 65 FR 77250, and became effective that same day.

The Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor.[1] *See* 28 U.S.C. 2461 note. In addition, the Act provides rules for rounding off increases,[2] and requires that any increase in a CMP apply only to violations that occur after the date of the adjustment. Finally, section 2 of the Debt Collection Improvement Act, 28 U.S.C. 2461 note, limited the initial adjustment of a CMP pursuant to the Act to 10 percent of the amount set by statute.

Description of the Final Rule

Inflation Adjustment

This final rule adjusts the amount for each type of CMP that the OCC has jurisdiction to impose in accordance with the statutory requirements by revising the table contained in subpart O of 12 CFR part 19. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation adjustment by comparing the CPI–U for June of the year in which the CMPs were last set or adjusted with the CPI–U for June of the calendar year preceding the adjustment. 28 U.S.C. 2461 note. For those CMPs that were adjusted in 2000, we compared the CPI–U for June 2003 (183.7) with the CPI–U for June 2000 (172.4). This resulted in an inflation adjustment of 6.6 percent. For those penalties that were last adjusted in 1997, we compared the CPI–U for June 1997 (160.3) to the CPI–U for June 2003 (183.7). This resulted in an inflation increase of 14.6 percent. The penalty for failure to require flood insurance or notify the borrower of lack of coverage, 42 U.S.C. 4012a(f)(5), has never been adjusted for inflation because of application of the rounding rules. For that penalty, we compared the CPI–U for June of the year of enactment, 1994[3] (148.0), with the CPI–U for June 2003 (183.7). This resulted in an inflation increase of 24.1 percent.

We multiplied the amount of each CMP by the appropriate percentage inflation adjustment and added that amount to the current penalty. We rounded the resulting dollar amount up or down according to the rounding requirements of the Act. In some cases, rounding resulted in no adjustment to the CMP. In the case of the flood insurance penalty, the increase was capped at 10 percent because this is the initial adjustment. The following table shows both the present CMPs and the inflation adjusted CMPs. The table published in § 19.240(a) is shorter and shows only the adjusted CMPs, not the calculations.

New § 19.240(b) states that the adjustments made in § 19.240(a) apply only to violations that occur after the effective date of this final rule.

The OCC will readjust these amounts in 2008 and every four years thereafter, assuming there are no further changes to the mandate imposed by the Act.

[1] The Department of Labor computes the CPI–U using two different base time periods, 1967 and 1982–1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI–U with 1982–84 as the base period.

[2] The Act's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. *See* 28 U.S.C. 2461 note.

[3] *See* Riegle Community Development and Regulatory Improvement Act of 1994 (RDCRIA), Pub. L. 103–325, Title V, section 525, 108 Stat. 2260.

U.S. Code citation	Description	Maximum penalty (in dollars)	Percentage increase	Amount of increase (in dollars)	Amount of increase—rounded (in dollars)	Adjusted maximum penalty (in dollars)
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F).	Tier 1	5,500	14.6	803	1,000	6,500
	Tier 2	27,500	14.6	4,015	5,000	32,500
	Tier 3	1,175,000	6.6	77,550	75,000	1,250,000
12 U.S.C. 164 and 3110(c)	Tier 1	2,200	6.6	145	0	2,200
	Tier 2	22,000	14.6	3,212	5,000	27,000
	Tier 3	1,175,000	6.6	77,550	75,000	1,250,000
12 U.S.C. 1832(c) and 3909(d)(1).		1,100	14.6	161	0	1,100
12 U.S.C. 1884		110	14.6	16	0	110
12 U.S.C. 3110(a)		27,500	14.6	4,015	5,000	32,500
15 U.S.C. 78u–2(b)	Tier 1 (natural person)	5,500	14.6	803	1,000	6,500
	Tier 1 (other person)	60,000	6.6	3,900	5,000	65,000
	Tier 2 (natural person)	60,000	6.6	3,900	5,000	65,000
	Tier 2 (other person)	300,000	6.6	19,800	25,000	325,000
	Tier 3 (natural person)	120,000	6.6	7,920	10,000	130,000
	Tier 3 (other person)	575,000	6.6	37,950	50,000	625,000
42 U.S.C. 4012a(f)(5)	Per violation	350	24.1	84	35	385
	Per year	115,000	6.6	7,475	10,000	125,000

Technical Correction

The OCC also is amending 12 CFR 19.240 to make a technical correction. When we issued subpart P (pertaining to the removal, suspension, and debarment of accountants from performing audit services) (68 FR 48265, Aug. 13, 2003), we inadvertently assigned a number—§ 19.241—that already appears in Subpart O. To correct this numbering overlap, the final rule amends subpart O by combining §§ 19.240 (prescribing the inflation-adjusted CMP amounts) and 19.241 (specifying when the inflation-adjusted CMP amounts apply) into § 19.240 and removes § 19.241 from subpart O. Revised § 19.240 is divided into paragraphs (a) and (b). Former § 19.240 becomes paragraph (a) and former § 19.241 becomes paragraph (b). Section 19.241 in subpart P is unchanged.

Procedural Issues

1. Notice and Comment Procedure

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC, accordingly, cannot vary the amount of the adjustment to reflect any views or suggestions provided by commenters. In addition, combining §§ 19.240 and 19.241 is technical in nature. Therefore, notice and comment are unnecessary and delay in the form of notice and comment procedure is contrary to the public interest. Accordingly, good cause exists to dispense with this procedure.

2. Delayed Effective Date

The RCDRIA requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. *See* 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). *See* 5 U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

Authority and Issuance

■ For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 2. Section 19.241 of subpart O is removed.

■ 3. Section 19.240 of subpart O is revised to read as follows:

§ 19.240 Inflation adjustments.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. Code citation	Description	Maximum penalty (in Dollars)
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F)	Tier 1	6,500
	Tier 2	32,500
	Tier 3	1,250,000
12 U.S.C. 164 and 3110(c)	Tier 1	2,200
	Tier 2	27,000
	Tier 3	1.250,000
12 U.S.C. 1832(c) and 3909(d)(1)		1,100
12 U.S.C. 1884		110
12 U.S.C. 3110(a)		32,500
15 U.S.C. 78u–2(b)	Tier 1 (natural person)	6,500
	Tier 1 (other person)	65,000
	Tier 2 (natural person)	65,000
	Tier 2 (other person)	325,000
	Tier 3 (natural person)	130,000
	Tier 3 (other person)	625,000
42 U.S.C. 4012a(f)(5)	Per violation	385
	Per year	125,000

(b) The adjustments in § 19.240(a) apply to violations that occur after December 10, 2004.

Dated: November 3, 2004.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 04–24974 Filed 11–9–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18821; Airspace Docket No. 04–ACE–47]

Modification of Class E Airspace; St. Francis, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at St. Francis, KS.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 24, 2004 (69 FR 57170). The **Federal Register** subsequently published a correction to the direct final rule on October 4, 2004 (69 FR 59303). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 28, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–24976 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18820; Airspace Docket No. 04–ACE–46]

Modification of Class E Airspace; Kennett, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Kennett, MO.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 28, 2004 (69 FR 57839). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 28, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–24975 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[R05–OAR–2004–WI–0001; FRL–7829–4]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to Wisconsin's State Implementation Plan (SIP) regarding the control of nitrogen oxide (NO_X) emissions submitted on May 25,2004. On August 29, 2003, the EPA published a final rulemaking approving the emission averaging program for existing sources subject to the state's rule limiting NO_X emissions in southeast Wisconsin. The SIP revisions modify language to clarify which sources are eligible to participate in the NO_X emission averaging program. In addition, the revision creates a separate categorical emission limit for new combustion turbines burning biologically derived gaseous fuels.

DATES: This "direct final" rule is effective on January 10, 2005 unless EPA receives adverse written comments by December 10, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket ID No. R05–OAR–2004–WI–0001, by one of the following methods:

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

Agency Web site: http://docket.epa.gov/rmepub/index.jsp material in Edocket (RME), EPA's electronic public docket and connect system, is EPA's preferred method for receiving comments. Once in the system, select "quick search" then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation, which are Monday through Friday, 8:30 a.m. to 4:30 p.m.excluding Federal holidays.

Instructions: Direct your comments to Regional Materials in Edocket (RME) ID No. R05–OAR–2004–WI–0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information of which the disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in Edocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) 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 of which the disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.) This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031. *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is rulemaking on two revisions to the Wisconsin SIP for the control of NO_X emissions from stationary sources as required by State rule NR 428. The rule applies to existing sources in eight of the counties in the Milwaukee-Racine area (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties), and to new sources in six of the eight counties (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha).

One revision modifies language to clarify which units are eligible for demonstrating compliance through emissions averaging. The emissions averaging provisions apply only to existing electric utility boilers in the Milwaukee-Racine ozone nonattainment area (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties). The second revision creates a new NO_X categorical limit for newly installed combustion turbines burning biologically derived gaseous fuel. Sources affected by the new categorical NO_X limit are landfill operations, wastewater treatment plants and digester facilities specifically designed to generate gaseous fuel. The new NO_X categorical limit for newly installed combustion turbines burning biologically derived fuel applies only to new sources located in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties in southeastern Wisconsin. The revisions have been adopted into the state administrative code and became effective on January 1, 2004.

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

1. The Regional Office has established an official public rulemaking file for this action that is available both electronically and in hard copy form at the Regional office. The electronic public rulemaking file can be found under Regional Material in Edocket

(RME) ID No. R05–OAR–2004–WI–0001. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The hard copy version of the official public rulemaking file is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov*, where you can find, review, and submit comments on federal rules that have been published in the **Federal Register**, the government's legal newspaper, and are open for comment.

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 at the EPA Regional Office in the format that EPA receives them, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

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 rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 in Regional Material in Edocket "R05–OAR–2004–WI–0001" 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.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule, which is published in the Proposed Rules section of this **Federal Register**.

II. What Action Is EPA Taking Today?

EPA is approving, as part of the Wisconsin ozone SIP, certain sections of Wisconsin rule NR 428, Control of Nitrogen Oxide Emissions. These revisions refer to the addition of language to clarify which sources are eligible to participate in the emissions averaging program.

In addition EPA is approving language that creates a separate categorical emission limit for new combustion turbines burning biologically derived gaseous fuel.

Clarification of Emissions Averaging Eligible Sources

The current version of NR 428 contained in the SIP allows utilities to demonstrate compliance with NO_X emission limitations by averaging emissions over multiple units. The rule defines eligible units through the combination of two provisions. NR 428.06(2)(a), the introduction to the averaging program, specifies that a unit must be subject to emission limitations for existing units under NR 428.03. NR 428.06(2)(e)3 specifies that, to be eligible for the averaging program a unit must be allotted a portion of the total 15,912 tons of NO_X emissions allocated by the department based on fuel consumption for 1995 through 1997. This mass of NO_X emissions is the quantity determined by the Wisconsin Department of Natural Resources for electric utility units with emission limitations under NR 428.03 and which have operated in the ozone nonattainment area during the 1995 to 1997 time frame. Through these two provisions the affected sources are defined as 17 units at five facilities in the nonattainment area, owned by We-Energies, Alliant Energy, and Wisconsin Public Service.

Section NR 428.06(2)(a) is amended to specify that an eligible unit must be subject to the emission limitations for utility boilers under NR 428.03(a). The amendment eliminates the need to reference two provisions in determining eligible sources.

Eligible sources must still receive a proportion of the total 15,912 tons of NO_X emissions as stated under the NR 428.06(2)(e)3. This revision does not change the population of the sources currently eligible under the existing SIP.

Categorical NO_X Emission Limit for Newly Installed Combustion Turbines Fired With Biologically Derived Gaseous Fuel

In this SIP revision, EPA is also approving a new categorical NO_X emission limit for newly installed combustion turbines burning biologically derived gaseous fuel. This section of the rule applies to new sources installed after January 1, 2004, in six of the eight counties of the Milwaukee-Racine ozone nonattainment area: Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha.

The Wisconsin Department of Natural Resources (DNR) created this new categorical NO_X emission limit because sources looking to install new combustion turbines would not be able to comply with the limit for natural gas-fired units that would otherwise apply under the provision of NR 428.04(2)(g)(1)(c). Currently, a newly installed simple cycle combustion turbine with a maximum design output less than 40 megawatts and burning biologically derived gaseous fuel is subject to the SIP emission limitation of 25 parts per million (ppmdv) of NO_X at 15 percent oxygen under NR 428.04(2)(g)(1)(c), which was established for burning any type of "gaseous fuel". In the original development of NR 428, the Wisconsin DNR anticipated biologically derived gaseous fuels being combusted in reciprocating engines and not in a combustion turbine. Therefore, biologically derived gaseous fuels were not addressed in establishing the combustion turbine emission limit of 25 ppmdv of NO_X at 15 percent oxygen. Instead, the emission limit was established based solely on the combustion of fossil gaseous fuels such as natural gas or propane.

The Wisconsin DNR has determined that a separate categorical standard of 35 ppmdv at 15 percent oxygen is appropriate for a combustion turbine burning landfill gas or any other biologically derived fuel. Comparable alternatives of controlling emissions from sources that generate biologically derived gaseous fuel, as currently allowed under the SIP, are likely to result in greater NO_X emissions than the combustion turbine. Landfills and wastewater digester plants generate biologically derived gaseous fuel as a by-product. Instead of destroying the gas

by flaring, these facilities prefer to generate electricity to drive their pumping and gas collection systems. The units capable of burning the biologically derived gaseous fuel and generating electricity are either a combustion turbine or spark ignition reciprocating engine. However, the actual NO_X emission rate of the reciprocation engine is significantly higher than the new categorical limit of the combustion turbine.

The use of a combustion turbine's higher energy efficiency and lower overall emissions potentially results in further environmental benefit. First, the turbine generates energy more efficiently than a reciprocating engine or power boiler burning biologically derived fuel. Second, the additional generated electricity for the same unit of fuel can potentially offset emissions from traditional electricity sources. (*e.g.* coal-fired utility plants).

Therefore, the Wisconsin DNR has concluded that implementation of a separate categorical limit is necessary for the continued or increased use of combustion turbines firing biologically derived gaseous fuel. In addition, this action is likely to result in lower NO_X emissions than originally allowed in the ozone attainment demonstration submitted to EPA in December, 2000. *See* 66 FR 56931, November 13, 2001. The new categorical NO_X limit is expressed for both a simple cycle and combined cycle combustion turbine configuration.

The limit is placed in the section of NO_X emission limits for combustion turbines under provision NR 428.04(2)(g)4 as follows.

NR 428.04(2)(g)4. 'Units fired by a biologically derived gaseous fuel.' No person may cause, allow or permit nitrogen oxides to be emitted from a biologically derived gaseous fuel fired combustion turbine in amounts greater than those specified in this subdivision.

a. 35 parts per million dry volume (ppmdv), corrected to 15% oxygen, on a 30-day rolling average basis for a simple cycle combustion turbine.

b. 35 parts per million dry volume (ppmdv), corrected to 15% oxygen, on a 30-day rolling average basis for a combined cycle combustion turbine.

With the creation of the new categorical emission limit, this revision amends the introductory language under provision NR 428.04(2)(g)(1), to acknowledge that combustion turbines only burning biologically derived gaseous fuel are not subject to the more stringent general emission limitations for burning any type of "gaseous fuels". The amended language references the newly created subparagraph 4 and reads:

NR 428.04(2)(g)1. (intro.) 'Gaseous fuel-fired units.' Except as provided in subds. 3. and 4., no person may cause, allow or permit nitrogen oxides to be emitted from a gaseous fuel-fired combustion turbine in amounts greater than those specified in this subdivision.

Biologically derived gaseous fuel is defined under the newly created provision NR 428.02(1). The current provision of NR 428.02(1) is renumbered to NR 428.02(2). The newly created definition is as follows:

NR 428.02(1) "Biologically derived gaseous fuel" means a gaseous fuel resulting from biological processing of a carbon-based feedstock.

Units subject to the new categorical limit for combustion turbines burning biologically derived gaseous fuel must meet the same compliance, monitoring, and reporting requirements established for all other new sources. These requirements have already been determined appropriate for combustion turbines and approved by EPA in the Wisconsin SIP.

EPA's review of the revisions to Wisconsin's SIP regarding the control of NO_X emissions is contained in a technical support document available from EPA Region 5, according to previously described procedures in "Section I.B." of this notice.

III. Why Is the Request Approvable?

EPA has concluded that the modification to Wisconsin's NO_X SIP to clarify those units eligible for demonstrating compliance through emission averaging does not change the population of sources currently eligible under the existing SIP. The approval of the new categorical NO_X emission limit will have no negative impact on the Wisconsin one-hour ozone attainment demonstration SIP. The new categorical standard will not result in any increase in overall NO_X emissions. To the contrary, this action is anticipated to reduce NO_X emission levels on a source-by-source basis below those allowed by the December 2000 SIP. The comparable alternative for burning biologically derived fuel is a spark ignition reciprocating engine with a higher NO_X emission rate than the new categorical standard for combustion turbines. In addition, there is a general environmental benefit due to the use of combustion turbines, in most cases, generating energy (electricity and steam) more efficiently than reciprocating engines or power boilers.

IV. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 10, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone.

Dated: October 8, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(111)to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(111) On May 25, 2004, Lloyd L. Eagan, Director, Wisconsin Department of Natural Resources, submitted a revision to its rule for control of nitrogen oxide emissions as a requested revision to the Wisconsin State Implementation Plan. The revision modifies language to clarify which sources are eligible to participate in the NO_X emission averaging program to demonstrate compliance as part of the one-hour ozone attainment plan approved by EPA for the Milwaukee-Racine ozone nonattainment area (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties). The rule revision also creates a separate categorical emission limit for new combustion turbines burning biologically derived gaseous fuels. The new NO_X categorical limit for newly installed combustion turbines burning biologically derived fuel applies only to new sources located in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties in southeastern Wisconsin.

(i) Incorporation by reference.

(A) NR 428.02(1)and (1m); NR 428.04(2)(g)(1); NR 428.04(2)(g)(4); and NR 428.06(2)(a) as published in the (Wisconsin) Register, December 2003, No.576 and effective January 1, 2004.

[FR Doc. 04–24914 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0329; FRL–7684–2]

Hexythiazox; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on field corn grain, stover, and fodder. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on field corn. This regulation establishes maximum permissible levels for residues of hexythiazox in these food commodities. The tolerances will expire and are revoked on December 31, 2007.

DATES: This regulation is effective November 10, 2004. Objections and requests for hearings must be received on or before January 10, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0329. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St.,

Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *sec-18-mailbox@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 at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on corn, field, grain at 0.05 ppm; corn, field, forage at 2.0 ppm; and corn, field, stover at 2.0 ppm. These tolerances will expire and are revoked on December 31, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Hexythiazox on Corn and FFDCA Tolerances

The applicant stated that the development of resistance in spider mite populations to the standard acaricide used to control mites has created an urgent and non-routine situation. EPA has authorized under FIFRA section 18 the use of hexythiazox on corn for control of Banks grass mite and two-spotted spider mite in Texas. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of hexythiazox in or on field corn grain, stover, and fodder. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on field corn grain, stover, and fodder after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether hexythiazox meets EPA's registration requirements for use on corn or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of hexythiazox by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Texas to use this pesticide on this crop under section 18 of FIFRA without following all

provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for hexythiazox, contact the Agency's Registration Division at the address provided under FOR FURTHER INFORMATION CONTACT.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of hexythiazox and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on corn, field, grain at 0.05 ppm; corn, field, forage at 2.0 ppm; and corn, field, stover at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no observed adverse effect level (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the lowest observed adverse effect level (LOAEL)) is sometimes used for risk assessment if NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HEXYTHIAZOX FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute dietary females (13-50 years of age)	Developmental NOAEL = 240 mg/kg/day UF = 100 Acute RfD = 2.4 mg/kg/day	FQPA SF = 1X aPAD= acute RfD/FQPA SF = 2.4 mg/kg/day	Developmental toxicity study - rat Developmental LOAEL = 720 mg/kg/day based on delayed ossification
Acute dietary (general population including infants and children)	A dose and endpoint attributable to a single exposure were not identified from the available oral toxicity studies, including maternal toxicity in the developmental toxicity studies.		
Chronic dietary (all populations)	NOAEL= 2.5 mg/kg/day UF = 100 chronic RfD= 0.025 mg/kg/day	FQPA SF = 1X cPAD= chronic RfD/FQPA SF = 0.025 mg/kg/day	One–Year toxicity feeding study - dog LOAEL = 12.5 mg/kg/day based on increased absolute and relative adrenal weights and associated adrenal histopathology
Cancer (oral, dermal, inhalation)	Category C (possible human carcinogen)	Q1* = 2.22 x 10^{-2}	Increases in incidence of malignant and combined benign/malignant liver tumors in mice

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.448) for the combined of hexythiazox, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from hexythiazox in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996, and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. Published and proposed tolerance level residues were used. Default and specially assigned processing factors were assumed for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996, and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Partially refined, deterministic assessment using tolerance-level residue or anticipated residues, average weighted percent crop treated (% CT) information and modified DEEM™ (version 2.0) processing factors for some commodities based on guideline processing studies.

iii. *Cancer.* The Agency believes that pesticidal use of hexythiazox is likely to pose a carcinogenic hazard to humans. Thus, a cancer dietary risk assessment is required. Hexythiazox was classified by the Agency as a "Group C" - possible human carcinogen-chemical. It has been assigned a $Q1^* = 2.22 \times 10^{-2}$ milligrams/kilogram/day (mg/kg/day) for purposes of risk assessment. The estimated exposure of the U.S. population (total) to hexythiazox is 3.0 x 10–5 mg/kg/day.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Almond nutmeat, 2%; pecans, <1%; other nutmeat, <1%; almond hulls, 2%; apricots, 2%; cherries, <1%; peaches, 1%; nectarines, 2%; plum, 1%; plum, prune, fresh, <1%; plum, prune, dried, <1%; caneberry crop subgroup, 15%; spearmint tops, 5%; peppermint, tops, 5%; undelinted cottonseed, 1%; cottonseed meal, 1%; refined cottonseed oil, 1%; apples, 4%; apple juice, 4%; wet apple pomace, 4%; pears, 3%; hops, 45%; dates, 45%; strawberries, 14%.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which hexythiazox may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for hexythiazox in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of hexythiazox.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous

pond scenario. The PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to hexythiazox, they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models, the EECs of hexythiazox for acute exposures are estimated to be 1.81 parts per billion (ppb) for surface water and 0.009 ppb for ground water. The EECs for chronic exposures are estimated to be 0.91 ppb for surface water and 0.009 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Hexythiazox is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether hexythiazox has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that hexythiazox has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*—a. *rats.* In the rat developmental study, the maternal (systemic) NOEL was 240 mg/kg/day. The maternal LOEL of 720 mg/kg/day was based on decreased food consumption and decreased body weight. The developmental (fetal) NOEL was 240 mg/kg/day. The developmental LOEL was based on slight delayed ossification.

b. *Rabbits.* In the rabbit developmental toxicity study, the maternal (systemic) NOEL was 1,080 mg/kg/day at the highest dose tested (HDT). The developmental (fetal) NOEL was 1,080 mg/kg/day at the HDT.

3. *Reproductive toxicity study—rats.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 20 mg/kg/day. The LOEL of 120 mg/kg/day was based on decreased body weight and decreased food consumption. The developmental NOEL was 20 mg/kg/day. The developmental LOEL of 120 mg/kg/day was based on decreased body weight and delayed maturation. The reproductive NOEL was 120 mg/kg/day at the HDT.

4. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology data base for hexythiazox is complete with respect to current toxicological data requirements. There are no prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study. In the developmental study in rats, the developmental NOEL and LOEL is the same as the maternal NOEL and LOEL demonstrating that no extra-sensitivity for infants and children is present. In rabbits, there are no maternal or developmental effects up to the limit dose of 1,080 mg/kg/day HDT. In the 2-generation reproductive toxicity study in rats, there are no pup effects at doses below maternal effects and the common effects in both pups and parental animals decreased body weight also demonstrates that there is no extra-sensitivity for infants and children.

5. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor and that the 10x FQPA safety factor be removed since the hazard and exposure assessments do not indicate a concern for potential risk to infants and children.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be

taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to hexythiazox in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of hexythiazox on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to hexythiazox will occupy 0.12 of the aPAD for females 13–49 years old, the population sub-group of concern. In addition, despite the potential for acute dietary exposure to hexythiazox in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of hexythiazox in surfacewater and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HEXYTHIAZOX

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13-49 years old)	2.4	0.12	1.81	0.009	72,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to hexythiazox from food will utilize 0.1% of the cPAD for the U.S. population, 0.2% of the cPAD for all infants, and 0.4% of the cPAD for children 1–5 years old. There are no residential uses for hexythiazox that result in chronic residential exposure to hexythiazox. In addition, despite the potential for chronic dietary exposure to hexythiazox in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of hexythiazox in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HEXYTHIAZOX

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
General U.S. population	0.025	0.1	0.910	0.009	870
All Infants (< 1 year old)	0.025	0.2	0.910	0.009	250
Children (1-2 years old)	0.025	0.4	0.910	0.009	250
Females (13-49 years old)	0.025	0.1	0.910	0.009	750
Youth (13-19 years old)	0.025	0.1	0.910	0.009	750
Adults (20-49 years old)	0.025	0.1	0.910	0.009	870

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Hexythiazox is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Hexythiazox is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Chronic (cancer) aggregate risk estimates are below the Agency's level of concern. A partially refined analysis was performed using anticipated residue levels for most crops, processing factors where applicable, and PCT or anticipated market share information for all crops. The chronic cancer analysis applied to the U.S. population only. The carcinogenic risk estimate (food only) for the general U.S. population was 6.6 x 10^{-7}. The Agency's level of concern is for risks that exceed 1 x 10^{-6}. Thus, the estimated dietary cancer risk to the U.S. population associated with the existing and pending uses is below the level the Agency generally considers negligible for excess lifetime cancer risk.

The surface water and ground water EECs were used to compare against back-calculated DWLOCs for aggregate risk assessments. For the carcinogenic risk scenario, the DWLOC is 3.675 ppb for the U.S population. For ground water and surface water, the EECs for hexythiazox are less than EPA's DWLOCs for hexythiazox in drinking water as a contribution to carcinogenic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of hexythiazox in drinking water do not contribute significantly to

the carcinogenic aggregate human-health risk at the present time.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to hexythiazox residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no international residues limits for hexythiazox on field corn, and therefore, this is not an issue.

VI. Conclusion

Therefore, the tolerances are established for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in or on corn, field, grain at 0.05 ppm; corn, field, forage at 2.0 ppm; and corn, field, stover at 2.0 ppm.

VII. 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 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 identification (ID) number OPP–2004–0329 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 January 10, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual 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 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *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 VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number OPP–2004–0329, 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).

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. 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: October 27, 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.

■ 2. Section 180.448 is amended by adding text to paragraph (b) to read as follows:

§ 180.448 Hexythiazox; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the insecticide hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Corn, field, grain	0.05 ppm	12/31/07
Corn, field, forage	2.0 ppm	12/31/07
Corn, field, stover	2.0 ppm	12/31/07

* * * * *

[FR Doc. 04–24926 Filed 11–9–04; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0323; FRL–7683–9]

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of glyphosate, N-(phosphonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on cotton, gin byproducts and cotton, undelinted seed. Monsanto Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective November 10, 2004. Objections and requests for hearings must be received on or before January 10, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0323. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: James A.Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@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), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at*http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of August 18, 2004 (69 FR 51301) (FRL–7364–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 0F6195, 1F6274, 2F6487, and 3F6570) by Monsanto Company, 600 13th St., NW., Suite 660, Washington, DC 20005. The petition requested that 40 CFR 180.364 be amended by establishing a tolerance for residues of the herbicide glyphosate, N-(phosphonomethyl)glycine, in or on alfalfa seed at 0.5 parts per million (ppm) (PP 2F6487); increasing the current tolerance for cotton, gin byproducts from 100 ppm to 150 ppm (PP 3F6570); rice, bran at 30 ppm; rice, grain at 15 ppm; and rice, hulls at 25 ppm (PP 1F6274); wheat, forage at 10.0 ppm; wheat, hay at 10.0 ppm (PP 0F6195). Monsanto Company also proposed to revise the entry for grain, cereal group tolerance "except rice" to read as grain, cereal group 15 except barley, field corn, grain sorghum, oats, rice, and wheat at 0.1 ppm (PP 1F6274). Monsanto Company also amended PP 0F6195 to delete the proposal for wheat grain at 6 ppm that was announced in the **Federal Register** of April 17, 2002 (67 FR 18894) (FRL–6830–5). The notice stated that tolerances for alfalfa, rice, wheat, and cotton gin byproducts include both conventional and genetically altered crops.

The notice also proposed that the tolerances for alfalfa, forage at 175 ppm and alfalfa, hay at 400 ppm be deleted from § 180.364. Also proposed was to amend § 180.364 by replacing the current listing vegetable, legume, group 6 except soybean at 5.0 ppm with the current crop group pea and bean, dried and shelled, subgroup 6C at 5.0 ppm. That notice included a summary of the petition prepared by Monsanto Company, the registrant. One comment was received in response to the notice of filing from B. Sachau, 15 Elm St., Florham Park, NJ 07932. The commenter objected to allowing any tolerance, wavier, or exemption for glyphosate. The commenter also objected to animal testing and stated that a more reliable method of testing should be developed. This comment is discussed further in Unit V.

During the course of the review the Agency decided to correct the company address to read Monsanto Company, 1300 I St., NW., Suite 450 East, Washington, DC 20005. The Agency also determined the tolerance proposed for cotton, gin byproducts should be raised to 175 ppm and that the current tolerance for cotton, undelinted seed be increased to 35 ppm.

The Agency has determined that based on available data, the current tolerances for alfalfa, forage and alfalfa, hay are to be maintained and that the current listing for vegetable, legume,

group 6 except soybean at 5 ppm is correct; therefore, these proposed changes are not made at this time. Also, even though the proposed tolerances for alfalfa, seed; rice, bran; rice, grain; rice, hulls; wheat, forage; and wheat, hay are included in the risk assessment discussed in Units III.C., D., and E., these tolerances are not being issued at this time.

The Agency is also correcting the proposed tolerance expression to agree with the current tolerance expression by including references to the salts. Therefore, the tolerance expression is corrected to read: Tolerances are established for residues of glyphosate, N-(phosophonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on cotton, gin byproducts at 175 ppm and cotton, undelinted seed at 35 ppm.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of glyphosate, N-(phosophonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate on cotton, gin byproducts at 175 ppm and cotton, undelinted seed at 35 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by glyphosate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of September 27, 2002 (67 FR 60934) (FRL–7200–2).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or UFs may be used: "Traditional uncertainty factors;" the "special FQPA safety factor;" and the "default FQPA safety factor." By the term "traditional uncertainty factor," EPA is referring to those additional UFs used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term "special FQPA safety factor" refers to those safety factors that are deemed necessary for the protection of infants and children, primarily as a result of the FQPA. The "default FQPA safety factor" is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for glyphosate used for human risk assessment is discussed in

Unit V.B. of the final rule published in the **Federal Register** of September 27, 2002 (67 FR 60934) (FRL–7200–2).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.364) for the residues of glyphosate, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

A review of the toxicity database, including developmental toxicity studies in rats and rabbits, did not provide an endpoint that could be used to quantitate risk to the general population and to females 13–50 years old from a single-dose administration of glyphosate. Therefore, no acute dietary analysis was conducted for glyphosate.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues, DEEM default factors and 100% crop treated. PCT and/or anticipated residues were not used.

iii. *Cancer.* Glyphosate is classified as a Group E chemical, negative for carcinogenicity in humans, based on the absence of carcinogenicity in male and female rats as well as male and female mice.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for glyphosate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of glyphosate.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration and Ground Water (SCI-GROW) model, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water in quantitative risk assessments. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to glyphosate they are further discussed in the aggregate risk sections, Unit III.E.

Based on the GENEEC, and SCI-GROW models, the EECs of glyphosate for acute exposures are estimated to be 21.0 parts per billion (ppb) for surface water and 0.0038 ppb for ground water. The EECs for chronic exposures are estimated to be 0.83 ppb for surface water. The EEC resulting from the registered use of direct glyphosate application to surface water is 230 ppb. Because the glyphosate water-application estimate is greater than the crop-application estimate, 230 ppb is the appropriate value to use in the chronic risk assessment. The EEC for chronic exposure in ground water is 0.0038 ppb.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

i. *Non-occupational (recreational) exposures.* Glyphosate is currently registered for use on the following residential non-dietary sites: Recreational areas, including parks and golf courses for control of broadleaf weeds and grasses, and lakes and pond, including reservoirs for control of nuisance aquatic weeds. Based on the registered uses, adult and child golfers are anticipated to have short-term post-application dermal exposure at golf courses. Swimmers (adults, children, and toddlers) are anticipated to have short-term post-application dermal and incidental ingestion exposures. However, since the Agency did not select dermal endpoints, no post-application dermal assessment was performed.

A post-application incidental ingestion exposure assessment for swimmers was performed. This assessment assumed 100% of applied concentration available at maximum application rate in the top one foot of water column; an ingestion rate of 0.05 Liter/hour (L/hr), and an exposure duration of 5 hrs/day (although a toddler is unlikely to be exposed for 5 hrs/day). Adult and toddler swimmers were included in this assessment as they are anticipated to represent the upper and lower bound of swimmer exposures. The respective body weights are 60 kilogram (kg) for adult-females (since NOAEL is based on developmental study) and 15 kg for toddlers. This exposure assessment is fully discussed in Unit V.C. of the final rule published in the **Federal Register** of September 27, 2002 (67 FR 60934) (FRL–7200–2). MOEs for incidental exposure for incidental ingestion by swimmers were 7,600 for toddler and to 36,000 for adult females and therefore, do not exceed the Agency's level of concern (LOC) for short-term non-occupational (recreational) exposures (MOEs of less than 100).

ii. *Residential exposures.* Glyphosate is also registered for broadcast and spot treatments on home lawns and gardens by homeowners and by lawn care operators (LCOs). Based on the registered residential use pattern, there is a potential for short-term dermal and inhalation exposures to homeowners who apply products containing

glyphosate (residential handlers). Additionally, based on the results of the environmental fate studies, there is a potential for incidental ingestion by toddlers. However, since the Agency did not select short- or intermediate-term dermal or inhalation endpoints, no residential handler or post-application dermal assessment was performed.

A post-application toddler assessment for incidental ingestion exposure assessment was performed. The *SOPs For Residential Exposure Assessments*, Draft, 17-DEC-1997 and Exposure Science Advisory Committee (ExpoSAC) Policy No. 11, 22-FEB-2001: *Recommended Revisions to the SOPs for Residential Exposure* were used to estimate post-application incidental ingestion exposures and risk estimates for toddlers. The following assumptions were used to assess exposures to toddlers after contact with treated lawns: Toddler body weight of 15 kg; toddler hand-surface area is 20 centimeter squared $(cm)^2$, and a toddler performs 20 hand-to-mouth events per hr for short-term exposures; exposure duration of 2 hrs per day; 5% of application rate represents fraction of glyphosate available for transfer to hands and a 50% saliva extraction factor for hand-to-mouth exposures; surface area of a object (for toddler object-to-mouth exposures; surface area of an object (for toddler object-to-mouth exposures) is approximately 25 cm^2; 20% of application rate available as dislodgeable residues for object-to-mouth exposures; 100% of application rate is avaible in the top 1 cm of soil for soil ingestion exposures; and that a toddler can ingest 100 milligram (mg) soil/day. This risk assessment is fully discussed in Unit V.C. of the final rule published in the **Federal Register** of September 27, 2002 (67 FR 60934) (FRL–7200–2). MOEs for toddler post-application incidental ingestion exposures were 7,200 for hand-to-mouth, 29,000 for object-to-mouth and greater than 10^6 for soil ingestion, and therefore, do not exceed the Agency's level of concern for residential exposures (MOEs) less than 100.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to glyphosate and any other substances and glyphosate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glyphosate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Based on the acceptable developmental studies, the Agency has determined that there is no evidence of either a quantitative or qualitative increased susceptibility following *in utero* glyphosate exposure to rats or rabbits, or following prenatal/postnatal exposure in the 2-generation reproduction study in rats.

3. *Conclusion.* There is a complete toxicity database for glyphosate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The impact of glyphosate on the nervous system has not been specifically evaluated in neurotoxicity studies. However, there was no evidence of neurotoxicity seen in either acute, subchronic, chronic, or reproductive studies. and there are no concerns for potential developmental neurotoxicity. Therefore, neurotoxicity studies are not required for glyphosate. EPA determined that the 10X SF to protect infants and children should be removed. The FQPA factor is removed because the toxicology database is complete; a developmental neurotoxicity study is not required; there is no evidence of quantitative or qualitative increased susceptibility of the young demonstrated in the prenatal developmental studies in rats or rabbits and pre-/postnatal reproduction study in rats; and the dietary (food and drinking water) exposure assessments will not underestimate the potential exposure for infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of

exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Glyphosate is not expected to pose an acute risk because no toxicological endpoints attributable to a single exposure (dose), including maternal toxicity in developmental toxicity studies, were identified in the available data.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to glyphosate from food will utilize 2.2% of the cPAD for the U.S. population, 3.9% of the cPAD for all infants < 1 year old, and 5.4% of the cPAD for children 1–2 years old. Based the use pattern, chronic residential exposure to residues of glyphosate is not expected. In addition, there is potential for chronic dietary exposure to glyphosate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO GLYPHOSATE

Population subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	1.75	2.2	230	0.0038	60,000
All infants < 1 year old	1.75	3.9	230	0.0038	16,800
Children 1–2 years old	1.75	5.4	230	0.0038	16,600
Females 13–49 years old	1.75	1.7	230	0.0038	51,600
Youth 13–19 years old	1.75	2.1	230	0.0038	51,400
Adults 20–49 years old	1.75	1.9	230	0.0038	60,100

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Glyphosate is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for glyphosate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,800 for all infants < 1 year old, 1,500 for children 1–6 years old, and 2000 for children 7–12 years old. Because the incidental oral ingestion exposure estimates for toddlers from residential turf exposures exceeded the incidental oral exposure from post-application swimmer exposures, the Agency conducted this risk assessment using exposure estimates from the worst case situation. No attempt was made to combine exposures from swimmer and residential turf scenarios due to the low probability of both occurring. See Tables 5 and 6 from the final rule published in the **Federal Register** of September 27, 2002 (67 FR 60934) (FRL–7200–2) for detailed discussion. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of glyphosate in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO GLYPHOSATE

Population subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
All infants < 1 year old	1,800	100	230	0.0038	16,500
Children 1–6 years old	1,500	100	230	0.0038	16,300
Children 7–12 years old	2,000	100	230	0.0038	16,600

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Glyphosate is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for glyphosate.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,800 for all infants < 1 year old, 1,500 for children 1–6 years old, and 2,000 for

children 7–12 years old. Because the incidental oral ingestion exposure estimates for toddlers from residential turf exposures exceeded the incidental oral exposure from post-application swimmer exposures, the Agency conducted this risk assessment using exposure estimates from the worst case situation. No attempt was made to combine exposures from swimmer and residential turf scenarios due to the low probability of both occurring. See Tables 5 and 6 from the final rule published in the **Federal Register** of September 27, 2002 (67 FR 60934) (FRL–7200–2) for detailed discussion. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of glyphosate in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO GLYPHOSATE

Population subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Intermediate-Term DWLOC (ppb)
All infants < 1 year old	1,800	100	230	0.0038	16,500
Children 1–6 years old	1,500	100	230	0.0038	16,300
Children 7–12 years old	2,000	100	230	0.0038	16,600

5. *Aggregate cancer risk for U.S. population.* Glyphosate has no carcinogenic potential.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods are available for the enforcement of tolerances for glyphosate in plant and livestock commodities. These methods include gas liquid chromatography (GLC) (*Method I in Pesticides Analytical Manual* (PAM II)) and High Performance Liquid Chromatography (HPLC) with fluorometric detection. Use of GLC is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion into PAM II. A Gas Chromatography Spectrometry (GC/MS) method for glyphosate in crops has also been validated by EPA.

These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

Codex and Mexican maximum residue levels (MRLS) are established for residues of glyphosate per se and Canadian MRLs are established for combined residues of glyphosate and aminomethylphosphonic acid (AMPA) in a variety of raw agricultural commodities. Codex MRLs exist for dry peas and dry beans at 5 ppm and 2 ppm, respectively. Canadian MRLs exist for peas, beans, and lentils at 5 ppm, 2 ppm, and 4 ppm, respectively. Mexican MRLs of 0.2 ppm exist for both peas and beans. Codex and Canadian MRLs for beans and lentils, and Mexican MRLs for peas and beans are lower then necessary to cover residues from the use patterns in the United States. The proposed U. S. tolerance for the crop group peas and beans, dried and shelled, except soybeans, is in agreement with the Codex and Canadian MRLs for dry peas and peas, respectively, and are necessary to cover use patterns in the United States.

Currently no Codex MRL for cotton, gin byproducts or cotton, undelinted seed are established.

C. Conditions

There are no conditions of registration for the establishment of tolerances on cotton, gin byproducts or cotton, undelinted seed.

V. Comments

One comment was received in response to the notice of filing from B. Sachau, 15 Elm St., Florham Park, NJ 07932. The commenter objected to the allowance of any tolerances, waiver, or exemption from tolerance for glyphosate because there are bad effects from glyphosate. The commenter also objected to animal testing, because testing on rabbit or dog constitutes animal abuse, and stated that a more reliable method of testing should be developed.

The comment contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate expose to glyphosate, including all anticipated dietary exposure and all other exposures for which the is reliable information.

Health Effects Guidelines (Series 870) recommends that dog or rabbit be used for various acute, subchronic, and longer term chronic, carcinogenic, developmental, and reproductive studies. Information derived from these tests serve to indicate the presence of possible hazards likely to arise from exposure to the test substance. Currently, there are not *in vitro* studies that can address the questions these studies answer. The EPA is currently working with the Interagency Coordinating Committee on the Validation or Alternative Methods (ICCVAM) to investigate alternative *in vitro* methods.

VI. Conclusion

Therefore, the tolerance is established for residues of glyphosate, N-(phosophonomethyl)glycine, resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on cotton, gin byproducts at 175 ppm and cotton, undelinted seed at 35 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by 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 FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of 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 FFDCA, as was provided in the old sections 408 and 409 of 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–2004–0323 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 January 10, 2005.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0323, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Statutory and Executive Order Reviews

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

IX. 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: October 25, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

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

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

■ 2. Section 180.364, paragraph (a) is amended by:

■ i. Revising the chemical name "(N-phosphomethyl)glycine)" in the introductory text to read "N-(phosphonomethyl)glycine."

■ ii. Revising in the table the entries "cotton, gin byproducts" and "cotton, undelinted seed" to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Cotton, gin byproducts	175
Cotton, undelinted seed	35
* * *	* *

* * * * *

[FR Doc. 04–25098 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

[DFARS Case 2003–D011]

Defense Federal Acquisition Regulation Supplement; Contractor Qualifications Relating to Contract Placement

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to delete text pertaining to contractor qualification requirements. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* November 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D011.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Deletion of text at DFARS 209.103, 209.103–70, and 252.209–7000 pertaining to obsolete Intermediate Range Nuclear Forces (INF) Treaty inspection requirements.
- Deletion of text at DFARS 209.106–1, 209.106–2, and 209.202 containing internal DoD procedures relating to requests for pre-award surveys and approval for use of product qualification requirements. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi*.
- Deletion of unnecessary first article testing and approval requirements in DFARS subpart 209.3.

DoD published a proposed rule at 69 FR 8150 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule. An additional change has been made at DFARS 209.202 to reflect the qualification requirements for aviation critical safety items added to the DFARS on September 17, 2004 (69 FR 55987).

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

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes DFARS text that is obsolete, unnecessary, or procedural, but makes no significant change to contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 209 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209 and 252 continues to read as follows:

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

PART 209—CONTRACTOR QUALIFICATIONS

209.103 and 209.103–70 [Removed]

■ 2. Sections 209.103 and 209.103–70 are removed.

■ 3. Section 209.106 is revised to read as follows:

209.106 Preaward surveys.

When requesting a preaward survey, follow the procedures at PGI 209.106.

209.106–1 and 209.106–2 [Removed]

■ 4. Sections 209.106–1 and 209.106–2 are removed.

■ 5. Section 209.202 is revised to read as follows:

209.202 Policy.

(a)(1) Except for aviation critical safety items, obtain approval in accordance with PGI 209.202(a)(1) when establishing qualification requirements. *See* 209.270 for approval of qualification requirements for aviation critical safety items.

Subpart 209.3 [Removed]

■ 6. Subpart 209.3 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.209–7000 [Removed and Reserved]

■ 7. Section 252.209–7000 is removed and reserved.

[FR Doc. 04–24862 Filed 11–9–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 212

[DFARS Case 2003–D074]

Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of commercial items. This rule is a result of an initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: November 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D074.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes—

- Delete unnecessary text pertaining to structuring of contracts at DFARS 212.303; and
- Update a FAR reference at DFARS 212.503(c)(ii).

DoD published a proposed rule at 69 FR 31939 on June 8, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes unnecessary text and updates reference information, but makes no significant change to contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 212

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 212 is amended as follows:

■ 1. The authority citation for 48 CFR Part 212 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.303 [Removed]

■ 2. Section 212.303 is removed.

212.503 [Amended]

■ 3. Section 212.503 is amended in paragraph (c)(ii) by revising the parenthetical to read "(*see* FAR 15.403–1(b)(3))".

[FR Doc. 04–24866 Filed 11–9–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 214

[DFARS Case 2003–D076]

Defense Federal Acquisition Regulation Supplement; Sealed Bidding

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to sealed bidding. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: November 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D076.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Deletion of unnecessary text at DFARS 214.201–1, 214.407–3(h), and 214.5.
- Redesignation of DFARS 214.202–5(d) as 214.202–5(c) for consistency with the corresponding FAR text.
- Addition of the Defense Contract Management Agency General Counsel to the list of agency officials authorized to permit correction of mistakes in bid before award.

DoD published a proposed rule at 69 FR 8152 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes unnecessary text and updates administrative information, but makes no significant change to contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 214

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 214 is amended as follows:

■ 1. The authority citation for 48 CFR part 214 continues to read as follows:

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

PART 214—SEALED BIDDING

214.201–1 [Removed]

■ 2. Section 214.201–1 is removed.

214.202–5 [Amended]

■ 3. Section 214.202–5 is amended by redesignating paragraph (d) as paragraph (c).

■ 4. Section 214.407–3 is amended as follows:

■ a. By adding paragraph (e)(ix); and

■ b. By removing paragraph (h). The added text reads as follows:

214.407–3 Other mistakes disclosed before award.

(e) * * *

(ix) Defense Contract Management Agency: General Counsel, DCMA.

Subpart 214.5—[Removed]

■ 5. Subpart 214.5 is removed.

[FR Doc. 04–24864 Filed 11–9–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 228

[DFARS Case 2003–D037]

Defense Federal Acquisition Regulation Supplement; Insurance

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to insurance requirements. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: November 10, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2003–D037.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The rule deletes DFARS text in the areas addressed below. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi*.

- *DFARS 228.304, Risk-pooling arrangements.* In the early 1950's, DoD teamed with the insurance industry to develop a program that would minimize the cost of workers' compensation and contractor liability charged to Government contracts. The objective was to provide an optional insurance plan to be used if it provided a better deal than what could be purchased on the open market. The team's solution was the National Defense Projects Rating Plan (NDPRP). The NDPRP defined premiums via a formula based upon average workers' compensation rates throughout the country and adjusted for experience pooled from Defense contractors. This produced premiums without loadings, *e.g.*, commissions, and eliminated the burden of negotiating premiums every year with insurance carriers. Today, there is little cost difference between the NDPRP and the states' workers' compensation program, because the states have adopted the same premium algorithm as the NDPRP and many contractors have adopted self-insurance. The text at DFARS 228.304 may be beneficial in the event of a prolonged surge in Defense contract activity, and should be retained as guidance. Accordingly, DoD has removed this text from the DFARS and relocated it to the new DFARS companion resource, PGI.
- *DFARS 228.305, Overseas workers' compensation and war-hazard insurance.* The Defense Base Act (42

U.S.C. 1651 *et seq.*) extends the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees working outside the United States. When the agency head recommends a waiver to the Secretary of Labor, the Secretary may waive the applicability of the Defense Base Act to any contract, subcontract, work location, or classification of employees. DFARS 228.305 provides the procedures within DoD for submitting such requests for waiver. DoD has removed this procedural text from the DFARS and relocated it to the new DFARS companion resource, PGI.

DoD published a proposed rule at 69 FR 8153 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes DFARS text addressing procedural matters, but makes no significant change to contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 228

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 228 is amended as follows:

■ 1. The authority citation for 48 CFR part 228 continues to read as follows:

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

PART 228—BONDS AND INSURANCE

■ 2. Sections 228.304 and 228.305 are revised to read as follows:

228.304 Risk-pooling arrangements.

DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307–2. Use the plan in accordance with the procedures at PGI 228.304 when it provides the necessary coverage more advantageously than commercially available coverage.

228.305 Overseas workers' compensation and war-hazard insurance.

(d) When submitting requests for waiver, follow the procedures at PGI 228.305(d).

[FR Doc. 04–24865 Filed 11–9–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 235 and 252

[DFARS Case 2003–D067]

Defense Federal Acquisition Regulation Supplement; Research and Development Contracting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to research and development contracting. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: November 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D067.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Updating of a statutory reference at DFARS 235.006–70.
- Deletion of unnecessary text at DFARS 235.007 and 235.015.
- Deletion of text at DFARS 235.010 regarding DoD maintenance of scientific and technical reports. Text on this subject has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi*.
- Updating of administrative information at DFARS 235.017–1 and 252.235–7011.

DoD published a proposed rule at 69 FR 8158 on February 23, 2004. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

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

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates administrative information, and deletes DFARS text that is unnecessary or procedural, but makes no significant change to contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 235 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Parts 235 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 235 and 252 continues to read as follows:

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

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.006–70 [Amended]

■ 2. Section 235.006–70 is amended in the introductory text by removing "10 U.S.C. 2525(d)" and adding in its place "10 U.S.C. 2521(d)".

235.007 [Removed]

■ 3. Section 235.007 is removed.

■ 4. Section 235.010 is revised to read as follows:

235.010 Scientific and technical reports.

(b) For DoD, the Defense Technical Information Center is responsible for collecting all scientific and technical reports. For access to these reports, follow the procedures at PGI 235.010(b).

235.015 [Removed]

■ 5. Section 235.015 is removed.

235.017–1 [Amended]

■ 6. Section 235.017–1 is amended in paragraph (c)(4) by revising the first parenthetical to read "(C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute operated by Carnegie Mellon)".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Section 252.235–7011 is revised to read as follows:

252.235–7011 Final scientific or technical report.

As prescribed in 235.071(d), use the following clause: FINAL SCIENTIFIC OR TECHNICAL REPORT (NOV 2004)

The Contractor shall—

(a) Submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center, Attn: DTIC–O, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6218;

(b) Include a completed Standard Form 298, Report Documentation Page, with each copy of the report; and

(c) For submission of reports in other than paper copy, contact the Defense Technical Information Center or follow the instructions at *http://www.dtic.mil.*

(End of clause)

[FR Doc. 04–24863 Filed 11–9–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4168–02; I.D. 110404D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2004 Shallow-Water Grouper Commercial Fishery

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

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for shallow-water grouper (black, gag, red, red hind, rock hind, scamp, yellowfin, and yellowmouth) in the exclusive economic zone (EEZ) of the Gulf of Mexico. This closure is in response to NMFS's determination that the red grouper quota for the commercial fishery will be reached by November 15, 2004. Existing regulations require closure of the entire shallow-water grouper fishery when either the red grouper quota or shallow-water grouper quota is reached. This closure is necessary to protect the shallow-water grouper resource.

DATES: Closure is effective 12:01 a.m., local time, November 15, 2004, until 12:01 a.m., local time, on January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5784, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for red grouper in the Gulf of Mexico at 5.31 million lb (2,413,636 kg) for the current fishing year, January 1 through December 31, 2004. Those regulations also require closure of the entire shallow-water grouper commercial fishery when either the red grouper quota or the shallow-water grouper quota is reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 5.31 million lb (2,413,636 kg) for red grouper will be reached on or before November 15, 2004. Accordingly, NMFS is closing the commercial shallow-water grouper fishery in the Gulf of Mexico EEZ from 12:01 a.m., local time, on November 15, 2004, until 12:01 a.m., local time, on January 1, 2005. The operator of a vessel with a valid reef fish permit having shallow-water grouper aboard must have landed and bartered, traded, or sold such shallow-water grouper prior to 12:01 a.m., local time, November 15, 2004.

During the closure: the bag and possession limits specified in 50 CFR 622.39(b) apply to the harvest or possession of red grouper and shallow-water grouper in or from the Gulf of Mexico EEZ, and the sale or purchase of shallow-water grouper taken from the EEZ is prohibited. The prohibition on the sale or purchase does not apply to the sale or purchase of red grouper or shallow-water grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, November 15, 2004, and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds the need to immediately implement this action to close the fishery. Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive provide prior notice and opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because it requires time during which harvest would likely exceed the quota.

There is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effective date. There is a need to implement this measure in a timely fashion to prevent an overage of the commercial quota of Gulf red grouper, given the capacity of the fishing fleet to exceed the quota quickly. Any delay in implementing this action would be

impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. For these reasons, NMFS finds good cause that the implementation of this action cannot be delayed for 30 days.

This action is required by 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: November 4, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–25085 Filed 11–5–04; 3:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 102504D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #14 - Adjustments of the Recreational Fisheries from the U.S.-Canada Border to Cape Falcon, Oregon

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

ACTION: Closure and modification of fishing seasons; request for comments.

SUMMARY: NMFS announces that the recreational salmon fishery in the area from the Queets River to Leadbetter Point, WA (Westport Subarea), was modified to close at midnight on Monday, September 6, 2004. In addition, the recreational salmon fishery in the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea), was modified to reopen the area between Tillamook Head (45°56′45″ N. lat.) and Cape Falcon effective Saturday, September 4, 2004. These actions were necessary to conform to the 2004 management goals. The intended effect of these actions was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

DATES: Closure for the area from the Queets River to Leadbetter Point, WA effective 2359 hours local time (l.t.) September 6, 2004; reopening the area between Cape Falcon and Tillamook Head 0001 hours l.t. September 4, 2004, until the chinook quota or coho quota is taken, or 2359 hours l.t., September 30, 2004, whichever is earlier; after which the fisheries will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through November 26, 2004.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004salmonIA14.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

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

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) adjusted the recreational salmon fishery in the area from the Queets River to Leadbetter Point, WA (Westport Subarea) to close at midnight on Monday, September 6, 2004. In addition, the recreational salmon fishery in the area from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea) was modified to reopen the area between Cape Falcon and Tillamook Head (45°56′45″ N. lat.) effective Saturday, September 4, 2004. On September 2 the Regional Administrator had determined the available catch and effort data indicated that the adjusted quota of 10,000 coho salmon in the Westport Subarea would be reached by September 6, and that the small closed area in Columbia River Subarea could be reopened without exceeding conservation objectives established preseason.

All other restrictions remained in effect as announced for 2004 ocean salmon fisheries and previous inseason actions. These actions were necessary to conform to the 2004 management goals. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1). Modification of boundaries, including landing boundaries, and establishment of closed areas is authorized by regulations at 50 CFR 660.409(b)(1)(v).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the recreational fishery in the area from the Queets River to Leadbetter Point, WA (Westport Subarea) would open June 27 through the earlier of September 19 or a 74,900–coho subarea quota, with a subarea guideline of 30,800 chinook; and the recreational fishery in the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea), would open June 27 through earlier of September 30 or 101,250 coho subarea quota with a subarea guideline of 8,000 chinook, and the area between Cape Falcon and Tillamook Head would be closed beginning August 1.

The recreational fishery in the area from the Queets River, WA, to Cape Falcon, OR (Westport and Columbia River Subareas) was modified by Inseason Action #7 to be open 7 days per week, with a modified daily bag limit of all salmon, two fish per day, and all retained coho must have a healed adipose fin clip, effective Friday, July 23, 2004, thus allowing for the retention of two chinook per day (69 FR 52448, August 26, 2004).

The recreational fisheries in the area from Cape Alava, WA, to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas) were modified by Inseason Action #10 to have a minimum size limit for chinook of 24 inches (61.0 cm) total length; and for the area from Cape Alava to Queets River, WA (La Push Subarea) the daily bag limit was modified to: "all salmon, two fish per day, and all retained coho must have a healed adipose fin clip," thus allowing for the retention of two chinook per day. In addition, 40,000 coho were reallocated from Queets River to Leadbetter Point, WA (Westport Subarea) quota, by transferring the coho on an impact neutral basis, to the coho quota in the subarea from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), which increased the Neah Bay Subarea quota by 6,600 coho (69 FR 54047, September 7, 2004).

The recreational salmon fishery from the Queets River to Leadbetter Point, WA (Westport Subarea) was modified by Inseason Action #11, effective Sunday, August 29, 2004, to allow for the retention of all legal sized coho until the earlier of September 19 or a quota of 10,000 coho (69 FR 63332, November 1, 2004). Unmarked coho could only be possessed and landed in the Westport

Subarea. In addition, 20,000 coho from the quota of the commercial fishery from the U.S.-Canada Border to Cape Falcon was traded for 5,000 chinook from the Westport Subarea quota.

The area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), was modified by Inseason Action #13 to close at midnight on Thursday, September 2, 2004 (69 FR 64501, November 5, 2004). To allow for the Neah Bay Subarea to remain open until September 2, 3,100 coho were transferred to the Neah Bay coho quota on an impact neutral basis from the Queets River to Leadbetter Point, WA (Westport Subarea), coho quota.

On September 2, 2004, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the coho and chinook catch rates, and effort data indicated that it was likely that the revised Westport Subarea coho quota of 10,000 would be reached soon, and that the Columbia River Subarea catch was much lower than was predicted preseason. As a result, on September 2 the states recommended, and the RA concurred, that the recreational salmon fishery close in the Westport Subarea at midnight on Monday, September 6, 2004, and the recreational Columbia River Subarea be modified to reopen in the area between Tillamook Head and Cape Falcon effective Saturday, September 4, 2004. All other restrictions that apply to these fisheries remained in effect as announced in the 2004 annual management measures.

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

These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota or the time an area must be reopened to allow access to fish when they are available. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. In addition, the action also relieved a restriction by reopening a closed area, thus providing additional harvest opportunity and was consistent with conservation and use objectives specified in the 2004 annual management measures. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: November 5, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–25112 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 217
Wednesday, November 10, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19565; Directorate Identifier 2004–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 airplanes. This proposed AD would require inspecting for incorrect torque of the retaining bolt of the aft trunnion of the main landing gear (MLG), and for associated damage to certain components, and adjustments or repairs if necessary. This proposed AD is prompted by a report of a rumbling sound heard by the flightcrew during takeoff, and the rumbling stopped after the MLG was retracted. We are proposing this AD to prevent damage to the retaining bolt and bearing of the aft trunnion of the MLG, which could result in reduced structural integrity of the MLG and consequent reduced controllability of the airplane on the ground.

DATES: We must receive comments on this proposed AD by December 10, 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.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19565; the directorate identifier for this docket is 2004–NM–104–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: 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.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19565; Directorate Identifier 2004–NM–104–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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 Docket

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

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified us that an unsafe condition may exist on certain Gulfstream Model Galaxy and Gulfstream 200 airplanes. The CAAI advises that a rumbling sound was heard by the flightcrew of a Model Galaxy airplane during takeoff,

and the rumbling stopped after the main landing gear (MLG) was retracted. Investigation revealed excessive play had occurred in the trunnion bearing of the left-hand MLG due to inadequate torque to retain the bearing. Inadequate torque would allow the bearing to migrate inside the bearing housing, causing damage to the retaining bolt and bearing, which could result in reduced structural integrity of the MLG and consequent reduced controllability of the airplane on the ground.

The trunnion of the MLG on Model Galaxy airplanes is the same on Model Gulfstream 200 airplanes; therefore, the unsafe condition could exist on all of these airplanes.

Relevant Service Information

Gulfstream has issued Alert Service Bulletin 200–32A–213, dated August 19, 2003. The service bulletin applies to airplanes on which the existing aft MLG washers have been replaced with improved chamfered washers, as specified in Gulfstream Service Bulletin 200–32–076, dated October 4, 2002. Service Bulletin 200–32–076 specified incorrect torque values and has been replaced with Service Bulletin 200–32A–213. Service Bulletin 200–32A–213 describes procedures for a one-time visual inspection of the retaining bolt of the aft trunnion of the MLG to ensure that it is torqued correctly; inspecting for associated damage to the bearing, washer, or bolt, and adjustments or repairs if necessary. The adjustments and repairs include re-torqueing the retaining bolt to the correct value, and replacing any damaged components.

Accomplishing the actions specified in Service Bulletin 200–32A–213 is intended to adequately address the unsafe condition. The CAAI mandated the service information and issued Israeli airworthiness directive 32–03–08–07, dated August 20, 2003, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in Service Bulletin 200–32A–213, except as discussed under "Difference Between the Proposed AD and Service Information."

Difference Between the Proposed AD and Service Information

Although Service Bulletin 200–32A–213 specifies to submit a service reply card to the manufacturer, this proposed AD does not include such a requirement.

Clarification of Inspection Type

Service Bulletin 200–32A–213 specifies accomplishing a visual inspection, but this proposed AD would require a general visual inspection. A note has been added to define that inspection.

Costs of Compliance

This proposed AD would affect about 63 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $4,095, or $65 per airplane.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket No. FAA–2004–19565; Directorate Identifier 2004-NM–104-AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 10, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes, serial numbers 004 through 042 inclusive, on which Gulfstream Service Bulletin 200–32–076, dated October 4, 2002, has been incorporated; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of a rumbling sound heard by the flightcrew during takeoff, and the rumbling stopped after the main landing gear (MLG) was retracted. We are issuing this AD to prevent damage to the retaining bolt and bearing of the aft trunnion of the MLG, which could result in reduced structural integrity of the MLG and consequent reduced controllability of the airplane on the ground.

Compliance

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

Replacement/Inspection/Adjustments or Repairs

(f) Within 50 flight hours after the effective date of this AD: Accomplish a general visual inspection as required by paragraphs (f)(1) and (f)(2) of this AD, by doing all the actions specified in Gulfstream Alert Service Bulletin 200–32A–213, dated August 19, 2003. Any adjustments or repairs must be accomplished before further flight in accordance with the service bulletin.

(1) Inspect the retaining bolt of the aft trunnion of the MLG to ensure that it is correctly torqued.

(2) Inspect for associated damage to the bearing, washer, or bolt of the MLG.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual

examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to 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."

No Reporting Requirement

(g) Gulfstream Alert Service Bulletin 200–32A–213, dated August 19, 2003, specifies to submit a service reply card to the manufacturer, but this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) Israeli airworthiness directive 32–03–08–07, dated August 20, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on November 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25029 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19566; Directorate Identifier 2004–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus airplanes as listed above. This proposed AD would require repetitively inspecting for cracking in the web of nose rib 7 of the inner flap on the wings, and related investigative/corrective actions if necessary. This proposed AD is prompted by reports of cracking in the web of nose rib 7 of the inner flap. We are proposing this AD to detect and correct cracking in the web of nose rib 7, which could result in rupture of the attachment fitting between the inner flap and flap track no. 2, and consequent reduced structural integrity of the flap.

DATES: We must receive comments on this proposed AD by December 10, 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.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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

FOR FURTHER INFORMATION CONTACT:

Technical information: 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.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD 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 proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–19566; Directorate Identifier 2004–NM–72–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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 Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the

airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A300 B2 and A300 B4 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600). The DGAC advises that two operators have found cracking in the web of nose rib 7 at flap track no. 2 of the inner flap. Cracking in this area, if not corrected, could result in rupture of the attachment fitting between the inner flap and flap track no. 2, and consequent reduced structural integrity of the flap.

Relevant Service Information

Airbus has issued Service Bulletins A300–57–0240 (for Model A300 B2 and B4 series airplanes) and A300–57–6095 (for Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600)), both including Appendix 01, and both dated April 7, 2003. These service bulletins describe procedures for performing an inspection using a borescope or endoscope to detect cracking of the vertical stiffeners of nose rib 7 of the inner flap of the left- and right-hand wings, and related investigative/corrective actions if necessary. The related investigative/corrective actions apply if any cracking is found and involve performing high-frequency eddy current inspections for cracking of the fastener holes of nose rib 7, performing a detailed visual inspection for cracking in the upper radii of the upper and lower skin flanges of the ribs and front spar of the wing, and replacing nose rib 7 with a new, improved nose rib. If any cracking is found during the related investigative actions, the service bulletin specifies to contact Airbus. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2003–410(B), dated October 29, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require you to do the actions specified in the service information described previously, except as discussed under "Differences Among the Proposed AD, Service Information, and French Airworthiness Directive."

Differences Among the Proposed AD, Service Information, and French Airworthiness Directive

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

Unlike the procedures described in the service information, this proposed AD would not permit further flight if any crack is detected in nose rib 7 of the inner flap. We have determined that, because of the safety implications and consequences associated with that cracking, all applicable related investigative/corrective actions must be done before further flight after the crack finding.

The service information and the French airworthiness directive specify reporting inspection findings to Airbus. This proposed AD would not require that action.

Costs of Compliance

This proposed AD would affect about 143 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $18,590, or $130 per airplane, per inspection cycle.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2004–19566; Directorate Identifier 2004–NM–72–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 10, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B2 and A300 B4 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600); certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracking in the web of nose rib 7 of the inner flap. We are issuing this AD to detect and correct cracking in the web of nose rib 7, which could result in rupture of the attachment fitting between the inner flap and flap track no. 2, and consequent reduced structural integrity of the flap.

Compliance

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

Service Bulletin Reference

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the service bulletin in paragraph (f)(1) or (f)(2) of this AD, as applicable. These service bulletins specify to submit certain information to the manufacturer, but this AD does not include that requirement.

(1) For Model A300 B2 and B4 series airplanes: Airbus Service Bulletin A300–57–0240, including Appendix 01, dated April 7, 2003.

(2) For Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600): Airbus Service Bulletin A300–57–6095, including Appendix 01, dated April 7, 2003.

Inspections

(g) Do an inspection, using a borescope or endoscope, for cracking of the vertical stiffeners of nose rib 7 of the inner flap of the left- and right-hand wings in accordance with the Accomplishment Instructions of the service bulletin. Do the initial inspection at the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes with 18,599 or fewer total flight cycles as of the effective date of this AD: Prior to the accumulation of 5,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with 18,600 or more total flight cycles as of the effective date of this AD: Within 500 flight cycles after the effective date of this AD.

Repetitive Inspections

(h) If no cracking is found during the inspection required by paragraph (g) of this AD: Repeat the inspection at intervals not to exceed 1,000 flight cycles.

Related Investigative/Corrective Actions

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, accomplish all related investigative and corrective actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (j) of this AD. Within 5,000 flight cycles after doing the repair specified in the service bulletin, do the inspection in paragraph (g) of this AD, and thereafter, repeat the inspection, as applicable, at intervals not to exceed 1,000 flight cycles.

(j) If any cracking is found for which the service bulletin specifies to contact Airbus: 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 (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

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

Related Information

(l) French airworthiness directive 2003–410(B), dated October 29, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on November 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25030 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19567; Directorate Identifier 2004–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require a one-time detailed inspection for discrepancies of the secondary fuel vapor barrier of the wing center section, and related investigative/corrective actions if necessary. This proposed AD is prompted by reports that the secondary fuel vapor barrier was not applied correctly to, or was missing from, certain areas of the wing center section. We are proposing this AD to prevent fuel or fuel vapors from leaking into the cargo or passenger compartments and coming into contact with a possible ignition source, which could result in fire or explosion.

DATES: We must receive comments on this proposed AD by December 27, 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.
- *By fax:* (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004-NM–999-AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2004–19567; Directorate Identifier 2004-NM–118-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 submitted by the closing date and may amend the proposed AD in light of those comments.

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

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 Docket

You can examine the AD docket in person at the Docket Management Facility office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that, during manufacture, the secondary fuel vapor barrier was not applied correctly to the wing center section front spar and upper panel of certain Boeing Model 737–300 series airplanes. The vapor barrier was also not applied continuously along the front spar vertical stiffeners and the top panel floor beams. In addition, inspections of Boeing Model 737–600, –700, and –800 series airplanes revealed these same conditions. The secondary fuel vapor barrier was also missing from the side body corner of the spar upper panel of the wing center section and the lower row of fasteners on the front spar. The vapor barrier on these airplanes also was too thin in some areas and too thick in other areas of the top panel and front spar. This condition, if not corrected, could result in fuel or fuel vapors leaking through fasteners or cracks in the wing center section into the cargo or passenger compartments and coming into contact with a possible ignition source, which could result in fire or explosion.

The vapor barrier installations on Boeing Model 737–300 series airplanes are identical to those on Model 737–200, –200C, –400, and –500 series airplanes, and the vapor barrier installations on Model 737–600, –700, and –800 series airplanes are identical to those on Model 737–700C, and –900 series airplanes. Therefore, all of these models may be subject to the identified unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–57–1261, dated February 27, 2003; and Boeing Special Attention Service Bulletin 737–57–1250, Revision 1, dated September 4, 2003. The service bulletins describe procedures for a one-time detailed visual inspection for discrepancies of the secondary fuel vapor barrier of the front spar and top panel of the wing center section; and related investigative/corrective actions, if necessary. Discrepancies include areas of the secondary fuel vapor barrier that are missing, peeling, non-transparent, non-continuous, too thin, or too thick. Investigative action includes measuring the thickness of the secondary fuel vapor barrier with a non-conductive coating thickness gauge. Corrective actions include removing incorrectly applied secondary fuel vapor barrier, primers, sealants, corrosion inhibitors, and embedded metallic particles; and applying new primers, sealants, corrosion inhibitors, filleting seals, and secondary fuel vapor barrier; as necessary.

Accomplishing the actions specified in the service bulletins is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD to require a one-time detailed inspection for discrepancies of the secondary fuel vapor barrier of the wing center section, and related investigative/corrective actions if necessary. The proposed AD would require you to use the service information described previously to perform these actions except as specified under "Clarification of Inspection Terminology."

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the service bulletins is referred to as a "detailed inspection." We have included the definition for a detailed inspection in a note in the proposed AD.

The service bulletins refer to a "special detailed inspection'; however, this action is actually a measurement of the thickness of the secondary fuel vapor barrier using a non-conductive coating thickness gauge. The proposed AD would refer to this measurement of the secondary fuel vapor barrier as "related investigative action" rather than a special detailed inspection.

Costs of Compliance

This proposed AD would affect about 1,521 airplanes of U.S. registry and 3,861 airplanes worldwide. We estimate the average labor rate to be $65 per work hour. We estimate that it would take the number of work hours shown in the following table to accomplish the proposed actions for each airplane. Parts and materials are standard and are to be supplied by the operator. Based on these figures, the cost impact of the proposed AD is estimated to range between $325 and $910 per airplane.

ESTIMATED WORK HOURS

Affected airplanes as listed in	Airplane group	Work hours
Boeing Special Attention Service Bulletin 737–57–1250, Revision 1, dated September 4, 2003	1	14
	2	12
	3	5
Boeing Special Attention Service Bulletin 737–57–1261, dated February 27, 2003	1	14
	2	7

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2004–19567; Directorate Identifier 2004–NM–118–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by December 27, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Model	Line numbers
737–200, –200C, –300, –400, and –500 series airplanes	311 through 3132 inclusive.
737–600, –700, –700C, –800, and –900 series airplanes	1 through 1088 inclusive and 1090 through 1134 inclusive.

Unsafe Condition

(d) This AD is prompted by reports that the secondary fuel vapor barrier was not applied correctly to, or was missing from, certain areas of the wing center section. We are issuing this AD to prevent fuel or fuel vapors from leaking into the cargo or passenger compartments and coming into contact with a possible ignition source, which could result in fire or explosion.

Compliance

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

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 737–200, –200C, –300, –400, and –500 series airplanes: Boeing Special Attention Service Bulletin 737–57–1261, dated February 27, 2003; and

(2) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Boeing Special Attention Service Bulletin 737–57–1250, Revision 1, dated September 4, 2003.

Inspection

(g) Within 48 months after the effective date of this AD, do a one-time detailed inspection for discrepancies of the secondary fuel vapor barrier of the wing center section; and if discrepancies exist, before further flight, do any applicable related investigative/corrective actions in accordance with the Accomplishment Instructions of the applicable service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: "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."

Actions Accomplished per Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–57–1250, dated February 7, 2002, are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on November 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25031 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19562; Directorate Identifier 2004–NM–73–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR 42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Aerospatiale Model ATR 42–200, –300, and –320 series airplanes. This proposed AD would require inspecting to determine the part and serial number of the swinging lever of the main landing gears (MLG) and replacing the swinging lever if necessary. This proposed AD is prompted by a report that, on an airplane lined up for takeoff, the swinging lever of the left MLG collapsed when engine power was applied. We are proposing this AD to prevent fracture of the MLG swinging lever, which could result in collapse of the swinging lever and reduced structural integrity and possible collapse of the MLG during operations on the ground.

DATES: We must receive comments on this proposed AD by December 10, 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.
- *By fax:* (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19562; the directorate identifier for this docket is 2004–NM–73–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: 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.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD 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 proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19562; Directorate Identifier 2004–NM–73–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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 Docket

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

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Aerospatiale Model ATR 42–200, –300, and –320 series airplanes. The DGAC advises that, on an airplane lined up for takeoff, the swinging lever of the left main landing gear (MLG) collapsed when engine power was applied. Investigation revealed abnormally high concentrations of silicium (silicon) in the cracked area of the swinging lever. Similar defects were found in other levers of the same batch. This condition, if not corrected, could cause fracture of the MLG swinging lever, which could result in collapse of the swinging lever and reduced structural integrity and possible collapse of the MLG during operations on the ground.

Relevant Service Information

Aerospatiale has issued Job Instruction Card (JIC) 32–11–00 RAI 10030–001, dated February 1, 2000, to the Avions de Transport Regional Aircraft Maintenance Manual. The JIC describes procedures for replacing the swinging lever of the MLG with a new or serviceable swinging lever. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2003–376(B), dated October 1, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require inspecting to determine the part number and serial number of the swinging lever of the MLG and replacing the swinging lever with a new or serviceable swinging lever, if necessary. The proposed AD would require you to use the service information described previously to perform the replacement, except as discussed under "Differences Between the Proposed AD and French Airworthiness Directive."

Differences Between the Proposed AD and French Airworthiness Directive

Though French airworthiness directive 2003–376(B) limits its applicability to Model ATR 42–200, –300, and –320 series airplanes having

MLGs currently equipped with a swinging lever part number (P/N) D56771, we have determined that a swinging lever P/N D56771 could be installed in the future on an airplane not currently equipped with a lever having that part number. Therefore, this proposed AD would be applicable to all Model ATR 42–200, –300, and –320 series airplanes and would prohibit installing a swinging lever having a subject P/N and serial number on any of these airplanes.

Though French airworthiness directive 2003–376(B) specifies that operators shall report certain inspection findings to Messier-Dowty, this proposed AD would not require this.

Though French airworthiness directive 2003–376(B) specifies that operators shall return swinging levers with applicable serial numbers to Messier-Dowty for discard, this proposed AD would not require this.

Costs of Compliance

This proposed AD would affect about 24 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,560, or $65 per airplane.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aerospatiale: Docket No. FAA–2004–19562; Directorate Identifier 2004–NM–73–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 10, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Aerospatiale Model ATR 42–200, –300, and –320 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that, on an airplane lined up for takeoff, the swinging lever of the left MLG collapsed when engine power was applied. We are issuing this AD to prevent fracture of the MLG swinging lever, which could result in collapse of the swinging lever and reduced structural integrity and possible collapse of the MLG during operations on the ground.

Compliance

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

Inspection To Determine Part and Serial Numbers

(f) Within 30 days after the effective date of this AD, inspect to determine the part number (P/N) and serial number (S/N) of the swinging lever of the MLG.

(1) If the P/N of the swinging lever is not D56771; or if the P/N of the swinging lever is D56771 but the S/N is not from 115 to 151 inclusive; no further action is required by this paragraph.

(2) If the P/N of the swinging lever is D56771 and the S/N is from 115 to 151 inclusive, within 90 days after the effective date of this AD: Remove the swinging lever and replace it with a new or serviceable lever in accordance with Job Instruction Card 32–11–00 RAI 10030–001, dated February 1, 2000, to the Avions de Transport Regional Aircraft Maintenance Manual.

No Reporting Requirement

(g) Though French airworthiness directive 2003–376(B), dated October 1, 2003, specifies that operators shall report certain inspection findings to Messier-Dowty, this AD does not require this.

Disposition of Swinging Levers

(h) Though French airworthiness directive 2003–376(B), dated October 1, 2003, specifies that operators shall return swinging levers with applicable serial numbers to Messier-Dowty for discard, this AD does not require this.

Parts Installation

(i) As of the effective date of this AD, no person may install on any airplane an MLG swinging lever, P/N D56771, having a S/N from 115 to 151 inclusive.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(k) French airworthiness directive 2003–376(B), dated October 1, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on November 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25032 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19561; Directorate Identifier 2004–NM–50–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, HS.125, and BH.125 Series Airplanes; BAe.125 Series 800A (C–29A and U–125) and 800B Airplanes; and Hawker 800 (Including Variant U–125A) and 800XP Airplanes; Equipped With TFE731 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 certain Raytheon Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A (C–29A and U–125) and 800B airplanes; and Hawker 800 (including variant U–125A) and 800XP airplanes. This proposed AD would require installing insulating blankets on the engine compartment firewall and the wire harness passing

through the firewall fairlead. This proposed AD is prompted by a report indicating that insulation on the wire harness passing through the firewall fairlead ignited on the fuselage side of the firewall. We are proposing this AD to prevent a fire in the engine compartment from causing possible ignition of outgassing wire insulation on the fuselage side of the firewall, which could lead to an uncontrollable fire in the fuselage.

DATES: We must receive comments on this proposed AD by December 27, 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.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Raytheon Aircraft Company, Department 62, PO Box 85, Wichita, Kansas 67201–0085.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19561; the directorate identifier for this docket is 2004–NM–50–AD.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Jeff Pretz, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4407.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19561; Directorate Identifier 2004–NM–50–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 submitted by the closing date and may amend the proposed AD in light of those comments.

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

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 Docket

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

Discussion

We have received a report indicating that during certification testing of a new firewall fairlead material, insulation on the wire harness passing through the laboratory test firewall fairlead ignited on the fuselage side of the firewall. The configuration of the test firewall and wire harness was similar to the configuration of the firewall and wire harness found on certain Raytheon Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A (C–29A and U–125), and 800B airplanes; and Hawker 800 (including variant U–125A) and 800XP airplanes; equipped with TFE731 engines. This condition, if not corrected, could result in a fire in the engine compartment causing possible ignition of outgassing wire insulation on the fuselage side of the firewall, which could lead to an uncontrollable fire in the fuselage.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 26–3496, dated November 2003. The service bulletin describes procedures for installing insulating blankets on the engine compartment firewall and the wire harness passing through the firewall fairlead. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

The service bulletin describes procedures for reporting accomplishment of the service bulletin to the manufacturer; however, this proposed AD would not require that action.

Costs of Compliance

There are about 804 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 530 airplanes of U.S. registry. The proposed actions would take about 8

work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $1,784 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,221,120, or $2,304 per airplane.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. FAA–2004–19561; Directorate Identifier 2004–NM–50–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by December 27, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon Model DH.125, HS.125, and BH.125 series airplanes; BAe.125 series 800A (C–29A and U–125) and 800B airplanes; and Hawker 800 (including variant U–125A) and 800XP airplanes; certificated in any category; equipped with TFE731 engines; as listed in Raytheon Service Bulletin SB 26–3496, dated November 2003.

Unsafe Condition

(d) This AD was prompted by a report indicating that insulation on the wire harness passing through the firewall fairlead ignited on the fuselage side of the firewall. We are issuing this AD to prevent a fire in the engine compartment from causing possible ignition of outgassing wire insulation on the fuselage side of the firewall, which could lead to an uncontrollable fire in the fuselage.

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.

Installation of Insulating Blankets

(f) Within 12 months after the effective date of this AD, install insulating blankets on the engine compartment firewall and the wire harness passing through the firewall fairlead, by doing all the actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 26–3496, dated November 2003.

No Reporting Requirement

The service bulletin describes procedures for reporting accomplishment of the service bulletin to the manufacturer; however, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on November 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25033 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19564; Directorate Identifier 2004–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 airplanes. This proposed AD would require repetitive inspections for damage of the flexible supply lines of the pilot and copilot oxygen mask boxes, and eventual replacement of the lines with new rigid tubes. This proposed AD is prompted by a report of an oxygen leak in the cockpit mask box. We are proposing this AD to prevent a broken oxygen supply line, which could result in oxygen being unavailable to the flightcrew.

DATES: We must receive comments on this proposed AD by December 10, 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.
- *By fax:* (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, PO Box 2206, Mail Station D–25, Savannah, Georgia 31402.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street

SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical information:* 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.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19564; Directorate Identifier 2004-NM–103-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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 Docket

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

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified us that an unsafe condition may exist on certain Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 airplanes. The CAAI advises that several operators have reported loss of oxygen system pressure caused by the separation of the flexible supply lines of the flightcrew oxygen mask boxes. If this condition is not corrected, oxygen could be unavailable to the flightcrew.

Relevant Service Information

Gulfstream has issued Alert Service Bulletin 200–35A–202, Revision 1, dated August 27, 2003. The service bulletin describes procedures for:

- Repetitive inspections for damage of the flexible supply lines of the pilot and copilot oxygen mask boxes;
- Replacement of any damaged line either with a new or serviceable flexible hose that has the same part number, or with a new rigid tube; and
- Eventual replacement of the flexible supply lines with new rigid tubes, which would eliminate the need for the repetitive inspections.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAAI mandated the service information and issued Israeli airworthiness directive 35–03–07–12, dated July 21, 2003, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed below.

Differences Between the Proposed AD and the Service Information/Israeli Airworthiness Directive

This proposed AD and the service bulletin specify repetitive inspections and eventual replacement of the supply lines. The CAAI, however, has mandated only the replacement. We find it necessary to require the interim repetitive inspections to ensure the safety of the fleet until the replacement can be completed.

Although the service bulletin specifies completing a service reply card, this proposed AD would not require that action.

The service bulletin specifies a "visual inspection" of the supply lines. We have determined that this inspection should be considered a "general visual inspection," which is defined in Note 1 of this proposed AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per cycle	8	$65	None required.	$520	63	$32,760
Replacement	10	65	0	650	63	40,950

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket No. FAA–2004–19564; Directorate Identifier 2004–NM–103-AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 10, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model Galaxy and Gulfstream 200 airplanes, certificated in any category, serial numbers 004 through 084 inclusive.

Unsafe Condition

(d) This AD was prompted by a report of an oxygen leak in the cockpit mask box. We are issuing this AD to prevent a broken oxygen supply line, which could result in oxygen being unavailable to the flightcrew.

Compliance

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

Inspection

(f) Within 50 flight hours after the effective date of this AD, perform a general visual inspection for damage of the flexible supply lines of the pilot and copilot oxygen mask boxes. Use the Accomplishment Instructions of Gulfstream Alert Service Bulletin 200–35A–202, Revision 1, dated August 27, 2003, to do the inspection. If any damage is found, perform corrective actions before further flight in accordance with the service bulletin. All replacement parts must be new or serviceable. Repeat the inspection thereafter at intervals not to exceed 50 flight hours until the replacement required by paragraph (g) of this AD has been done.

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

Replacement

(g) Within 300 flight hours after the effective date of this AD, replace the flexible supply lines with new rigid tubes, in accordance with the Accomplishment Instructions of Gulfstream Alert Service Bulletin 200–35A–202, Revision 1, dated August 27, 2003. This replacement terminates the repetitive inspection requirement of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) Israeli airworthiness directive 35–03–07–12, dated July 21, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on November 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25034 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19504; Airspace Docket No. 04–ACE–64]

Proposed Establishment of Class E2 Airspace; Wichita Colonel James Jabara Airport, KS.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Wichita Colonel James Jabara Airport, KS.

DATES: Comments for inclusion in the Rules Docket must be received on or before December 22, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19504/ Airspace Docket No. 04–ACE–64, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–19504/Airspace Docket No. 04–ACE–64". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to establish Class E airspace designated as a surface area for Colonel James Jabara Airport at Wichita, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. Weather observations would be provided by an Automated Surface Observing System (ASOS) and communications would be direct with Wichita Approach Control. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Wichita Colonel James Jabara Airport, KS

Wichita, Colonel James Jabara Airport, KS
(Lat. 37°44'51" N., long. 97°13'16" W.)

Within a 4-mile radius of Colonel James Jabara Airport; excluding that airspace within the Wichita Mid-Continent Airport, KS Class C airspace area and the Wichita, McConnell AFB, KS Class D airspace area.

* * * * *

Issued in Kansas City, MO, on October 29, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–24977 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114726–04]

RIN 1545–BD23

Distributions From a Pension Plan Under a Phased Retirement Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations under section 401(a) of the Internal Revenue Code. These proposed regulations provide rules permitting distributions to be made from a pension plan under a phased retirement program and set forth requirements for a bona fide phased retirement program. The proposed regulations will provide the public with guidance regarding distributions from qualified pension plans and will affect administrators of, and participants in, such plans.

DATES: Written or electronic comments and requests for a public hearing must be received by February 8, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–114726–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114726–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–114726–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy A. Vohs, (202) 622–6090; concerning submissions and requests for a public hearing, contact Sonya Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

As people are living longer, healthier lives, there is a greater risk that individuals may outlive their retirement savings. In addition, employers have expressed interest in encouraging older, more experienced workers to stay in the workforce. One approach that some employers have implemented is to offer employees the opportunity for "phased retirement."

While there is no single approach to phased retirement, these arrangements generally provide employees who are at or near eligibility for retirement with the opportunity for a reduced schedule or workload, thereby providing a smoother transition from full-time employment to retirement. These arrangements permit the employer to retain the services of an experienced employee and provide the employee with the opportunity to continue active employment at a level that also allows greater flexibility and time away from work.

During such a transition arrangement, employees may wish to supplement their part-time income with a portion of their retirement savings. However, phased retirement can also increase the risk of outliving retirement savings for employees who begin drawing upon their retirement savings before normal retirement age. Even though the annuity distribution options offered by defined benefit plans preclude outliving benefits, early distribution of a portion of the employee's benefit will reduce the benefits available after full retirement. On the other hand, phased retirement also can provide employees additional time to save for retirement because employees continue working while they are able to do so, and can accrue additional benefits and reduce or forgo early spending of their retirement savings.

In light of this background, Treasury and the IRS issued Notice 2002–43 in the Cumulative Bulletin (2002–27 C.B. 38 (July 8, 2002)), in which comments were requested regarding phased retirement. Notice 2002–43 specifically requested comments on a wide variety of issues, including the following:

- Under what circumstances, if any, would permitting distributions from a defined benefit plan before an employee attains normal retirement age be consistent with the requirement that a defined benefit plan be established and maintained primarily for purposes of providing benefits after retirement, such as the extent to which an employee has actually reduced his or her workload?
- If there are such circumstances, how should any early retirement subsidy be treated?

Comments Received

Sixteen written comments were formally submitted in response to Notice 2002–43. These comments are in addition to the substantial number of articles and other published materials addressing phased retirement.[1]

While some of the comments expressed concerns over the potential for both dissipation of retirement funds and violation of age discrimination laws, commentators generally responded favorably to the proposal to provide guidance on facilitating phased retirement arrangements. These commentators noted that permitting pension distributions during phased retirement would be attractive to both employers and employees. Commentators also indicated that any guidance issued should provide that establishment of phased retirement arrangements be optional on the part of the employer and that participation in any such arrangement be voluntary on the part of the employee.

Most of the comments recommended that eligibility to participate in a phased retirement program be limited to employees who are eligible for immediately commencing retirement benefits under the plan (including those eligible for early retirement benefits). Other comments recommended that retirement benefits be permitted to start at a specific age or combination of age and service; however, they noted that current legislative constraints, notably the section 72(t) 10 percent additional income tax on early distributions, may limit the desirability of this option.

Some commentators advocated that any phased retirement arrangement should be cost neutral and not create additional funding obligations for employers. Others recommended that any early retirement subsidy available to an employee upon full retirement continue to be available if the employee participates in phased retirement. For example, one such commentator recommended not only that any early retirement subsidy be available upon phased retirement, but also that the subsidy so paid not be permitted to be applied to reduce the remainder of the benefit that is earned by the employee, particularly if the employee continues working past normal retirement age.

The comments were divided over what constituted phased retirement. Several recommended that phased retirement benefits be limited to cases in which there is a reduction in hours worked. Others recommended that a reduction in hours not be required and that a transition to a less stressful job also be considered phased retirement or that the full retirement benefit be payable after the attainment of a specified age or years of service without regard to any change in work.

The commentators who recommended that phased retirement benefits be limited to cases in which there is a reduction in hours worked generally recommended that the phased retirement benefits payable be proportionate to the reduction in work, based on a "dual status" approach. Under this dual status approach, an employee who reduces his or her work schedule to, for example, 80 percent of full-time would be considered to be 20 percent retired and thus entitled to 20 percent of his or her retirement benefit. The employee would continue to accrue additional benefits based on the actual hours he or she continues to work.

Several of the commentators discussed the implications of phased retirement benefits for purposes of the nondiscrimination rules of section 401(a)(4) and the anti-cutback rules of section 411(d)(6). Many of the comments said that phased retirement arrangements must be flexible and that

[1] *See*, for example, Pension & Welfare Benefits Administration, U.S. Department of Labor, "Report on Working Group on Phased Retirement to the Advisory Council on Employee Welfare & Pension Benefit Plans," 2000; Forman, Jonathan Barry, "How Federal Pension Laws Influence Individual Work and Retirement Decisions," 54 Tax Law. 143 (2000); Littler Mendelson, "Employers Consider 'Phased Retirement' to Retain Employees," Maryland Employment Law Letter, Vol 10, Issue 6 (April, 2000); Geisel, Jerry, "Rethinking Phased Retirement; IRS Call for Comment May Signal Pension Law Changes," Business Insurance (June 24, 2002); Flahaven, Brian, "Please Don't Go! Why Phased Retirement May Make Sense For Your Government," 18 Gov't Finance Review 24 (Oct. 1, 2002); NPR, Morning Edition, "Older Workers Turn to 'Phased' Retirement, "(May 18, 2004) at *www.npr.org/features/feature.php?wfId=1900465*.

it would be important for employers to be able to adopt a phased retirement arrangement on a temporary (even experimental) basis.

Many commentators expressed concern over the effect that a reduction in hours and the corresponding reduction in compensation would have on the final average pay of an individual for purposes of the benefit calculation when the employee fully retires. These comments generally requested guidance on this issue, including clarification as to whether an employee's final average pay is permitted to decline as a result of the employee's reduction in hours pursuant to participation in a phased retirement arrangement.

Explanation of Provisions

Overview

The proposed regulations would amend § 1.401(a)–1(b) and add § 1.401(a)–3 in order to permit a pro rata share of an employee's accrued benefit to be paid under a bona fide phased retirement program. The pro rata share is based on the extent to which the employee has reduced hours under the program. Under this pro rata approach, an employee maintains a dual status (*i.e.*, partially retired and partially in service) during the phased retirement period. This pro rata or dual status approach to phased retirement was one of the approaches recommended by commentators.

While all approaches suggested by commentators were considered, the pro rata approach is the most consistent with the requirement that benefits be maintained primarily for retirement. Other approaches, such as permitting benefits to be fully available if an employee works reduced hours as part of phased retirement or permitting distributions of the entire accrued benefit to be paid as of a specified age prior to normal retirement age, are fundamentally inconsistent with the § 1.401(a)–1(b) principle that benefits be paid only after retirement. In addition, although a number of commentators suggested that guidance address the practice of terminating an employee with a prearranged rehiring of the employee (or similar sham transactions), the proposed regulations do not address this topic because it involves additional issues outside the scope of this project.

Rules Relating to Phased Retirement

Under the proposed regulations, a plan would be permitted to pay a pro rata portion of the employee's benefits under a bona fide phased retirement program before attainment of normal retirement age. The proposed regulations define a bona fide phased retirement program as a written, employer-adopted program pursuant to which employees may reduce the number of hours they customarily work beginning on or after a retirement date specified under the program and receive phased retirement benefits. Payment of phased retirement benefits is permitted only if the program meets certain conditions, including that employee participation is voluntary and the employee and employer expect the employee to reduce, by 20 percent or more, the number of hours the employee works during the phased retirement period.

Consistent with the pro rata approach discussed above, the maximum amount that is permitted to be paid is limited to the portion of the employee's accrued benefit equal to the product of the employee's total accrued benefit on the date the employee commences phased retirement (or any earlier date selected by the plan for administrative ease) and the employee's reduction in work. The reduction in work is based on the employee's work schedule fraction, which is the ratio of the hours that the employee is reasonably expected to work during the phased retirement period to the hours that would be worked if the employee were full-time. Based in part on commentators' concerns regarding early retirement subsidies, the proposed regulations generally require that all early retirement benefits, retirement-type subsidies, and optional forms of benefit that would be available upon full retirement be available with respect to the phased retirement accrued benefit. However, the proposed regulations would not permit payment to be made in the form of a single-sum distribution (or other eligible rollover distribution) in order to prevent the premature distribution of retirement benefits. The phased retirement benefit is an optional form of benefit protected by section 411(d)(6) and the election of a phased retirement benefit is subject to the provisions of section 417, including the required explanation of the qualified joint and survivor annuity.

Some comments suggested that phased retirement be limited to employees who have attained an age or service (or combination thereof) that is customary for retirement, *e.g.*, where the employer has reasonably determined in good faith that participants who cease employment with the employer after that age or service combination are typically not expected to continue to perform further services of a generally comparable nature elsewhere in the workforce. Such a retirement age might be considerably lower than age 65 in certain occupations (such as police or firefighters). As discussed further below (under the heading *Application to Plans Other Than Qualified Pension Plans*), the Treasury and IRS have concluded that they do not have the authority to permit payments to begin from a section 401(k) plan under a bona fide phased retirement program before the employee attains age 59½ or has a severance from employment.[2] Further, section 72(t)(3)(B) provides an additional income tax on early distributions if annuity distributions are made before the earlier of age 59½ or separation from service. Accordingly, in lieu of a customary retirement age, the proposed regulations adopt a rule that is consistent with section 401(k) and section 72(t)(3)(B), under which phased retirement benefits may not be paid before an employee attains age 59½.

Additional Accruals During Phased Retirement

The regulations provide that, during the phased retirement period, in addition to being entitled to the phased retirement benefit, the employee must be entitled to participate in the plan in the same manner as if the employee were still maintaining a full-time work schedule (including calculation of average earnings) and must be entitled to the same benefits (including early retirement benefits, retirement-type subsidies, and optional forms of benefits) upon full retirement as a similarly situated employee who has not elected phased retirement, except that the years of service credited under the plan for any plan year during the phased retirement period is multiplied by the ratio of the employee's actual hours of service during the year to the employee's full-time work schedule, or by the ratio of the employee's compensation to the compensation that would be paid for full-time work. Thus, for example, under a plan with a 1,000 hours of service requirement to accrue a benefit, an employee participating in a phased retirement program will accrue proportionate additional benefits, even if the employee works fewer than 1,000 hours of service.

The requirement that full-time compensation be imputed, with a proportionate reduction based on an employee's actual service, is intended to ensure that a participant is not disadvantaged by reason of choosing phased retirement. This rule precludes the need for extensive disclosure requirements, *e.g.*, disclosure to alert

[2] Cf., *Edwards* v. *Commissioner*, T.C. Memo. 1989–409, *aff'd*, 906 F.2d 114 (4th Cir. 1990).

participants to rights that may be lost as a result of participating in a phased retirement program. To be consistent with the requirement to use full-time compensation, the proposed regulations require an employee who was a highly compensated employee before commencing phased retirement to be treated as a highly compensated employee during phased retirement. *See* also § 1.414(q)–1T, A–4 & A–5.

Under the proposed regulations, the employee's final retirement benefit is comprised of the phased retirement benefit and the balance of the employee's accrued benefit under the plan (*i.e.*, the excess of the total plan formula benefit over the portion of the accrued benefit paid as a phased retirement benefit). Upon full retirement, the phased retirement benefit can continue unchanged or the plan is permitted to offer a new election with respect to that benefit.

This bifurcation is consistent with commentators' recommendation that an employee who is in a phased retirement program has a dual status, under which the employee is treated as retired to the extent of the reduction in hours and is treated as working to the extent of the employee's continued work with the employer. This approach also ensures that a phased retirement program offers an early retirement subsidy to the extent the employee has reduced his or her hours, and that the remainder of the employee's benefit rights is not adversely affected by participation in the phased retirement program.

Testing and Adjustment of Payments

Subject to certain exceptions, the proposed regulations require periodic testing to ensure that employees in phased retirement are in fact working at the reduced schedule, as expected. Thus, unless an exception applies, a plan must provide for an annual comparison between the number of hours actually worked by an employee during a testing period and the number of hours the employee was reasonably expected to work. If the actual hours worked during the testing period are materially greater than the expected number of hours, then the employee's phased retirement benefit must be reduced prospectively. For this purpose, the employee's hours worked are materially greater than the employee's work schedule if they exceed either 133⅓ percent of the work schedule or 90 percent of the hours that the employee would work under a full-time schedule.

This annual comparison is not required after the employee is within 3 months of attaining normal retirement age or if the amount of compensation paid to the employee by the employer during the phased retirement testing period does not exceed the compensation that would be paid to the employee if he or she had worked full time multiplied by the employee's work schedule fraction. Further, no comparison is required during the first year of an employee's phased retirement or if the employee has entered into an agreement with the employer that the employee will retire within 2 years.

In the event that the employer and employee agree to increase prospectively the hours that the employee will work, then the employee's phased retirement benefit must be adjusted based on a new work schedule. The date of the agreement to increase the employee's hours is treated as a comparison date for testing purposes.

In calculating the employee's benefit at full retirement, if an employee's phased retirement benefits have been reduced during phased retirement, the employee's accrued benefit under the plan is offset by an amount that is actuarially equivalent to the additional payments made before the reduction. The potential for this offset, like other material features of the phased retirement optional form of benefit, must be disclosed as part of the QJSA explanation as required under § 1.401(a)–20, Q&A–36, and § 1.417(a)(3)–1(c)(1)(v) and (d)(1).

If the employee's phased retirement benefit is less than the maximum amount permitted or the employee's work schedule is further reduced at a later date, the proposed regulations allow a plan to provide one or more additional phased retirement benefits to the employee. The additional phased retirement benefit, commencing a later annuity starting date, provides flexibility to reflect future reductions in the employee's work hours.

Provisions Relating to Payment After Normal Retirement Age

The proposed regulations clarify that a pension plan (*i.e.*, a defined benefit plan or money purchase pension plan) is permitted to pay benefits upon an employee's attainment of normal retirement age. However, normal retirement age cannot be set so low as to be a subterfuge to avoid the requirements of section 401(a), and, accordingly, normal retirement age cannot be earlier than the earliest age that is reasonably representative of a typical retirement age for the covered workforce.[3]

Application to Plans Other Than Qualified Pension Plans

The regulations that limit distributions that are modified by these proposed regulations only apply to pension plans (*i.e.*, defined benefit or money purchase pension plans). Other types of plans may be subject to less restrictive rules regarding in-service distributions, including amounts held in or attributable to: (1) Qualified profit sharing and stock bonus plans to the extent not attributable to elective deferrals under section 401(k); (2) insurance annuities under section 403(b)(1), and retirement income accounts under section 403(b)(9), to the extent not attributable to elective deferrals; (3) custodial accounts under section 403(b)(7) to the extent not attributable to elective deferrals; and (4) elective deferrals under section 401(k) or 403(b). In general, these types of plans are permitted to provide for distributions after attainment of age 59½, without regard to whether the employee has retired or had a severance from employment. Accordingly, they may either provide for the same phased retirement rules that are proposed in these regulations or may provide for other partial or full in-service distributions to be available after attainment of age 59½. However, eligible governmental plans under section 457(b) are not generally permitted to provide for payments to be made before the earlier of severance from employment or attainment of age 70½. *See* generally § 1.457–6.

Other Issues

The proposed regulations also authorize the Commissioner to issue additional rules in guidance of general applicability regarding the coordination of partial retirement under a phased retirement program and the plan qualification rules under section 401(a).

These proposed regulations do not address all of the issues that commentators raised in response to Notice 2002–43. Thus, as noted above, the proposed regulations do not address when a full retirement occurs and specifically do not endorse a prearranged termination and rehire as constituting a full retirement. Further, the proposed regulations only address certain tax issues. For example, although commentators pointed out that

[3] While a low normal retirement age may have a significant cost effect on a traditional defined benefit plan, this effect is not as significant for defined contribution plans or for hybrid defined benefit plans.

the continued availability of heath coverage would be an important feature for employees in deciding whether to participate in phased retirement, the proposed regulations do not include any rules relating to heath coverage. Similarly, the proposed regulations do not address any potential age discrimination issues, other than through the requirement that participation in a bona fide phased retirement program be voluntary.

Proposed Effective Date

The rules in these regulations are proposed to apply to plan years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. These proposed regulations cannot be relied on before they are adopted as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

Comments are specifically requested on the following issues:

- Should eligibility to participate in a phased retirement program be extended to employees that reduce their workload using a standard, other than counting hours, to identify the reduction, and, if so, are there administrable methods for measuring the reduction?
- The proposed regulations require periodic testing of the hours an employee actually works during phased retirement, and if the hours are materially greater than the employee's phased retirement work schedule, the phased retirement benefit must be adjusted. As discussed above (under the heading *Testing*), there are a number of exceptions to this requirement. Are there other, less complex alternatives that also would ensure that phased retirement benefits correspond to the employee's reduction in hours?
- The proposed regulations require an offset for the actuarial value of additional payments made before a reduction in phased retirement benefits. Should the regulations permit this offset to be calculated without regard to any early retirement subsidy and, if so, how should a subsidy be quantified?
- The proposed regulations clarify that the right to receive a phased retirement benefit as a partial payment is a separate optional form of benefit for purposes of section 411(d)(6) and, thus, is a benefit, right, or feature for purposes of the special nondiscrimination rules at § 1.401(a)(4)–4. Comments are requested on whether there are facts and circumstances under which the age and service conditions for a particular employer's phased retirement program should be disregarded in applying § 1.401(a)(4)–4 (even if the program may only be in place for a temporary period), or under which the rules at § 1.401(a)(4)–4 should otherwise be modified with respect to phased retirement.
- Should any special rules be adopted to coordinate the rules regarding distributions and continued accruals during phased retirement with a plan's provisions regarding employment after normal retirement age, such as suspension of benefits?

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Cathy A. Vohs of the Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.401(a)–1 also issued under 26 U.S.C. 401.

Section 1.401(a)–3 also issued under 26 U.S.C. 401.

Par. 2. In § 1.401(a)–1, paragraph (b)(1)(i) is amended by adding text before the period at the end of the current sentence and a new second sentence, and paragraph (b)(1)(iv) is added to read as follows:

§ 1.401(a)–1 Post-ERISA qualified plans and qualified trusts; in general.

* * * * *

(b) * * *

(1) * * *

(i) * * * or attainment of normal retirement age. However, normal retirement age cannot be set so low as to be a subterfuge to avoid the requirements of section 401(a), and, accordingly, normal retirement age cannot be earlier than the earliest age that is reasonably representative of a typical retirement age for the covered workforce.

* * * * *

(iv) Benefits may not be distributed prior to normal retirement age solely due to a reduction in hours. However, notwithstanding anything provided elsewhere in paragraph (b) of this section (including the pre-ERISA rules under § 1.401–1), an employee may be treated as partially retired for purposes of paragraph (b)(1)(i) of this section to the extent provided under § 1.401(a)–3 relating to a bona fide phased retirement program.

* * * * *

Par. 3. Section 1.401(a)–3 is added to read as follows:

§ 1.401(a)–3 Benefits during phased retirement.

(a) *Introduction*—(1) *General rule.* Under section 401(a), a qualified pension plan may provide for the distribution of phased retirement benefits in accordance with the limitations of this paragraph (a) to the extent that an employee is partially retired under a bona fide phased retirement program, as defined in paragraph (c) of this section, provided the requirements set forth in paragraphs (d) and (e) of this section are satisfied.

(2) *Limitation on benefits paid during phased retirement period*—(i) *Benefits limited to pro rata retirement benefit.* The phased retirement benefits paid

during the phased retirement period cannot exceed the phased retirement accrued benefit payable in the optional form of benefit applicable at the annuity starting date for the employee's phased retirement benefit.

(ii) *Availability of early retirement subsidies, etc.* Except as provided in paragraph (a)(2)(iii) of this section, all early retirement benefits, retirement-type subsidies, and optional forms of benefit available upon full retirement must be available with respect to the portion of an employee's phased retirement accrued benefit that is payable as a phased retirement benefit.

(iii) *Limitation on optional forms of payment.* Phased retirement benefits may not be paid in the form of a single sum or other form that constitutes an eligible rollover distribution under section 402(c)(4).

(3) *Limited to full-time employees who are otherwise eligible to commence benefits.* Phased retirement benefits are only permitted to be made available to an employee who, prior to the phased retirement period, normally maintains a full-time work schedule and who would otherwise be eligible to commence retirement benefits immediately if he or she were to fully retire.

(4) *Authority of Commissioner to adopt other rules.* The Commissioner, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(*b*) of this chapter), may adopt additional rules regarding the coordination of partial retirement under a phased retirement program and the qualification rules of section 401(a).

(b) *Definitions*—(1) *In general.* The definitions set forth in this paragraph (b) apply for purposes of this section.

(2) *Phased retirement program.* The term *phased retirement program* means a written, employer-adopted program pursuant to which employees may reduce the number of hours they customarily work beginning on or after a date specified under the program and commence phased retirement benefits during the phased retirement period, as provided under the plan.

(3) *Phased retirement period.* The term *phased retirement period* means the period of time that the employee and employer reasonably expect the employee to work reduced hours under the phased retirement program.

(4) *Phased retirement accrued benefit.* The term *phased retirement accrued benefit* means the portion of the employee's accrued benefit equal to the product of the employee's total accrued benefit on the annuity starting date for the employee's phased retirement benefit, and one minus the employee's work schedule fraction.

(5) *Phased retirement benefit.* The term *phased retirement benefit* means the benefit paid to an employee upon the employee's partial retirement under a phased retirement program, based on some or all of the employee's phased retirement accrued benefit, and payable in the optional form of benefit applicable at the annuity starting date.

(6) *Work schedule.* With respect to an employee, the term *work schedule* means the number of hours the employee is reasonably expected to work annually during the phased retirement period (determined in accordance with paragraph (c)(4) of this section).

(7) *Full-time work schedule.* With respect to an employee, the term *full-time work schedule* means the number of hours the employee would normally work during a year if the employee were to work on a full-time basis, determined in a reasonable and consistent manner.

(8) *Work schedule fraction.* With respect to an employee, the term *work schedule fraction* means a fraction, the numerator of which is the employee's work schedule and the denominator of which is the employee's full-time work schedule.

(c) *Bona fide phased retirement program*—(1) *Definition generally.* The term *bona fide phased retirement program* means a phased retirement program that satisfies paragraphs (c)(2) through (5) of this section.

(2) *Limitation to individuals who have attained age 59½.* A bona fide phased retirement program must be limited to employees who have attained age 59½. A plan is permitted to impose additional requirements for eligibility to participate in a bona fide phased retirement program, such as limiting eligibility to either employees who have satisfied additional age or service conditions (or combination thereof) specified in the program or employees whose benefit may not be distributed without consent under section 411(a)(11).

(3) *Participation must be voluntary.* An employee's participation in a bona fide phased retirement program must be voluntary.

(4) *Reduction in hours requirement.* An employee who participates in a bona fide phased retirement program must reasonably be expected (by both the employer and employee) to reduce, by 20 percent or more, the number of hours the employee customarily works. This requirement is satisfied if the employer and employee enter into an agreement, in good faith, under which they agree that the employee will reduce, by 20 percent or more, the number of hours the employee works during the phased retirement period.

(5) *Limited to employees who are not key-employee owners.* Phased retirement benefits are not permitted to be made available to a key employee who is described in section 416(i)(1)(A)(ii) or (iii).

(d) *Conditions for commencement of phased retirement benefit*—(1) *Imputed accruals based on full-time schedule*—(i) *General rule.* During the phased retirement period, in addition to being entitled to payment of the phased retirement benefit, the employee must be entitled to participate in the plan in the same manner as if the employee still maintained a full-time work schedule (including calculation of average earnings, imputation of compensation in accordance with § 1.414(s)–1(f), and imputation of service in accordance with the service-crediting rules under § 1.401(a)(4)–11(d)), and must be entitled to the same benefits (including early retirement benefits, retirement-type subsidies, and optional forms of benefits) upon full retirement as a similarly situated employee who has not elected phased retirement, except that the years of service credited under the plan for any plan year during the phased retirement period is determined under paragraph (d)(1)(ii) or (iii) of this section, whichever is applicable.

(ii) *Method for crediting years of service for full plan years.* The years of service credited under the plan for any full plan year during the phased retirement period is multiplied by an adjustment ratio that is equal to the ratio of the employee's actual hours worked during that year to the number of hours that would be worked by the employee during that year under a full-time work schedule. Alternatively, on a reasonable and consistent basis, the adjustment ratio may be based on the ratio of an employee's actual compensation during the year to the compensation that would be paid to the employee during the year if he or she had maintained a full-time work schedule.

(iii) *Method for crediting years of service for partial plan years.* In the case of a plan year only a portion of which is during a phased retirement period for an employee, the method described in paragraphs (d)(1)(i) and (ii) of this section is applied with respect to that portion of the plan year. Thus, for example, if an employee works full time until October 1 of a calendar plan year and works one-third time from October 1 through December 31 of the year, then the employee is credited with 10 months for that year (9 months plus ⅓ of 3 months).

(2) *Ancillary benefits during phased retirement period*—(i) *Death benefits.* If an employee dies while receiving phased retirement benefits, death benefits are allocated between the phased retirement benefit and the benefit that would be payable upon subsequent full retirement. *See* also § 1.401(a)–20, A–9. Thus, if an employee dies after the annuity starting date for the phased retirement benefit, death benefits are paid with respect to the phased retirement benefit in accordance with the optional form elected for that benefit, and death benefits are paid with respect to the remainder of the employee's benefit in accordance with the plan's provisions regarding death during employment.

(ii) *Other ancillary benefits.* To the extent provided under the terms of the plan, ancillary benefits, other than death benefits described in paragraph (d)(2)(i) of this section, are permitted to be provided during the phased retirement period.

(3) *Calculation of benefit at full retirement*—(i) *In general.* Upon full retirement following partial retirement under a phased retirement program, the employee's total accrued benefit under the plan (including the employee's accruals during the phased retirement period, determined in accordance with paragraph (d)(1) of this section) is offset by the portion of the employee's phased retirement accrued benefit that is being distributed as a phased retirement benefit at the time of full retirement.

(ii) *Adjustment for prior payments.* If, before full retirement, the employee's phased retirement benefit has been reduced under paragraph (d)(4) of this section, then the employee's accrued benefit under the plan is also offset upon full retirement by an amount that is actuarially equivalent to the phased retirement benefit payments that have been made during the phased retirement period that were not made with respect to the portion of the phased retirement accrued benefit that is applied as an offset under paragraph (d)(3)(i) of this section at the time of full retirement.

(iii) *Election of optional form with respect to net benefit.* Upon full retirement, an employee is entitled to elect, in accordance with section 417, an optional form of benefit with respect to the net accrued benefit determined under paragraph (d)(3)(i) and (ii) of this section.

(iv) *New election permitted for phased retirement benefit.* A plan is permitted to provide that, upon full retirement, an employee may elect, in accordance with section 417 and without regard to paragraph (a)(2)(iii) of this section, a new optional form of benefit with respect to the portion of the phased retirement accrued benefit that is being distributed as a phased retirement benefit. Any such new optional form of benefit is calculated at the time of full retirement as the actuarial equivalent of the future phased retirement benefits (without offset for the phased retirement benefits previously paid).

(4) *Prospective reduction in phased retirement benefit if hours are materially greater than expected*—(i) *General rule.* Except as otherwise provided in this paragraph (d)(4), a plan must compare annually the number of hours actually worked by an employee during the phased retirement testing period and the number of hours the employee was reasonably expected to work during the testing period for purposes of calculating the work schedule fraction. For this purpose, the phased retirement testing period is the 12 months preceding the comparison date (or such longer period permitted under paragraph(d)(4)(iv) of this section, or any shorter period that applies if there is a comparison date as a result of an agreed increase under paragraph (d)(4)(vi) of this section). In the event that the actual hours worked (determined on an annual basis) during the phased retirement testing period exceeds the work schedule, then, except as provided in paragraph (d)(4)(ii) or (v) of this section, the employee's phased retirement benefit must be reduced in accordance with the method provided in paragraph (d)(4)(iii) of this section, effective as of an adjustment date specified in the plan that is not more than 3 months later than the comparison date.

(ii) *Permitted variance in hours.* A plan is not required to reduce the phased retirement benefit unless the hours worked during the phased retirement testing period are materially greater than the hours that would be expected to be worked under the work schedule. For this purpose, the employee's hours worked (determined on annual basis) are materially greater than the employee's work schedule if either—

(A) The employee's hours worked (determined on an annual basis) are more than 133⅓ percent of the employee's work schedule; or

(B) The employee's hours worked (determined on an annual basis) exceed 90 percent of the full-time work schedule.

(iii) *Adjustment method.* If a phased retirement benefit must be reduced under paragraph (d)(4) of this section, a new (*i.e.*, reduced) phased retirement benefit must be calculated as provided in this paragraph (d)(4)(iii). First, an adjusted work schedule is determined. The adjusted work schedule is an annual schedule based on the number of hours the employee actually worked during the phased retirement testing period. The adjusted work schedule is applied to the employee's accrued benefit that was used to calculate the prior phased retirement benefit. This results in a new phased retirement accrued benefit for purposes of paragraph (b)(4) of this section. Second, a new phased retirement benefit is determined, based on the new phased retirement accrued benefit and payable in the same optional form of benefit (*i.e.*, using the same annuity starting date and the same early retirement factor and other actuarial adjustments) as the prior phased retirement benefit. If an employee is receiving more than one phased retirement benefit (as permitted under paragraph (e)(2) of this section) and a reduction is required under paragraph (d)(4) of this section, then the reduction is applied first to the most recently commencing phased retirement benefit (and then, if necessary, to the next most recent phased retirement benefit, *etc.*).

(iv) *Comparison date for phased retirement testing period.* The comparison date is any date chosen by the employer on a reasonable and consistent basis and specified in the plan, such as the last day of the plan year, December 31, or the anniversary of the annuity starting date for the employee's phased retirement benefit. As an alternative to testing the hours worked during the 12 months preceding the comparison date, the plan may, on a reasonable and consistent basis, provide that the comparison of actual hours worked to the work schedule be based on a cumulative period that exceeds 12 months beginning with either the annuity starting date for the employee's phased retirement benefit or any later date specified in the plan.

(v) *Exceptions to comparison requirement*—(A) *In general.* The comparison of hours described in paragraph (d)(4) of this section is not required in the situations set forth in this paragraph (d)(4)(v).

(B) *Employees recently commencing phased retirement.* No comparison is required for an employee who commenced phased retirement benefits within the 12-month period preceding the comparison date.

(C) *Employees with short phased retirement periods.* No comparison is required during the first 2 years of an employee's phased retirement period if—

(*1*) The employee has entered into an agreement with the employer under which the employee's phased retirement period will not exceed 2 years and the employee will fully retire at the end of such period; and

(*2*) The employee fully retires after a phased retirement period not in excess of 2 years.

(D) *Employees with proportional pay reduction.* No comparison is required for any phased retirement testing period if the amount of compensation paid to the employee during that period does not exceed the compensation that would be paid to the employee if he or she had maintained a full-time work schedule multiplied by the work schedule fraction.

(E) *Employees at or after normal retirement age.* No comparison is required for any phased retirement testing period ending within 3 months before the employee's normal retirement age or any time thereafter.

(vi) *Agreement to increase hours*—(A) *General rule.* In the event that the employer and the employee agree to increase prospectively the hours under the employee's work schedule prior to normal retirement age, then, notwithstanding the exceptions provided in paragraphs (d)(4)(v)(B) through (D) of this section, the plan must treat the effective date of the agreement to increase the employee's hours as a comparison date for purposes of paragraph (d)(4)(iv) of this section. For purposes of this paragraph (d)(4)(vi), with respect to an employee, the term *new work schedule* means the greater of the actual number of hours the employee worked (determined on an annual basis) during the prior phased retirement testing period or the annual number of hours the employee reasonably expects to work under the new agreement.

(B) *Required adjustments.* If the employee's hours under the new work schedule are materially greater (within the meaning of paragraph (d)(4)(ii) of this section) than the hours the employee would be expected to work (based on the employee's prior work schedule), the employer is required to reduce the employee's phased retirement benefit, effective as of the date of the increase, based on the new work schedule. In this case, the employee's new work schedule is used for future comparisons under paragraph (d)(4) of this section.

(C) *Permitted adjustments.* If the employee's hours under the new work schedule are not materially greater (within the meaning of paragraph (d)(4)(ii) of this section) than the hours the employee would be expected to work (based on the employee's prior work schedule), the employer is permitted, but not required, to reduce the employee's phased retirement benefit, effective as of the date of the increase, based on the new work schedule. If the benefit is so reduced, the employee's new work schedule is used for future comparisons under paragraph (d)(4) of this section. If the employee's phased retirement benefit is not so reduced, future comparisons are determined using the employee's prior work schedule.

(e) *Other rules*—(1) *Highly compensated employees.* An employee who partially retires under a phased retirement program and who was a highly compensated employee, as defined in section 414(q), immediately before the partial retirement is considered to be a highly compensated employee during the phased retirement period, without regard to the compensation actually paid to the employee during the phased retirement period.

(2) *Multiple phased retirement benefits permitted*—(i) *In general.* A plan is permitted to provide one or more additional phased retirement benefits prospectively to an employee who is receiving a phased retirement benefit if the conditions set forth in paragraph (e)(2)(ii) of this section are satisfied. At the later annuity starting date for the additional phased retirement benefit, the additional phased retirement benefits may not exceed the amount permitted to be paid based on the excess of—

(A) The employee's phased retirement accrued benefit at the later annuity starting date, over

(B) The portion of the employee's phased retirement accrued benefit at the earlier annuity starting date that is being distributed as a phased retirement benefit.

(ii) *Conditions.* The additional phased retirement benefit described in paragraph (e)(2)(i) of this section may be provided only if—

(A) The prior phased retirement benefit was not based on the employee's entire phased retirement accrued benefit at the annuity starting date for the prior phased retirement benefit, or

(B) The employee's work schedule at the later annuity starting date is less than the employee's work schedule that was used to calculate the prior phased retirement benefit.

(3) *Application of section 411(d)(6).* In accordance with § 1.411(d)–4, A–1(b)(1), the right to receive a partial distribution of an employee's accrued benefit as a phased retirement benefit is treated as an optional form of payment that is separate from the right to receive a full distribution of the accrued benefit upon full retirement.

(4) *Application of nondiscrimination rules.* The right to receive a phased retirement benefit is a benefit, right, or feature that is subject to § 1.401(a)(4)–4.

(f) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) *Employer's Plans.* Plan X (as in effect prior to amendment to reflect the phased retirement program described below) is a defined benefit plan maintained by Employer M. Plan X provides an accrued benefit of 1.5% of the average of an employee's highest three years of pay (based on the highest 36 consecutive months of pay), times years of service (with 1,000 hours of service required for a year of service), payable as a life annuity beginning at age 65. Plan X permits employees to elect to commence actuarially reduced distributions at any time after the later of termination of employment or attainment of age 50, except that if an employee retires after age 55 and completion of 20 years of service, the applicable reduction is only 3% per year for the years between ages 65 and 62 and 6% per year for the years between ages 62 to 55. Plan X permits employees to select, with spousal consent, a single life annuity, a joint and contingent annuity with the employee having the right to select any beneficiary and a continuation percentage of 50%, 75%, or 100%, or a 10-year certain and life annuity.

(ii) *Phased Retirement Program.* Employer M adopts a voluntary phased retirement program that will only be available for employees who retire during the two-year period from February 1, 2006 to January 31, 2008. The program will not be available to employees who are not entitled to an immediate pension or who are 1 percent owners. Employer M has determined that employees typically begin to retire after attainment of age 55 with at least 15 years of service. Accordingly, to increase retention of certain employees, the program will provide that employees in certain specified work positions who have reached age 59½ and completed 15 years of service may elect phased retirement. The program permits phased retirement to be implemented through a reduction of 25%, 50%, or 75% in the number of hours expected to be worked for up to 5 years following phased retirement (other reduced schedules may be elected with the approval of M), with the employee's compensation during the phased retirement period to be based on what a similar full-time employee would be paid, reduced by the applicable percentage reduction in hours expected to be worked. In order to participate in the program, the employee and the employer must enter into an agreement under which the employee will reduce his or her hours accordingly. The agreement also provides that the employee's compensation during phased retirement will be reduced by that same percentage. The program is announced to employees in the fall of 2005.

(iii) *Plan Provisions Regarding Phased Retirement Benefit.* (A) Plan X is amended, prior to February 1, 2006, to provide that an employee who elects phased retirement

under M's phased retirement program is permitted to commence benefits with respect to a portion of his or her accrued retirement benefit (the employee's phased retirement accrued benefit), based on the applicable percentage reduction in hours expected to be worked. For example, for a 25% reduction in hours, the employee is entitled to commence benefits with respect to 25% of his or her accrued benefit. Plan X permits an employee who commences phased retirement to elect, with spousal consent, from any of the optional forms provided under the plan.

(B) During the phased retirement period, the employee will continue to accrue benefits (without regard to the plan's 1,000 hour requirement), with his or her pay for purposes of calculating benefits under Plan X increased by the ratio of 100 percent to the percentage of full-time pay that will be paid during phased retirement and with the employee's service credit to be equal to the product of the same percentage times the service credit that would apply if the employee were working full time. Upon the employee's subsequent full retirement, his or her total accrued benefit will be based on the resulting highest three years of pay and total years of service, offset by the phased retirement accrued benefit. The retirement benefit payable upon subsequent full retirement is in addition to the phased retirement benefit. Plan X does not provide for a new election with respect to the phased retirement benefit.

(C) In the case of death during the phased retirement period, the employee will be treated as a former employee to the extent of his or her phased retirement benefit and as an active employee to the extent of the retirement benefit that would be due upon full retirement.

(D) Because the terms of the phased retirement program provide that the employee's compensation during phased retirement will be reduced by that same percentage as applies to calculate phased retirement benefits, Plan X does not have provisions requiring annual testing of hours actually worked.

(iv) *Application to a Specific Employee*—(A) *Phased retirement benefit.* Employee E is age 59½ with 20 years of credited service. Employee E's compensation is $90,000, and E's highest three years of pay is $85,000. Employee E elects phased retirement on April 1, 2006 and elects to reduce hours by 50% beginning on July 1, 2006. Thus, E's annuity starting date for the phased retirement benefit is July 1, 2006. Employee E's total accrued benefit as of July 1, 2006 as a single life annuity payable at normal retirement age is equal to $25,500 per year (1.5% times $85,000 times 20 years of service). Thus, Employee E's phased retirement accrued benefit as of July 1, 2006 as a single life annuity payable at normal retirement age is equal to $12,750 per year ($25,500 times 1 minus E's work schedule fraction of 50%). Accordingly, Employee E's phased retirement benefit payable as a straight life annuity commencing on July 1, 2006 is equal to $9,690 per year ($12,750 per year times 76% (100% minus the applicable reduction for early retirement equal to 3% for 3 years and 6% for an additional 2½ years)). Employee E elects a joint and 50% survivor annuity, with E's spouse as the contingent annuitant. Under Plan X, the actuarial factor for this form of benefit is 90%, so E's benefit is $8,721 per year.

(B) *Death during phased retirement.* If Employee E were to die on or after July 1, 2006 and before subsequent full retirement, E's spouse would be entitled to a 50% survivor annuity based on the joint and 50% survivor annuity being paid to E, plus a qualified preretirement survivor annuity that complies with section 417 with respect to the additional amount that would be paid to E if he or she had fully retired on the date of E's death.

(C) *Subsequent full retirement benefit.* Three years later, Employee E fully retires from Employer M. Throughout this period, E's compensation has been 50% of the compensation that would have been paid to E if he or she were working full time. Consequently, no adjustment in E's phased retirement benefit is required. E's highest consecutive 36 months of compensation would be $95,000 if E had not elected phased retirement and E has been credited with 1½ years of service credit for the 3 years of phased retirement (.50 times 3 years). Accordingly, prior to offset for E's phased retirement accrued benefit, E's total accrued benefit as of July 1, 2009 as a single life annuity commencing at normal retirement age is equal to $30,637.50 per year ($95,000 times 1.5% times 21.5 years of service) and, after the offset for E's phased retirement accrued benefit, E's retirement benefit as a single life annuity commencing at normal retirement age is equal to $17,887.50 ($30,637.50 minus $12,750). Thus, the amount of E's additional early retirement benefit payable as a straight life annuity at age 62½ is equal to $16,545.94 per year ($17,887.50 per year times 92.5% (100% minus 3% for 2½ years)). Employee E elects, with spousal consent, a 10-year certain and life annuity that applies to the remainder of E's accrued benefit. This annuity is in addition to the previously elected joint and 50% survivor annuity payable as E's phased retirement benefit.

Example 2. (i) *Same Plan and Phased Retirement Program, Except Annual Testing Required.* The facts with respect to the Plan X and M's phased retirement program are the same as in *Example 1*, except that the program does not provide that the employee's compensation during phased retirement will be reduced by that same percentage as is applied to calculate phased retirement benefits, but instead the compensation depends on the number of hours worked by the employee. Plan X provides for annual testing on a calendar year basis and for an employee's phased retirement benefit to be reduced proportionately if the hours worked exceed a threshold, under provisions which reflect the variance permitted paragraph (d)(4)(ii) of this section.

(ii) *Employee Has Small Increase in Hours.* The facts with respect to Employee E are the same as in *Example 1*, except that E's full time work schedule would result in 2,000 hours worked annually, E's work schedule fraction is 50%, and E works 500 hours from July 1, 2006 through December 31, 2006, 1,000 hours in 2007, 1,200 hours in 2008, and 600 hours from January 1, 2009 through E's full retirement on June 30, 2009.

(iii) *Application of Testing Rules.* No comparison of hours is required for the partial testing period that occurs in 2006. For 2007, no reduction is required in E's phased retirement benefit as a result of the hours worked by E during 2007 because the hours did not exceed E's work schedule (50% of 2,000). For 2008, although the hours worked by E exceeded E's work schedule, no reduction is required because the hours worked in 2008 were not materially greater than E's work schedule (1,200 is not more than the variance permitted under paragraph (d)(4)(ii) of this section, which is 133⅓% of 1,000). E's total accrued benefit upon E's retirement on July 1, 2009 would be based on 21.65 years of service to reflect the actual hours worked from July 1, 2006 through June 30, 2009.

Example 3. (i) *Same Plan and Phased Retirement Program, Except Material Increase in Hours.* The facts with respect to the Plan X and M's phased retirement program are the same as in *Example 2*, except E works 1,400 hours in 2008 and 700 hours in the first half of 2009.

(ii) *Application of Testing Rules.* No comparison of hours is required for the partial testing period that occurs in 2006. For 2007, no reduction is required in E's phased retirement benefit as a result of the hours worked by E during 2007 because the hours did not exceed 50% of 2,000. However, the hours worked by E during 2008 exceed 133⅓% of E's work schedule (50% of 2,000), so that the phased retirement benefit paid to E during 2009 must be reduced. The reduction is effective March 1, 2009. The new phased retirement benefit of $5,232.60 is based on 30% of the participant's accrued benefit as of July 1, 2006, payable as a joint and 50% survivor annuity commencing on that date (30% times $25,500 times the early retirement factor of 76% times the joint and 50% factor of 90%). This is equivalent to reducing the previously elected joint and 50% survivor annuity payable with respect to E by 40% (400 "excess" hours divided by the 1,000 hour expected reduction). When E retires fully on July 1, 2009, E's total accrued benefit as of July 1, 2009 as a single life annuity commencing at normal retirement age is $31,065 per year ($95,000 times 1.5% times 21.8 years of service). This accrued benefit is offset by (A) E's phased retirement accrued benefit (which is $7,650 (600 divided by 2,000 times $25,500)) plus (B) the actuarial equivalent of 40% of the payments that were made to E from January 1, 2008 through February 28, 2009.

Example 4. (i) *Same Plan and Phased Retirement Program, Except Employer and Employee Agree to Decrease Hours.* The facts with respect to the Plan X and M's phased retirement program are the same as in *Example 2*, except before 2008, E enters into an agreement with M to decrease E's number of hours worked from 50% of full time to 25% of full time. E works 500 hours in 2008 and 250 hours in 2009.

(ii) *Application of Multiple Benefit Rule.* Under paragraph (e)(2) of this section, Plan

M may provide for an additional phased retirement benefit to be offered to E for 2008. The maximum increase would be for the phased retirement benefit paid to E during 2009 to be increased based on a phased retirement accrued benefit equal to 75% of E's accrued benefit (1,500 divided by 2,000). Thus, the amount being paid to E would be increased, effective January 1, 2008, based on the excess of 75% of E's total accrued benefit on December 31, 2007, over E's original phased retirement accrued benefit of $12,750. Employee E would have the right to elect, with spousal consent, any annuity form offered under Plan X (with the actuarial adjustment for time of commencement and form of payment to be based on the age of E and any contingent beneficiary (and E's service, if applicable) on June 1, 2008), which would be in addition to the previously elected joint and 50% survivor annuity payable as E's original phased retirement benefit. When E retires fully on July 1, 2009, Employee E's total accrued benefit as of July 1, 2009 would be offset by (A) E's original phased retirement accrued benefit plus (B) the phased retirement accrued benefit for which additional phased retirement benefits were payable beginning in 2008.

(g) *Effective date.* The rules of this section apply to plan years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–24874 Filed 11–9–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–WI–0001; FRL–7829–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Wisconsin's State Implementation Plan (SIP) regarding the control of nitrogen oxide (NO_X) emissions. On August 29, 2003, the EPA published a final rulemaking approving the emission averaging program for existing sources subject to the state's rule limiting NO_X emissions in southeast Wisconsin. By its submittal dated May 25, 2004, the Wisconsin Department of Natural Resources requested that EPA approve modifications to existing requirements regarding the control of NO_X emissions in the Wisconsin SIP. The SIP revisions modify language to clarify which sources are eligible to participate in the NO_X emission averaging program. In addition, the revision creates a separate categorical emission limit for new combustion turbines burning biologically derived gaseous fuels. The request is approvable because it meets the requirements of the Clean Air Act. Wisconsin held a public hearing on the submittal on August 6, 2003.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 10, 2004.

ADDRESSES: Submit comments, identified by Regional Material in EDocket ID No. R05–OAR–2004–WI–0001 by one of the following methods:

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

Agency Web site: http://docket.epa.gov/rmepub/index.jsp material in Edocket(RME), EPA's electronic public docket and connect system, is EPA's preferred method for receiving comments. Once in the system, select "quick search" then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, which are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to the appropriate rulemaking by including in the text "Public comment on the proposed rulemaking Region 5 in Regional Material in EDocket ID No. R05–OAR–2004–WI–0001" in the subject line on the first page of your comment. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in Edocket, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification. EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the Regional Material in Edocket (RME) 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. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the

Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031. *hatten.charles@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is rulemaking on two revisions to the Wisconsin SIP for the control of NO_X emissions from stationary sources as required by rule NR 428. The rule applies to existing sources in eight of the counties in the Milwaukee-Racine ozone nonattainment area (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties), and to new sources in six of the eight counties (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha).

One revision modifies language to clarify which units are eligible for demonstrating compliance through emissions averaging. The emissions averaging provisions apply only to existing electric utility boilers in the Milwaukee-Racine ozone nonattainment area (Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties). The second revision creates a separate NO_X categorical emission limit for newly installed combustion turbines burning biologically derived gaseous fuel. Sources affected by the new categorical NO_X limit are landfill operations, wastewater treatment plants and digester facilities specifically designed to generate gaseous fuel. The new NO_X categorical limit for newly installed combustion turbines burning biologically derived fuel applies only to new sources located in Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties in southeastern Wisconsin. The revisions have been adopted into the State administrative code and became effective on January 1, 2004.

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

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

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

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

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

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

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

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

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

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

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

II. Additional Information

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at Regional Materials in Edocket (RME) or in hard copy at the above address. (Please telephone Charles Hatten at (312) 886–6031 before visiting the Region 5 Office.)

Dated: October 8, 2004.

Norman Neidergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04–24915 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3174; MB Docket No. 04–386; RM–10817]

Radio Broadcasting Services; Leesville and New Llano, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the reply comment date to a proposed rule published in the **Federal Register** of October 20, 2004, regarding Radio Broadcasting Services in Leesville and New Llano, Louisiana. The wrong date was stated for the reply comment date. This document corrects the reply comment date to read as December 14, 2004.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

Correction

In proposed rule FR Doc. 04–23458, published October 20, 2004 (69 FR 61617) make the following correction.

On page 61617, in the third column, correct the **DATES** line to read as follows:

DATES: Comments must be filed on or before November 29, 2004, and reply comments on or before December 14, 2004.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–25064 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3333; MB Docket No. 04–401; RM–11095]

Radio Broadcasting Services; Durant, OK and Tom Bean, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by NM Licensing, LLC, licensee of Station KLAK(FM), Durant, Oklahoma proposing the reallotment of Channel 248C2 from Durant, Oklahoma to Tom Bean, Texas, as that community's first local service, and the modification of Station KLAK(FM)'s license

accordingly. The coordinates for Channel 248C2 at Tom Bean are 33–28–52 NL and 96–32–03 WL with a site restriction of 6.4 kilometers (4 miles) southwest of the community.

DATES: Comments must be filed on or before December 16, 2004, and reply comments on or before December 31, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: M. Scott Johnson, Esq., Fletcher, Heald & Hildreth PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209–3801.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 04–401, adopted October 20, 2004, and released October 25, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 248C2 at Durant.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Tom Bean, Channel 248C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–25061 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3335, Docket No. 04–206, RM–10705]

Radio Broadcasting Services; Pioche, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking filed by Micah Shrewsberry to allot Channel 268C1 at Pioche, Nevada for failure to state a continuing interest in the requested allotment. The document therefore terminates the proceeding. *See* 69 FR 34114–01, published June 18, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–206, adopted October 20, 2004, and released October 25, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since this proposed rule is dismissed, herein.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–25059 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3332; MB Docket No. 04–403, RM–11097; MB Docket No. 04–404, RM–11098]

Radio Broadcasting Services; Baudette, MN and Maysville, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by R.P. Broadcasting, Inc. proposing the allotment of Channel 233C1 at Baudette, Minnesota, as the community's first local aural transmission service. Channel 233C1 can be allotted to Baudette in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.6 kilometers (0.4 miles) east to avoid a short-spacing to Canadian Station CHIQ–FM, Channel 232C, Winnipeg, Manitoba, Canada. The reference coordinates for Channel 233C1 at Baudette are 48–42–52 North Latitude and 94–35–32 West Longitude. The Audio Division also requests comment on a petition filed by Charles Crawford proposing the allotment of Channel 251A at Maysville, Oklahoma, as the community's first local aural transmission service. Channel 251A can be allotted to Maysville in compliance with the Commission's minimum distance separation requirements at a site near the city reference coordinates. The reference coordinates for Channel 251A at Maysville are 39–49–00 NL and 97–24–18 WL.

DATES: Comments must be filed on or before December 16, 2004, and reply comments on or before December 31, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Harry F. Cole, Esq., Anne Goodwin Crump, Esq., Counsel, R.P. Broadcasting, Inc., Fletcher, Heald &

Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209 and Charles Crawford, 4553 Bordeaux Avenue, Dallas, TX 75205.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–403, 04–404, adopted October 20, 2004 and released October 25, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Baudette, Channel 233C1.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Maysville, Channel 251A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–25058 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3331; MB Docket No. 04–402; RM–11087]

Radio Broadcasting Services; Cheyenne and Encampment, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain States Radio, Inc. ("Petitioner"), licensee of Station KRRR(FM), Channel 285C2, Cheyenne, Wyoming. The petition requests that the Commission allot Channel 285C2 to Encampment, Wyoming; substitute Channel 229C2 for Channel 285C2 at Cheyenne, Wyoming; and substitute Channel 285C2 for vacant Channel 229A at Cheyenne. The coordinates for proposed Channel 285C2 at Encampment are 41–14–00 NL and 106–56–46 WL, with a site restriction of 13.4 kilometers (8.3 miles) west of Encampment. The coordinates for proposed Channel 229C2 at Cheyenne are 41–08–32 NL and 104–32–21 WL, with a site restriction of 23.0 kilometers (14.3 miles) east of Cheyenne. The coordinates for proposed Channel 285C2 at Cheyenne are 41–21–25 NL and 104–40–55 WL, with a site restriction of 26.7 kilometers (16.6 miles) northeast of Cheyenne.

DATES: Comments must be filed on or before December 16, 2004, and reply comments on or before December 31, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: A. Wray Fitch, Esq., Gammon & Grange, P.C.; 8280 Greensboro Drive, 7th Floor; McLean, Virginia 22102–3807.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–402, adopted October 20, 2004, and released October 25, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 285C2 and Channel 229A and by adding Channel 229C2 and Channel 285C2 at Cheyenne; by adding Encampment, Channel 285C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–25057 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253 and Appendix F to Chapter 2

[DFARS Case 2001–D003]

Defense Federal Acquisition Regulation Supplement; Geographic Use of the Term "United States"

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to standardize the use of the term "United States" and associated geographic terms, in accordance with definitions found in the Federal Acquisition Regulation.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 10, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2001–D003, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.*

Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2001–D003 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the DFARS to standardize the use of geographic terms, for consistency with the definitions of the following terms found in section 2.101 of the Federal Acquisition Regulation: "United States"; "contiguous United States"; "customs territory of the United States"; and "outlying areas".

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

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule standardizes DFARS terminology, but makes no substantive change to policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D003.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253 and Appendix F to Chapter 2 as follows:

PART 204—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR Parts 204, 208, 209, 212, 213, 215, 217, 219, 222, 223, 225, 227, 233, 235, 236, 237, 242, 247, 252, and 253 and Appendix F to subchapter I continues to read as follows:

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

204.670–1 [Amended]

2. Section 204.670–1 is amended by removing paragraph (d).

3. Section 204.904 is amended by revising paragraph (1)(v) to read as follows:

204.904 Reporting payment information to the IRS.

(1) * * *

(v) Any contract with a State, the District of Columbia, or an outlying area of the United States; or a political subdivision, agency, or instrumentality of any of the foregoing;

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Section 208.7002 is amended by revising paragraphs (a)(3) and (4) to read as follows:

208.7002 Assignment authority.

(a) * * *

(3) Outside the contiguous United States, by the Unified Commanders; and

(4) For acquisitions to be made in the contiguous United States for commodities not assigned under paragraphs (a)(1), (2), or (3) of this section, by agreement of agency heads (10 U.S.C. 2311).

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS

5. Section 209.406–2 is amended by revising paragraph (a) introductory text to read as follows:

209.406–2 Causes for debarment.

(a) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a "Made in America" inscription to any product sold in or shipped to the United States or its outlying areas that was not made in the United States or its outlying areas (10 U.S.C. 2410f).

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

6. Section 212.602 is amended by revising paragraph (b)(ii) to read as follows:

212.602 Streamlined evaluation of offers.

(b) * * *

(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the contiguous United States, also evaluate offers in accordance with the criterion at 247.301–71.

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

7. Section 213.270 is amended by revising paragraph (c)(1) to read as follows:

213.270 Use of the Governmentwide commercial purchase card.

* * * * *

(c) * * *

(1) The place of performance is entirely outside the United States and its outlying areas.

* * * * *

8. Section 213.307 is amended in paragraph (b)(i)(B)(*2*) by revising the first sentence to read as follows:

213.307 Forms.

* * * * *

(b)(i) * * *

(B) * * *

(2) Classified acquisitions when the purchase is made within the United States or its outlying areas. * * *

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

9. Section 215.404–76 is amended by revising paragraph (d) to read as follows:

215.404–76 Reporting profit and fee statistics.

* * * * *

(d) Contracting offices outside the United States and its outlying areas are exempt from reporting.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

10. Section 217.7005 is revised to read as follows:

217.7005 Solicitation provision.

Use the provision at 252.217–7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the contiguous United States. Allow at least 21 calendar days outside the contiguous United States.

11. Section 217.7102 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

217.7102 General.

(a) Activities shall enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States or its outlying areas, which—

* * * * *

(b) Activities may use master agreements in work with prospective contractors located outside the United States and its outlying areas.

* * * * *

12. Section 217.7103–3 is amended by revising paragraph (a) introductory text to read as follows:

217.7103–3 Solicitations for job orders.

(a) When a requirement arises within the United States or its outlying areas for the type of work covered by the master agreement, solicit offers from prospective contractors that'

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

13. Section 219.800 is amended in paragraph (a) by revising the fourth sentence to read as follows:

219.800 General.

(a) * * * Consistent with the provisions of this subpart, this authority is hereby redelegated to DoD contracting officers within the United States or its outlying areas, to the extent that it is consistent with any dollar or other restrictions established in individual warrants. * * *

* * * * *

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

14. Section 222.7201 is amended by revising paragraph (a) to read as follows:

222.7201 Contract clauses.

(a) Use the clause at 252.222–7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States and its outlying areas.

* * * * *

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

15. Section 223.570–4 is amended by revising paragraph (b)(2) to read as follows:

223.570–4 Contract clause.

* * * * *

(b) * * *

(2) When performance or partial performance will be outside the United States and its outlying areas, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

* * * * *

PART 225—FOREIGN ACQUISITION

16. Section 225.7014 is revised to read as follows:

225.7014 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7103–17 [Amended]

17. Section 227.7103–17 is amended in paragraph (b) in the second sentence, and in paragraph (c), by removing "possessions" and adding in its place "outlying areas".

227.7203–17 [Amended]

18. Section 227.7203–17 is amended in paragraph (b) in the second sentence, and in paragraph (c), by removing "possessions" and adding in its place "outlying areas".

PART 233—PROTESTS, DISPUTES, AND APPEALS

19. Section 233.215–70 is revised to read as follows:

233.215–70 Additional contract clause.

Use the clause at 252.233–7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside the United States and its outlying areas, unless otherwise provided for in a government-to-government agreement.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

20. Section 235.071 is amended by revising paragraph (a) to read as follows:

235.071 Additional contract clauses.

(a) Use the clause at 252.235–7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States or its outlying areas involving research on live vertebrate animals.

* * * * *

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.274 [Amended]

21. Section 236.274 is amended in paragraph (a) introductory text by removing "territories and possessions" and adding in its place "outlying areas".

236.570 [Amended]

22. Section 236.570 is amended in paragraph (c)(1) by removing "territory or possession" and adding in its place "outlying area".

23. Section 236.602–1 is amended in paragraph (a)(i)(6)(A)*(2)* by revising the first sentence to read as follows:

236.602–1 Selection criteria.

(a)(i) * * *

(6) * * *

(A) * * *

(2) Do not consider awards to overseas offices for projects outside the United States and its outlying areas. * * *

* * * * *

PART 237—SERVICE CONTRACTING

24. Section 237.102–70 is amended by revising paragraph (a)(1) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

(a) * * *

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

* * * * *

25. Section 237.7301 is amended by revising paragraph (a)(1) to read as follows:

237.7301 Definitions.

* * * * *

(a) * * *

(1) Is located in the United States or its outlying areas;

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

26. Section 242.1402 is amended by revising the section heading to read as follows:

242.1402 Volume movements within the contiguous United States.

* * * * *

PART 247—TRANSPORTATION

27. Section 247.571 is amended by revising paragraph (c)(1) introductory text to read as follows:

247.571 Policy.

* * * * *

(c)(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have any reflagging or repair work, as defined in the clause at 252.247–7025, Reflagging or Repair Work, performed in the United States or its outlying areas, if the reflagging or repair work is performed—

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

28. Section 252.209–7002 is amended by revising the clause date and paragraph (a)(3) to read as follows:

252.209–7002 Disclosure of ownership or control by a foreign government.

* * * * *

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (XXX 2004)

(a) * * *

(3) *Foreign government* includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

* * * * *

29. Section 252.212–7000 is amended as follows:

a. By revising the clause date to read "(XXX 2004)";

b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

c. By adding a new paragraph (a)(2) to read as follows:

252.212–7000 Offeror Representations and Certifications—Commercial Items.

* * * * *

(a) * * *

(2) *United States* means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

* * * * *

30. Section 252.225–7000 is amended by revising the clause date and paragraph (a) to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

* * * * *

BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (XXX 2004)

(a) *Definitions. Domestic end product, foreign end product, qualifying country, qualifying country end product, and United States* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

* * * * *

31. Section 252.225–7001 is amended by revising the clause date and by adding paragraph (a)(8) to read as follows:

252.225–7001 Buy American Act and Balance of Payments Program.

* * * * *

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (XXX 2004)

(a) * * *

(8) *United States* means the 50 States, the District of Columbia, and outlying areas.

* * * * *

32. Section 252.225–7003 is amended as follows:

a. By revising the clause date to read "(XXX 2004)";

b. By redesignating paragraphs (a) through (d) as paragraphs (b) through (e) respectively; and

c. By adding a new paragraph (a) to read as follows:

252.225–7003 Report of intended performance outside the United States.

* * * * *

(a) *Definition. United States,* as used in this provision, means the 50 States, the District of Columbia, and outlying areas.

* * * * *

33. Section 252.225–7004 is amended as follows:

a. By revising the clause date to read "(XXX 2004)";

b. By redesignating paragraphs (a) through (d) as paragraphs (b) through (e) respectively; and

c. By adding a new paragraph (a) to read as follows:

252.225–7004 Reporting of contract performance outside the United States.

* * * * *

(a) *Definition. United States,* as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

* * * * *

34. Section 252.225–7005 is amended as follows:

a. By revising the clause date to read "(XXX 2004)";

b. By redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively; and

c. By adding a new paragraph (a) to read as follows:

252.225–7005 Identification of expenditures in the United States.

* * * * *

(a) *Definition. United States,* as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

* * * * *

35. Section 252.225–7011 is revised to read as follows:

252.225–7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7012–3, use the following clause:

RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (XXX 2004)

Supercomputers delivered under this contract shall be manufactured in the United States or its outlying areas.

(End of clause)

36. Section 252.225–7013 is amended by revising the clause date, paragraph (a)(1), paragraph (b) introductory text, paragraph (f)(1)(i)(A), and the first sentence of paragraph (h) introductory text to read as follows:

252.225–7013 Duty-Free Entry.

* * * * *

DUTY-FREE ENTRY (XXX 2004)

(a) * * *

(1) *Customs territory of the United States* means the 50 States, the District of Columbia, and Puerto Rico.

* * * * *

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

* * * * *

(f) * * *

(1)(i) * * *

(A) Prepare any customs forms required for the entry of foreign supplies into the customs territory of the United States in connection with this contract; and

* * * * *

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. * * *

* * * * *

37. Section 252.225–7014 is amended by revising the clause date and paragraph (b) to read as follows:

252.225–7014 Preference for domestic specialty metals.

* * * * *

PREFERENCE FOR DOMESTIC SPECIALTY METALS (XXX 2004)

* * * * *

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States or its outlying areas.

* * * * *

38. Section 252.225–7015 is revised to read as follows:

252.225–7015 Restriction on acquisition of hand or measuring tools.

As prescribed in 225.7002–3(c), use the following clause:

RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS (XXX 2004)

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

39. Section 252.225–7016 is amended by revising the clause date and paragraph (b) to read as follows:

252.225–7016 Restriction on acquisition of ball and roller bearings.

* * * * *

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (XXX 2004)

* * * * *

(b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States, its outlying areas, or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States, its outlying areas, or Canada.

* * * * *

40. Section 252.225–7018 is amended by revising the clause date, paragraph (b) in the second sentence, and paragraph (c)(1) to read as follows:

252.225–7018 Notice of prohibition of certain contracts with foreign entities for the conduct of ballistic missile defense research, development, test, and evaluation.

* * * * *

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES FOR THE CONDUCT OF BALLISTIC MISSILE DEFENSE RESEARCH, DEVELOPMENT, TEST, AND EVALUATION (XXX 2004)

* * * * *

(b) * * * However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States or its outlying areas.

(c) * * *

(1) The contract will be performed within the United States or its outlying areas;

* * * * *

41. Section 252.225–7019 is amended by revising the clause date and paragraph (a) to read as follows:

252.225–7019 Restriction on acquisition of anchor and mooring chain.

* * * * *

RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN (XXX 2004)

(a) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States or its outlying areas, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States or its outlying areas shall exceed 50 percent of the total cost of components.

* * * * *

42. Section 252.225–7021 is amended by revising the clause date and paragraph (a)(12) to read as follows:

252.225–7021 Trade agreements.

* * * * *

TRADE AGREEMENTS (XXX 2004)

(a) * * *

(12) *United States* means the 50 States, the District of Columbia, and outlying areas.

* * * * *

43. Section 252.225–7022 is amended by revising the clause date and paragraph (b) to read as follows:

252.225–7022 Restriction on acquisition of polyacrylonitriile (PAN) carbon fiber.

* * * * *

RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER (XXX 2004)

* * * * *

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States, its outlying areas, or Canada using PAN precursor produced in the United States, its outlying areas, or Canada.

* * * * *

44. Section 252.225–7023 is amended by revising the clause date and paragraph (a) to read as follows:

252.225–7023 Restriction on acquisition of vessel propellers.

* * * * *

RESTRICTION ON ACQUISITION OF VESSEL PROPELLERS (XXX 2004)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers—

(1) Manufactured in the United States, its outlying areas, or Canada; and

(2) For which all component castings were poured and finished in the United States, its outlying areas, or Canada.

* * * * *

45. Section 252.225–7025 is amended by revising the clause date and paragraph (a)(1) introductory text to read as follows:

252.225–7025 Restriction on acquisition of forgings.

* * * * *

RESTRICTION ON ACQUISITION OF FORGINGS (XXX 2004)

(a) * * *

(1) "Domestic manufacture" means manufactured in the United States, its outlying areas, or Canada if the Canadian firm—

* * * * *

46. Section 252.225–7031 is amended as follows:

a. By revising the clause date to read "(XXX 2004)";

b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

c. By adding a new paragraph (a)(2) to read as follows:

252.225–7031 Secondary Arab boycott of Israel.

* * * * *

SECONDARY ARAB BOYCOTT OF ISRAEL (XXX 2004)

(a) * * *

(2) *United States* means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

* * * * *

47. Section 252.225–7036 is amended by revising the clause date and paragraph (a)(10) to read as follows:

252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (XXX 2004)

(a) * * *

(10) *United States* means the 50 States, the District of Columbia, and outlying areas.

* * * * *

48. Section 252.225–7037 is revised to read as follows:

252.225–7037 Evaluation of offers for air circuit breakers.

As prescribed in 225.7006–4(a), use the following provision:

EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS (XXX 2004)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of provision)

49. Section 252.225–7038 is revised to read as follows:

252.225–7038 Restriction on acquisition of air circuit breakers.

As prescribed in 225.7006–4(b), use the following clause:

RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS (XXX 2004)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of clause)

50. Section 252.225–7039 is revised to read as follows:

252.225–7039 Restriction on acquisition of totally enclosed lifeboat survival systems.

As prescribed in 225.7008–4, use the following clause:

RESTRICTION ON ACQUISITION OF TOTALLY ENCLOSED LIFEBOAT SURVIVAL SYSTEMS (XXX 2004)

The Contractor shall deliver under this contract totally enclosed lifeboat survival systems (consisting of the lifeboat and associated davits and winches), for which—

(a) 50 percent or more of the components have been manufactured in the United States or its outlying areas; and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States or its outlying areas.

(End of clause)

51. Section 252.225–7043 is amended as follows:

a. By revising the clause date to read "(XXX 2004)";

b. By redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively; and

c. By adding a new paragraph (a) to read as follows:

252.225–7043 Antiterrorism/force protection policy for defense contractors outside the United States.

* * * * *

(a) *Definition. United States*, as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

* * * * *

52. Section 252.225–7044 is amended as follows:

a. By revising the clause date to read "(XXX 2004)"; and

b. In paragraph (a) by revising the definition of "United States" to read as follows:

252.225–7044 Balance of Payments Program—Construction Material.

* * * * *

(a) * * *

"United States" means the 50 States, the District of Columbia, and outlying areas.

* * * * * *

53. Section 252.225–7045 is amended as follows:

a. By revising the clause date to read "(XXX 2004)"; and

b. In paragraph (a) by revising the definition of "United States" to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

(a) * * *

"United States" means the 50 States, the District of Columbia, and outlying areas.

* * * * *

54. Section 252.247–7025 is amended by revising the clause date and paragraph (b) introductory text to read as follows:

252.247–7025 Reflagging or repair work.

REFLAGGING OR REPAIR WORK (XXX 2004)

* * * * *

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its outlying areas, if the reflagging or repair work is performed—

* * * * *

PART 253—FORMS

55. Section 253.204–70 is amended by revising paragraphs (b)(6)(iv)(A)*(1)* and (c)(4)(xiii) to read as follows;

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(A) * * *

(1) For places in the United States and outlying areas, enter the numeric place code from FIPS PUB 55, Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States, Puerto Rico, and the Outlying Areas. Leave Line B6A blank for places outside the United States and outlying areas.

* * * * *

(c) * * *

(4) * * *

(xiii) LINE C13, FOREIGN TRADE DATA.

(A) LINE C13A, PLACE OF MANUFACTURE. Complete Line C13A only if the action is for a foreign end product or a service provided by a foreign concern under a DoD contract or a Federal schedule. Otherwise, leave Line C13A blank.

(1) Code A—U.S. Enter code A if the action is for—

(i) A foreign end product that is manufactured in the United States or its outlying areas but is still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or its outlying areas or inside qualifying countries; or

(ii) Services performed in the United States or its outlying areas by a foreign concern.

(2) Code B—Foreign. Enter code B if the action is for—

(i) Any other foreign end product; or

(ii) Services performed outside the United States or its outlying areas by a foreign concern.

(B) LINE C13B, COUNTRY OF ORIGIN CODE.

(1) Complete Line C13B only if Line C13A is coded A or B. Otherwise, leave Line C13B blank.

(2) Enter the code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions, that identifies the country where the foreign product is coming from or where the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value of work under the contract.

* * * * *

56. Section 253.213–70 is amended by revising paragraph (a)(2) to read as follows:

253.213–70 Instructions for completion of DD Form 1155.

(a) * * *

(2) The contractor is located in the contiguous United States or Canada.

* * * * *

Appendix F to Chapter 2—Material Inspection and Receiving Report F–104 [Amended]

57. Appendix F to Chapter 2 is amended in Part 1, Section F–104, as follows:

a. In paragraph (a)(5)(i) introductory text by removing "*Continental United States*" and adding in its place "*Contiguous United States*"; and

b. In paragraph (a)(5)(ii), in the first sentence, by removing "continental U.S." and adding in its place "contiguous United States".

[FR Doc. 04–24861 Filed 11–9–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–12845]

RIN 2127–AH71

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of rulemaking.

SUMMARY: In July 2002, NHTSA published an NPRM proposing to update Federal Motor Vehicle Safety Standard (FMVSS) No. 124, the agency's safety standard for vehicle accelerator control systems, to make explicit its applicability to new types of engines and throttle controls, particularly electronic ones. The proposal included a number of new test procedures to address different types of powertrain technology. One of those test procedures involved measurement of engine speed under realistic powertrain load conditions on a chassis dynamometer. That procedure was "technology-neutral" and was included to allow testing of vehicles that could not readily be tested by one of the other procedures included in the proposal that were technology specific.

As discussed in this document, the agency is withdrawing the NPRM while it conducts further research on issues relating to chassis dynamometer-based test procedures for accelerator controls.

FOR FURTHER INFORMATION CONTACT: The following persons at the NHTSA, 400 7th Street, SW., Washington, DC 20590.

For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–7002).

For legal issues, you may call Ms. Dorothy Nakama, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 124, *Accelerator Control Systems,* provides for safe control of engine power by a vehicle's driver-operated accelerator. For vehicles that are operating with their accelerator controls intact, FMVSS No. 124 requires the rapid return of the throttle to the idle position (within one second for light vehicles and two seconds for heavy vehicles) when the accelerator pedal is released. For vehicles that experience disconnections in the linkage between their accelerator pedals and throttling devices, FMVSS No. 124 requires return to idle in an equally rapid fashion. By virtue of FMVSS No. 124's requirements, drivers are ensured that releasing the accelerator pedal will prevent the engine from continuing to power the drive wheels at a level greater than the idle level, even if the accelerator linkage breaks.

New engine control technology such as "throttle-by-wire" systems have significantly changed the nature of accelerator control functions and failure modes. Throttle linkages have become less common, and now "disconnections" or "severances" as referred to in the standard could just as easily involve electrical wires as they could rods, levers, and cables. In interpretation letters, NHTSA has stated that electrical wires and connectors in an electronic system are analogous to mechanical components in a traditional system and are therefore covered by FMVSS No. 124. However, complexity in electronic accelerator control systems is much greater than in mechanical ones, especially in terms of the powertrain responses that can result from failures in such systems.

In order to update FMVSS No. 124, NHTSA published a Request for Comments in 1995 (60 FR 60261) and, after consideration of comments received, issued an NPRM in 2002 (67 FR 48117).

The agency proposed that the standard specify explicitly the components and types of disconnections and severances to be covered in electronic accelerator control systems. NHTSA also proposed that the standard include new test procedures to better address different types of powertrains. A manufacturer could choose any one of the test procedures as a basis for compliance, and a "universal" chassis dynamometer test was included as a last resort in cases where the other procedures were inapplicable.

In making the proposal, NHTSA sought not to expand the scope of the existing Standard, but to merely clarify the standard's applicability to accelerator control systems associated with various powertrains including gasoline engines, diesel engines, electric motors, and hybrids. The new procedures in the proposal were all premised on return to a "baseline" idle condition measured on a normally operating vehicle, analogous to return of a throttle plate to the idle position.

The proposal included three technology specific test procedures plus a "universal" test procedure. The first of the proposed technology specific test procedures was essentially the existing air throttle plate position test of the current Standard, normally applicable to conventional gasoline engines. The second test procedure was measurement of fuel flow rate, normally applicable to diesel engines. The third test procedure was measurement of input current to a drive motor, applicable to electric vehicles. The last procedure was measurement of drivetrain output via engine speed, conducted on a chassis dynamometer. This was considered a universal test because it could be applied to gasoline, diesel, or electric vehicles.

II. Reason for Withdrawal

In commenting on the NPRM and in subsequent comments, the Alliance of

Automobile Manufacturers (Alliance) suggested that FMVSS No. 124 should include a direct measurement of powertrain output to the drive wheels.[1,2] The Alliance stated that this would be a "technology-neutral" test and, thus, would be similar to NHTSA's proposed engine RPM test but with the advantage of being more easily applicable to hybrid powertrains in which engine RPM might not indicate drive torque. Subsequently, the Alliance suggested that the powertrain output test should measure vehicle driving speed, *i.e.*, "creep speed," rather than output horsepower or torque.[3] Toyota suggested a similar approach, but requested that the agency consider a somewhat different creep speed test procedure.[4]

While the agency regards these suggestions merely as variations on the dynamometer-based engine rpm test as proposed in the NPRM, we believe that additional research on the exact procedures for the suggested test is desirable. In particular, the agency wants to conduct its own tests to provide additional support for the use of a dynamometer for measurement of powertrain output (or possibly creep speed measurements), and demonstrate the feasibility of conducting compliance tests for all suggested approaches.

In addition, the Alliance suggested that the agency include air flow rate measurement as another optional test procedure in FMVSS No. 124. Many vehicles already have mass air flow sensors that can monitor air flow rate. For vehicles with sensors, the test would measure the air flow rate during the failsafe response for comparisons to the baseline idle condition. NHTSA plans to conduct research on the suggested air flow rate test procedure and decide on the appropriateness of including it in FMVSS No. 124.

Given the time it will take to conduct research on some of the issues involved, NHTSA has decided not to continue an active rulemaking on this issue during that research. Therefore, NHTSA is withdrawing the rulemaking to update FMVSS No. 124.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: November 4, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–24978 Filed 11–9–04; 8:45 am]

BILLING CODE 4910–59–P

[1] Docket NHTSA–2002–12845–10.
[2] Docket NHTSA–2002–12845–13.
[3] Docket NHTSA–2002–12845–15.
[4] Docket NHTSA–2002–12845–14.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 229

[Docket No. 040903253–4253–01; I.D. 081104H]

RIN 0648–AR39

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan; Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to implement management measures to reduce the incidental mortality and serious injury (bycatch) of the western North Atlantic coastal bottlenose dolphin stock (dolphins) (*Tursiops truncatus*) in the mid-Atlantic coastal gillnet fishery and eight other coastal fisheries operating within the dolphin's distributional range and to amend current, seasonal restrictions on large mesh gillnet fisheries operating in the mid-Atlantic region to reduce the incidental take of sea turtles in North Carolina and Virginia state waters. This rule proposes to use effort reduction measures, gear proximity rules, gear or gear deployment modifications, fishermen training, and outreach and education measures to reduce dolphin bycatch below the marine mammal stock's potential biological removal level (PBR); and time/area closures and size restrictions on large mesh fisheries to reduce incidental takes of endangered and threatened sea turtles as well as to reduce dolphin bycatch below the stock's PBR.

DATES: Written comments on the proposed rule must be received no later than 5 p.m. eastern time, on February 8, 2005.

ADDRESSES: You may submit comments, identified by the RIN 0648–AR39, by any of the following methods:

- E-mail: *0648–AR39.proposed@noaa.gov*. Include Docket Number RIN 0648–AR39 in the subject line of the message.
- Mail: Chief, Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432.
- Facsimile (fax) to: 727–570–5517. Chief, Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the Environmental Assessment (EA), an Initial Regulatory Flexibility Analysis (IRFA), the Bottlenose Dolphin Take Reduction Team (BDTRT) meeting summaries and progress reports and complete citations for all references used in this rulemaking may be obtained from the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Comments regarding the collection of information requirements contained in this proposed rule should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Stacey Carlson, NMFS, Southeast Region, 727–570–5312, Kristy Long, NMFS, 301–713–2322, or Brian Hopper, NMFS, Northeast Region, 978–281–9328. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: NMFS intends to conduct two public hearings on this proposed rule. One hearing will be in conjunction with the next BDTRT meeting, which has not yet been scheduled but will occur during the comment period; and another in a location chosen to maximize participation of affected fishermen. NMFS will publish a separate notice detailing the time and location of the public hearings.

Electronic Access

For additional information on western North Atlantic coastal bottlenose dolphins, refer to the final 2002 Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (SARs). The SARs can be accessed via the Internet at *http://www.nmfs.noaa.gov/prot_res/*

PR2/Stock_Assessment_Program/sars.html.

Background

Bycatch Reduction Requirements in the MMPA

Section 118 (f)(1) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1387(f)(1)) requires the preparation and implementation of Take Reduction Plans (TRPs) for strategic marine mammal stocks that interact with Category I or II fisheries. The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the PBR level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA, or as depleted under the MMPA (16 U.S.C. 1362(19)). PBR, as defined by the MMPA, means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (16 U.S.C. 1362(20)). NMFS regulations at 50 CFR 229.2 define a Category I fishery as a fishery that has frequent incidental mortality and serious injury of marine mammals; a Category II fishery as a fishery that has occasional incidental mortality and serious injury of marine mammals; and a Category III fishery as a fishery that has a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. The western North Atlantic coastal bottlenose dolphin is a strategic stock because fishery-related incidental mortality and serious injury exceeds the stock's PBR and because it is currently designated as depleted under the MMPA (see 50 CFR 216.15). Because it is a strategic stock that interacts with Category I and II fisheries, a TRP is required to address dolphin bycatch.

This rule proposes to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP), which is based on consensus recommendations of the BDTRT, for multiple management units (MUs) within the western North Atlantic coastal bottlenose dolphin stock. The BDTRP affects the following Category I and II fisheries (see 2003 List of Fisheries, 68 FR 41725, July 15, 2003): the mid-Atlantic coastal gillnet fishery, Virginia pound net fishery, mid-Atlantic haul/beach seine fishery, Atlantic blue crab trap/pot fishery, North Carolina inshore gillnet fishery, North Carolina roe mullet stop net fishery, North Carolina long haul seine fishery, Southeast Atlantic gillnet fishery, and Southeastern U.S. Atlantic shark gillnet fishery.

According to the MMPA (16 U.S.C. 1387(f)(2)), the short-term goal of a TRP is to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the PBR established for that stock. The long-term goal of a TRP is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Implementation of this proposed rule for the BDTRP is intended to accomplish the short-term goal of reducing dolphin bycatch to levels below the stock's PBR. In order to determine if this goal is met, NMFS would continue to monitor bycatch of bottlenose dolphins through observer programs, stranded animal reports, abundance and distribution surveys, and other means. Ultimately, the effectiveness of the TRP would be assessed via monitoring the serious injury and mortality rates for the bottlenose dolphins relative to the short- and long-term goals of the TRP.

History of the BDTRT

NMFS convened a Mid-Atlantic Take Reduction Team (TRT) in February 1997, to address the bycatch of both harbor porpoise and bottlenose dolphins in a suite of mid-Atlantic gillnet fisheries (from New York through North Carolina). However, members of the Mid-Atlantic TRT determined that there were insufficient data on dolphin abundance and bycatch to propose management measures for this stock at that time, and deferred the discussion until such time that more data were available on the abundance and stock structure of mid-Atlantic bottlenose dolphins. On October 24, 2001, NMFS published a notice announcing the convening of a newly formed BDTRT (66 FR 53782).

The BDTRT met five times (November 6–8, 2001; January 23–25, 2002; February 27–March 1, 2002; March 27–28, 2002; and April 23–25, 2002), and on May 17, 2002, submitted to NMFS a set of consensus recommendations to reduce bycatch of the coastal stock of bottlenose dolphins in nine coastal fisheries (based on data available at that time). New bottlenose dolphin abundance estimates became available to the BDTRT subsequent to the submission of these recommendations. In addition, NMFS determined that the original recommendations would not meet the short-term goal for TRPs under the MMPA. Therefore, NMFS convened an additional meeting of the BDTRT on April 1–3, 2003. The BDTRT, as detailed in its May 3, 2003 report, then reached consensus on updated measures to reduce bycatch based on the more recent information. The BDTRT meetings were open to the public and public comments were invited on each day of the meetings. NMFS also held three public meetings on May 15–16, 2001; July 11–12, 2001; and November 6, 2001 to provide background information prior to convening the BDTRT.

NMFS published a Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA)(67 FR 47772; July 22, 2002) to review the environmental effects of implementing the recommendations of the BDTRT. The comment period was reopened on September 19, 2002, to ensure that the public had ample opportunity to provide comments (67 FR 59051).

After publication of the NOI, NMFS determined that proceeding with an EIS was not necessary based on additional information on the abundance and status of the dolphin stock made available to the BDTRT and that an EA was a more appropriate initial level of analysis under NEPA. The new abundance estimates were greater than previous estimates of the dolphin stock for five of the stock's seven MUs. Given this new information, the recommendations by the BDTRT would not significantly impact the human environment. NMFS published a notice to proceed with the preparation of an EA on July 31, 2003 (68 FR 44925).

NMFS received five sets of comments during the public scoping period and the NOI comment period. The comments were considered during the development of this proposed rule and its supplemental analyses. These comments and NMFS' responses are available as an appendix to the EA (see **ADDRESSES**).

Stock Structure, Abundance, and Bycatch of the Western North Atlantic Coastal Bottlenose Dolphin

The following section provides a summary from NMFS Stock Assessment Reports and the latest scientific

information of stock structure, abundance, and estimated bycatch information for the western North Atlantic coastal bottlenose dolphin. Please consult the EA (see **ADDRESSES**) for more detailed information or specific studies related to stock structure, abundance, or bycatch.

The western North Atlantic coastal bottlenose dolphin stock is designated as a single stock in NMFS' Stock Assessment Reports. Recent research, however, demonstrated that the stock was more structurally complex than originally believed (NMFS 2002). To reflect this complexity and for management purposes, this stock was separated into seven discrete MUs, which have spatial and temporal components (see Figure 1). The PBR for the stock was determined and assigned according to each MU. Therefore, proposed management measures were established per MU, which serves management purposes well because fisheries interacting with this stock also have spatial and temporal components. The separate MUs include:

1. Northern Migratory MU, which ranges from northern New Jersey to southern Virginia in the summer, and from southern Virginia to southern North Carolina in the winter;

2. Northern North Carolina MU, which ranges from northern North Carolina to central North Carolina in the summer and from southern Virginia to southern North Carolina in the winter;

3. Southern North Carolina MU, which ranges from central North Carolina to southern North Carolina in the summer and winter (In the winter, the geographic distributions of the Northern Migratory, Northern North Carolina, and Southern North Carolina MUs overlap along the coast of North Carolina and southern Virginia. During the winter, these overlapping units are referred to as the "Winter Mixed" MU.);

4. South Carolina MU, which ranges from the North Carolina/South Carolina border to the South Carolina/Georgia border in the summer and winter;

5. Georgia MU, which ranges from northern coastal Georgia to southern Georgia in the summer and winter;

6. Northern Florida MU, which ranges from northern Florida to central Florida in the summer and winter; and

7. Central Florida MU, which ranges from central Florida to southern Florida in the summer and winter (NMFS 2002).

Abundance estimates are the basis for determining PBR for marine mammal stocks. Table 1 summarizes the stock assessment information for the seven coastal bottlenose dolphin MUs. Abundance estimates are derived from surveys conducted in 2002 unless otherwise specified. The BDTRT used these estimates to aid in developing take reduction recommendations.

TABLE 1.—2002 ABUNDANCE ESTIMATES AND THE ASSOCIATED COEFFICIENT OF VARIATION (CV) AND MINIMUM POPULATION ESTIMATE (NMIN) FOR EACH MANAGEMENT UNIT OF COASTAL BOTTLENOSE DOLPHINS (GARRISON *et al.*, 2003).

Management Unit	Abundance	CV (%)	Nmin
SUMMER (May - October)			
Northern Migratory	17,466	19.1	14,621
Northern North Carolina			
Oceanic	6,160	51.9	3,255
Estuary	919	12.5	828
BOTH	7,079	45.2	4,083
Southern North Carolina			
Oceanic	3,646	11.0	1,863
Estuary	141	15.2	124
BOTH	3,787	106.9	1,987
WINTER (November - April)			
Winter Mixed (Northern Migratory, Northern North Carolina, Southern North Carolina)	16,913	23.0	13,558
ALL YEAR			
South Carolina	2,325	20.3	1,963
Georgia	2,195	29.9	1,716
Northern Florida*	448	38.4	328
Central Florida*	10,652	45.8	7,377

*Northern Florida estimates are derived from the winter 1995 survey and the summer 2002 survey. Central Florida MU estimates are from the winter 1995 survey.

From the abundance estimates, NMFS provided the BDTRT with bycatch estimates and PBRs for each management unit. Table 2 provides a summary of these bycatch estimates and current PBRs per MU, which indicates that estimated bycatch exceeds PBR for the Summer Northern North Carolina Management Unit and the Winter Mixed Management Unit.

Management Unit	Estimated Bycatch	Current PBR
Northern Migratory	30	73.1
Summer Northern North Carolina	29	20.4
Summer Southern North Carolina	0[1]	9.9
Winter Mixed (Northern Migratory, Northern North Carolina, and Southern North Carolina)	151	67.8
South Carolina	Unknown	20
Georgia	Unknown	17
Northern Florida	0	3.3
Central Florida	4	74[2]

[1] No bycatch was recorded in the NMFS observer program, but stranding data indicate dolphin bycatch occurs.

[2] The PBR for the Central Florida MU is based on the 1995 abundance estimate as no 2002 estimate is available.

Please note that bycatch estimates are derived from observed fisheries only.

For a discussion of bycatch information from stranding events and unofficially observed events, please consult the EA (see **ADDRESSES**). Because observed fishery bycatch data demonstrate that PBR was exceeded for the western North Atlantic coastal bottlenose dolphin stock and because this stock is strategic, take reduction measures are warranted.

Components of the Bottlenose Dolphin Take Reduction Plan (BDTRP)

The take reduction measures in this proposed rule have spatial and seasonal components that reflect measures needed at different times of the year and in different areas for each of the seven distinct MUs. The seasonal and geographic distributions of these MUs are shown in Figure 1.

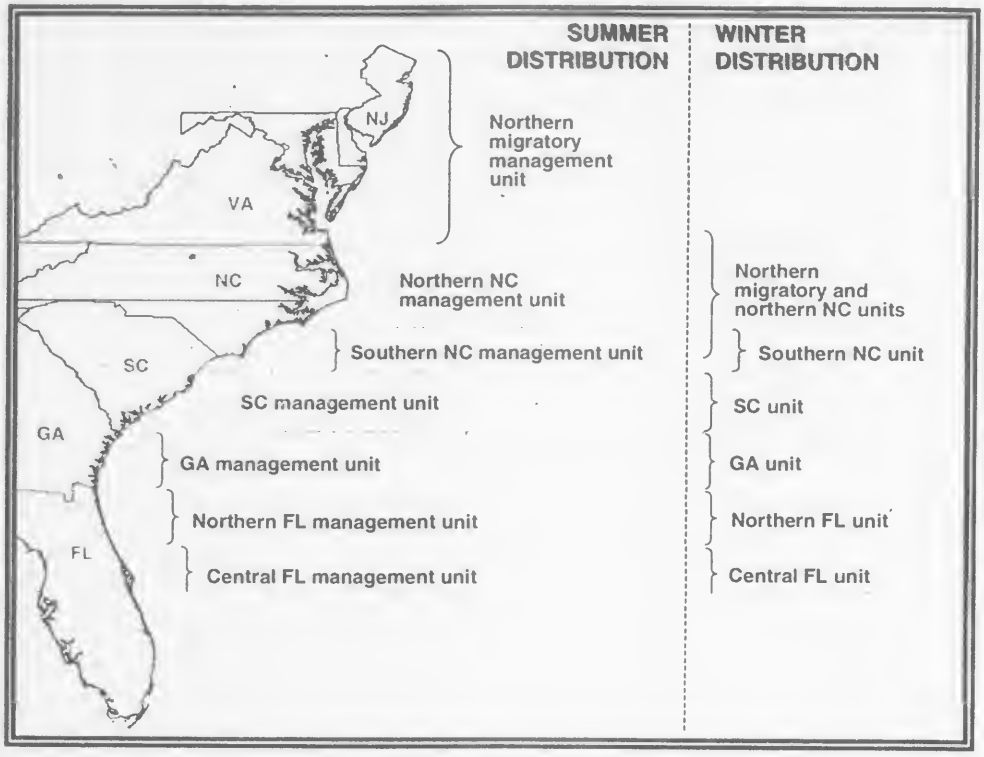

Figure 1. Seasonal and geographic distributions of the MUs within the western North Atlantic coastal bottlenose dolphin stock, Tursiops truncatus.

The BDTRT reviewed gear characteristics that may influence bycatch levels. Analysis by Palka and Rossman (2001) concluded that distance from shore and gillnet mesh size were the two factors exhibiting the strongest relationship to bycatch estimates. The authors found that the highest bycatch rates of coastal bottlenose dolphins in mid-Atlantic gillnet fisheries occurred in large mesh gear (greater than or equal to 7–inch or 17.8 cm stretch mesh) and in hauls that occurred within state waters (3 nmi or 4.8 km). Palka and Rossman (2001) also found that the highest bycatch occurred in the winter with most of the bycatch occurring in North Carolina and Virginia state waters. The authors inferred that changes in the fisheries that utilize this gear size in this region may have a considerable effect on reducing dolphin bycatch.

The BDTRT's consensus recommendations included two principal types of actions to achieve required bycatch reduction goals: (1) specific regulatory fishing gear restrictions organized by bottlenose dolphin MU, and (2) broad-based, non-regulatory measures, such as education, outreach, and research. For those dolphin MUs where bycatch is low, or where bycatch estimates are unavailable, the BDTRT offered non-regulatory recommendations. This proposed rulemaking addresses both the regulatory and non-regulatory measures recommended by the BDTRT.

Proposed Regulatory BDTRP Measures

Applied primarily to gillnet fisheries, the proposed regulations result in a reduction in soak times and in the amount of gear in the water or otherwise change practices to reduce bycatch of dolphins. In developing this proposed rule, NMFS evaluated the recommendations provided by the

BDTRT to ensure that: the recommended measures would meet the goals of the MMPA, no unnecessary requirements would be imposed on the fishing industry, and the recommended measures were compatible with existing state and Federal management plans. NMFS expects these measures to reduce dolphin bycatch below the stock's PBR within six months of implementation because, based on modeling efforts and broad expertise of the BDTRT, the measures are expected to reduce the number of interactions between dolphins and fisheries below that level.

NMFS proposes to implement all of the BDTRT's recommendations except the following: (1) the requirement for mandatory bycatch certification training (training would be conducted, but would not be mandatory); and (2) a requirement to haul gear once every 24 hours in the small mesh gillnet fisheries in the North Carolina portion of the Winter Mixed MU and the Summer Northern North Carolina MU.

The BDTRT recommended that vessel operators and persons in non-vessel fisheries complete a mandatory bycatch certification training program. However, a mandatory certification program is unnecessary at this time, and the potential costs of holding and ensuring participation at the workshops would outweigh the bycatch reduction benefits. Alternatively, NMFS proposes to provide outreach and education to the fishing industry through: (1) voluntary workshops conducted at major ports from New Jersey through Florida by NMFS outreach personnel; (2) dockside visits with the fishing industry carried out by fishery liaisons; (3) a pilot web-based training program accessible through the existing BDTRP web site to provide training to remaining fishermen who may not be able to attend dockside visits or workshops; and (4) educational materials (i.e., brochures, placards, decals, and possibly videos) provided through an annual mailing to all Category I and II fisheries affected by this proposed rule.

NMFS does not support implementing the requirement to haul gear once every 24 hours in the small mesh gillnet fisheries in the ranges of the Winter Mixed MU and the Summer Northern North Carolina MU. NMFS analyzed fishery data and found that 98 percent of the observed hauls soaked for less than 24 hours. Additionally, this requirement would be difficult to enforce because it would be difficult to accurately ascertain the length of time that gear remains in the water, unless enforcement agents monitor the gear for a 24 hour period. NMFS instead plans to highlight gear-tending practices during workshop training and in outreach materials.

Definitions Used in BDTRP Proposed Rule

Definitions of some of the terms used in this proposed rule differ from definitions of terms currently in 50 CFR 229.2 that apply to the Harbor Porpoise Take Reduction Plan. These different definitions would be placed within 50 CFR 229.35, which is the section for regulatory requirements of the Bottlenose Dolphin Take Reduction Plan, to avoid conflicting with definitions applicable to other take reduction plans. Also, new definitions were added where appropriate. Definition changes and additions were necessary in some cases for effective implementation of the BDTRT's recommended regulatory measures.

The proposed rule contains different definitions of the terms "night," "small mesh gillnet," and "large mesh gillnet." NMFS proposes a different definition of "night" in this proposed rule to give fishermen more time to remove their gear from the water prior to certain night-time gear restrictions taking effect. Different definitions of "small mesh gillnet" and "large mesh gillnet" were proposed, and a definition of "medium mesh gillnet" was added, to tailor gear restrictions most appropriately given the conduct of gillnet fisheries and the nature of interactions between gillnet fisheries and bottlenose dolphins. For instance, bottlenose dolphin bycatch occurs in very small mesh gillnets, and harbor porpoise bycatch does not. Thus, there was a need to add a different definition of "small mesh gillnet" under this proposed rule to address dolphin bycatch in gillnets with 5–inch (12.7 cm) stretched mesh or smaller. There was also a need to add a definition of "medium mesh gillnet" because a medium mesh gillnet category interacts with bottlenose dolphins. The definition of "large mesh gillnet" is slightly different from the one in 50 CFR 229.2 in that it does not include an upper bound of 18 inches (45.72 cm). It includes all gillnets with a mesh size greater than or equal to 7–inches (17.8 cm) stretched mesh and would, thus, address mesh sizes larger than 18 inches (45.72 cm) where necessary.

The proposed rule also contains new definitions not currently contained in 50 CFR 229.2. For instance, "fishing or to fish" was added to be consistent with regulations under the Magnuson-Stevens Fishery Conservation and Management Act and to aid in enforcement of the regulations under the BDTRP. Various areas of water (e.g., "Northern North Carolina state waters") were defined to indicate the locations in which certain regulations would apply. Definitions of "sunrise" and "sunset" were added to indicate precise times at which certain night-time restrictions would apply. Definitions of "beach" and "beach/water interface" were added to indicate in which part of the nearshore zone certain gear restrictions would apply.

Proposed Regulated Waters

North of Cape Hatteras, North Carolina, western North Atlantic coastal bottlenose dolphins occur primarily in nearshore waters out to about 6.5 nautical miles (12 km) from shore (Garrison 2001). Garrison (2001) found that the coastal bottlenose dolphin stock occurs out to 14.6 nautical miles (27 km) from shore in the southeastern U.S. Thus, NMFS proposes to implement portions of the BDTRT recommendations in all U.S. waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105), with the exception of exempted waters.

Exempted waters include all waters landward of the first bridge over any embayment, harbor, or inlet. In those instances where there is not a bridge over the embayment or harbor close to the mouth of the embayment or harbor, as in the case of Delaware Bay, exempted waters include all waters landward of the lines of demarcation delineating those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972, and those waters upon which mariners must comply with the Inland Navigation Rules as described in 33 CFR part 80 (COLREGS line). The decision was made to use the bridges, where possible, to mark the boundaries in part because the bridges are farther inshore than the COLREGS line and would, therefore, include more area under the proposed regulations.

Gear-area Measures

NMFS proposes to implement the following recommendations of the BDTRT (also found in Table 3), which are organized by bottlenose dolphin MU and specific location (persons fishing with large mesh gillnets must also adhere to pertinent conservation measures as amended by the large mesh mid-Atlantic gillnet rule; see Table 4).

Summer Northern Migratory MU (New Jersey through Virginia) From June 1–October 31 of each year, the proposed regulations require persons fishing with medium mesh (greater than 5–inch (12.7 cm) to less than 7–inch (17.8 cm) stretch mesh) and large mesh (greater than or equal to 7–inch (17.8 cm) stretch mesh) anchored gillnets at night in state waters to remain within 0.5 nautical miles (0.93 km) of the closest portion of each gear, and to remove all such gear and stow it on board the vessel before the vessel returns to port.

Summer Northern North Carolina MU (Virginia/North Carolina border to Cape Lookout) From May 1–October 31 of each year, the proposed regulations require persons fishing with small mesh (less than or equal to 5–inch (12.7 cm) stretch mesh) gillnets to use a net length of less than or equal to 1,000 feet (304.8 m); and from April 15–December 15, prohibit fishing with large mesh (greater than or equal to 7–inch (17.8 cm) stretch mesh) gillnets in state waters (this latter provision will codify existing North Carolina state prohibitions on gillnet fishing). (Note: The 2002 consensus recommendations contained a misprint indicating this restriction would begin on April 16.)

Summer Southern North Carolina MU (Cape Lookout to North Carolina/South Carolina border) From April 15–December 15, the proposed regulations prohibit persons fishing with large mesh (greater than or equal to 7–inch (17.8 cm) stretch mesh) gillnet gear from fishing in state waters (this latter provision will codify existing North Carolina state prohibitions on gillnet fishing). (Note: The 2002 consensus recommendations contained a misprint indicating this restriction would begin on April 16. In addition, when combined with the BDTRT recommendation for the Winter Mixed MU Southern North Carolina, the proposed regulations prohibit fishing with large mesh gillnets at night in state waters from November 1–April 30, this provision results in prohibiting fishing with large mesh gillnets at night in state waters year-round.)

Winter Mixed MU – Virginia (Cape Charles Light to Virginia/North Carolina border) From November 1–December 31, the proposed regulations prohibit persons fishing with large mesh (greater than or equal to 7–inch (17.8 cm) stretch mesh) gillnets at night in state waters and require that, at night, gear be removed from the water and stowed on board the vessel before the vessel returns to port.

Winter Mixed MU – Northern North Carolina (Virginia/North Carolina border to Cape Lookout) From November 1–April 30, the proposed regulations prohibit persons fishing with medium mesh (greater than 5–inch (12.7 cm) to less than 7–inch (17.8 cm) stretch mesh) gillnets at night in state waters. This restriction has a sunset clause of three years from the effective date of the final rule. The sunset clause is intended to ensure that NMFS and the BDTRT reconvene no later than three years after the effective date of this measure to evaluate whether it is effective at reducing dolphin bycatch and whether it should stay in effect. From December 16–April 14, the proposed regulations prohibit persons fishing with large mesh (greater than or equal to 7–inch (17.8) stretch mesh) gillnets at night in state waters without tie-downs. (Note: The BDTRT recommended this provision apply from November 1–April 30, but this period overlaps with a provision the BDTRT recommended for prohibiting large mesh gillnets (regardless of using tie-downs) in state waters from April 15–December 15. See proposed Gear-area Measures for Summer Northern North Carolina MU and Summer Southern North Carolina MU.)

Winter Mixed MU – Southern North Carolina (Cape Lookout to North Carolina/South Carolina border) From November 1–April 30, the proposed regulations prohibit persons fishing with medium mesh (greater than 5–inch (12.7 cm) to less than 7–inch (17.8 cm) stretch mesh) gillnets at night in state waters. This restriction has a sunset clause of three years from the effective date of the final rule. The sunset clause is intended to ensure that NMFS and the BDTRT reconvene no later than three years after the effective date of this measure to evaluate whether it is effective at reducing dolphin bycatch and whether it should stay in effect. From November 1–April 30, prohibit persons fishing with large mesh (greater than or equal to 7–inch (17.8 cm) stretch mesh) gillnets at night in state waters and require that, at night, gear be removed from the water and stowed on board the vessel before the vessel returns to port. (Note: When combined with the BDTRT recommendation for the Summer Southern North Carolina MU, to prohibit fishing with large mesh gillnets in state waters from April 15–December 15, this provision results in prohibiting fishing with large mesh gillnets at night in state waters year-round.)

Summer Northern North Carolina, Summer Southern North Carolina, and Winter Mixed MUs (North Carolina coast-wide) No person fishing in a Category I or II fishery may fish with a net within 300 feet (91.4 m) of the beach/water interface unless it consists of multi-fiber nylon (no type of monofilament material) that is 4 inches (10.2 cm) or less stretched mesh. NMFS proposes the 300–feet (91.4 m) distance requirement as an expansion of the BDTRT's recommendation to address the problem of bottlenose dolphin - fisheries interactions within the surf zone, evidenced by observer and stranding data. While the BDTRT recognized the need to prohibit certain nets deployed from the beach, NMFS expanded this prohibition to include the use of certain nets within 300 feet of the beach/water interface to address bottlenose dolphin bycatch throughout this area.

South Carolina, Georgia, Northern Florida, and Central Florida MUs (South Carolina, Georgia, and Florida) Except in instances where state or federal regulations require a closer proximity to gear, the proposed regulations require persons fishing with all types of gillnet gear to remain within 0.25 nmi (0.46 km) of the closest portion of their gear at all times in state and Federal waters within 14.6 nmi (27 km) from shore. In addition, the proposed regulations require that gear be removed from the water and stowed on board the vessel before the vessel returns to port.

Proposed gear marking requirements (apply to all regulated and exempted waters, as defined in § 229.35 (c)(1) and (c)(2) in the regulatory text of this proposed rule) All fishermen participating in Category I or II fisheries affected by this proposed rule (except the Atlantic blue crab trap/pot fishery and Virginia pound net fishery, which already have gear marking requirements) must permanently mark their gear with identification tags containing the last name and first and middle initials of the owner, gear mesh size, and one of the following: state vessel registration number, U.S. Coast Guard documentation number, or state commercial fishing license number. For gillnet gear, in addition to identification tags, gear must be marked on one end of the net with a square flag and the opposite end with another square flag or ball buoy (see Table 3 or regulatory text at 229.35(d)(1) and (d)(2) for specific requirements).

NMFS is proposing gear marking requirements to assist in monitoring the performance of the proposed components of this rule to better ascertain which fisheries are interacting with dolphins and sea turtles and to assist with enforcement efforts. Some marking of gillnets and associated surface gear (e.g., buoys or flags) is currently required or being considered under Federal or state fishery

management plans for each of the nine fisheries covered by this plan. Most fishery-related strandings of bottlenose dolphins and sea turtles involve gear that cannot be definitively traced back to a particular fishery or geographical area. Any additional information obtained from gear marking will be important for assessing fishery interactions with protected species. This measure will not directly reduce bycatch, but it is expected to facilitate monitoring of bycatch rates and assist in designing future bycatch reduction measures.

NMFS evaluated other possible gear marking requirements in the Atlantic blue crab trap/pot fishery and Virginia pound net fishery and determined that no additional gear marking requirements are currently needed. Atlantic blue crab trap/pot fishermen are currently required to mark the surface buoy, which is at least 5–inches (12.7 cm) in diameter, with an identification number contrasting in color to the buoy. Requiring additional tagging with the unique identification tags discussed above would cause an undue economic burden on the mid-Atlantic crab trap/pot fishermen (please refer to the Environmental Assessment for further details), especially given their current gear marking requirements. Virginia pound net fishermen are also currently required to mark the holding stake or pole with a unique identification tag. Because there are already other state and Federal gear marking requirements in place for these fisheries, significant additional information is not likely to be obtained, in the event of the serious injury or mortality of a dolphin, from further gear marking requirements. Therefore, no additional gear marking requirements are currently proposed for the mid-Atlantic crab trap/pot and Virginia pound net fisheries.

TABLE 3. SUMMARY OF PROPOSED BOTTLENOSE DOLPHIN REGULATORY MEASURES.

Management Unit	Fishing Area	Time Period	Gillnet Mesh Size Requirements (Stretch Mesh)		
			Small (≤5 inch)	Medium (>5 in to <7 inch)	Large (≥7 inch)
Summer Northern Migratory	NJ - VA	Unless otherwise specified, the following proposed measures apply during Summer (May 1- October 31).	None	Jun. 1–October 31: Anchored gillnets- fishermen must remain within 0.5 nmi (0.93 km) of the closest portion of each gear fished at night in state waters, and any gear fished at night must be brought back to port with vessel..	Jun. 1–October 31: Anchored gillnets- fishermen must remain within 0.5 nmi (0.93 km) of the closest portion of each gear fished at night in state waters, and any gear fished at night must be brought back to port with vessel.[1]
Summer Northern North Carolina	VA/NC border to Cape Lookout.	Unless otherwise specified, the following proposed measures apply during Summer (May 1- October 31).	Net length must be less than or equal to 1,000 feet (304.8 m)..	None	April 15–December 15: No fishing in state waters.[1]
Summer Southern North Carolina	Cape Lookout to NC/SC border.	Unless otherwise specified, the following proposed measures apply during Summer (May 1- October 31).	None	None	April 15–December 15: No fishing in state waters.[1,2]
Winter Mixed - Virginia	Cape Charles Light to VA/NC border.	Unless otherwise specified, the following proposed measures apply during Winter (November 1- April 30).	None	None	November 1–December 31: No fishing at night in state waters, and, at night, gear must be removed from the water and stowed on board the vessel before the vessel returns to port.[1]
Winter Mixed - Northern North Carolina	VA/NC border to Cape Lookout.	Unless otherwise specified, the following proposed measures apply during Winter (November 1- April 30).	None	No fishing at night in state waters; sunset clause of 3 years for this restriction..	From December 16–April 14: No fishing at night in state waters without tie-downs.[1,3]
Winter Mixed - Southern North Carolina	Cape Lookout to NC/SC border.	Unless otherwise specified, the following proposed measures apply during Winter (November 1- April 30).	None	No fishing at night in state waters; sunset clause of 3 years for this restriction..	No fishing at night in state waters, and, at night, gear must be removed from the water and stowed on board the vessel before the vessel returns to port.[1,4]

[1]Large mesh gillnets have additional restrictions for sea turtle and bottlenose dolphin protection under the amendments for the mid-Atlantic large mesh gillnet rule. Please cross-reference with Table 4.

[2]When combined with the BDTRT recommendation for the Winter Mixed MU Southern North Carolina, to prohibit fishing with large mesh gillnets at night in state waters from November 1–April 30, this provision results in prohibiting fishing with large mesh gillnets at night in state waters year-round.

[3]The BDTRT recommended this provision apply from November 1–April 30, but this period overlaps with a provision the BDTRT recommended for prohibiting large mesh gillnets (regardless of using tie-downs) in state waters from April 15–December 15. See proposed Gear-area Measures for Summer Northern North Carolina MU and Summer Southern North Carolina MU.

[4]When combined with the BDTRT recommendation for the Summer Southern North Carolina MU, to prohibit fishing with large mesh gillnets in state waters from April 15–December 15, this provision results in prohibiting fishing with large mesh gillnets at night in state waters year-round.)

Management Unit	Fishing Area	Time Period	Gear Operating Requirements
Summer Northern and Southern North Carolina; Winter Mixed	NC coast-wide	Year-round	No person fishing in a Category I or II fishery may fish with a net within 300 feet (91.4 m) of the beach/water interface unless it consists of multi-fiber nylon (no type of monofilament material) that is 4 inches (10.2 cm) or less stretched mesh.
South Carolina, Georgia, Northern Florida, and Central Florida	SC, GA, and FL.	Year-round	All gillnet gear: Fishermen must remain within 0.25 nmi (0.46 km) of the closest portion of their gear at all times in state and Federal waters within 14.6 nmi (27 km) from shore. Gear must be removed from the water and stowed on board the vessel before the vessel returns to port.

Management Unit	Fishing Area	Time Period	Gear Marking Requirements for All Fisheries (excluding Virginia Pound Net and Atlantic Blue Crab Trap/Pot Fisheries)
All	NJ - central FL	Year-round	Gear marking requirements apply to all regulated and exempted waters, as defined in § 229.35(c)(1) and (c)(2) in the regulatory text of this proposed rule. All fishermen participating in Category I or II fisheries affected by this rule (except Atlantic blue crab trap/pot and Virginia pound net fisheries, which already have gear marking requirements) must permanently mark their gear with identification tags containing the last name and first and middle initials of the owner, gear mesh size, and one of the following: state vessel registration number, U.S. Coast Guard documentation number, or state commercial fishing license number. These identification tags, made of plastic or metal, must be attached along the float line, as close to the float line as operationally feasible, at least once every 300 feet (91.4 m). For gillnet gear, in addition to the identification tags, gear must be marked on the end flag or ball by using engraved flag(s) or ball buoy(s), or by attaching engraved metal or plastic tags to the flag(s) and ball buoy(s). One end of the net must be marked by a square flag not less than 144 square inches (929.03 square cm) and at least 3 feet (0.91 m) above the water. The opposite end of the net must also be marked by a square flag or an 8–inch (20.32 cm) minimum diameter ball buoy with the gear mesh size. Both flag(s) and ball buoy(s) must be marked with at least two stripes of reflective material that are not less than 2 inches (5.08 cm) in width and that are visible for 360 degrees.

Proposed Non-regulatory BDTRP Measures

The BDTRT noted that effective application of the BDTRP requires cooperation among researchers, regulators, and fishermen and, therefore, included non-regulatory recommendations considered important in achieving the long-term goals of the BDTRP. The following are non-regulatory recommendations from the May 7, 2002, Consensus Recommendations, which include research initiatives, outreach, training, and cooperative efforts (Please see the EA for additional information on non-regulatory recommendations).

The BDTRT made the following general research and monitoring recommendations: (1) continue research on bottlenose dolphin stock structure; (2) design and conduct rigorous scientific surveys to provide reliable abundance estimates of the bottlenose dolphin stock; (3) conduct research on the bottlenose dolphin stock to determine if it is depleted under the MMPA; (4) improve assessment of bottlenose dolphin bycatch by expanding monitoring coverage under the observer program, expanding stranding networks to enhance data collection efforts, assessing the factors contributing to bottlenose dolphin bycatch, providing better assessment of fishery effort, and exploring alternative bycatch monitoring methods; and (5) complete various ongoing gear-modification-related research projects (e.g., comparing behavior of captive and wild dolphins around gillnets with and without acoustically reflective webbing, and investigating the effects of twine stiffness on dolphin bycatch).

NMFS will continue to conduct annual mortality and abundance estimates for the western North Atlantic coastal stock of bottlenose dolphins, as well as update the distribution of the stock. NMFS is also partnering with state agencies in conducting gear modification research and identifying bottlenose dolphin behavior around deployed gear.

The BDTRT recommended the following gear modification research projects to evaluate their effectiveness in reducing dolphin bycatch: (1) investigate bridle alterations to prevent collapsing of the net and eliminate bridles on anchored gillnet gear; (2) investigate effectiveness of preventing slack netting on anchored gillnet gear when net panels are/are not laced together; (3) investigate various string designs (e.g., shallower net depth, hang in different parts of the water column) to determine if the amount of webbing can be reduced without decreasing landings; (4) determine if and how dolphins interact with gillnet gear in North Carolina waters, identify these dolphins, and investigate their associated behavior and bycatch rates; (5) investigate the importance of day and set times with respect to when dolphins are caught in gear, based on carcass temperatures and soak times; (6)

investigate the effectiveness of using inverted bait wells in crab traps/pots to prevent dolphins from removing bait from traps/pots and becoming caught in trap/pot lines; and (7) investigate effects of reducing the slack in pound net leaders.

NMFS and the BDTRT recognize the difficulties in quantifying the performance of gear modifications and recognize the importance of such research to ensuring appropriate and effective conservation measures are established and fishermen are not unnecessarily burdened without sufficient bycatch reduction. Therefore, NMFS would continue to develop funding opportunities for cooperative work with the fishing industry, researchers, and state wildlife agencies to implement recommended gear research projects. NMFS would develop, test and analyze the effects of gear modifications and "best management practices" through the agency's gear specialists and fishery liaison personnel. Results from these projects would be presented to the BDTRT at future meetings and to the fishing community via outreach efforts.

The BDTRT also recommended outreach and education workshops be conducted to: (1) inform fishermen of new and existing regulations to reduce bycatch in their fisheries; (2) supply contact information and protocols for responding to dolphin/fishery interactions or strandings; and (3) encourage best fishing practices (e.g., reduce dolphin attraction to fish) to reduce bycatch. NMFS proposes to address these recommendations by conducting workshops led by the fishery liaison in major ports from New Jersey through Florida and dockside visits, by establishing web-based educational training, and by providing educational materials via annual mail-outs to all Category I and II fisheries affected by this proposed rule.

The BDTRT further advised NMFS to educate state and local fishery enforcement agents on the significance of reporting strandings. Training should: (1) discuss the agent's role in stranding response and in educating fishermen and the public; (2) include similar training materials as provided to the fishermen; (3) be conducted at regional law enforcement meetings; and (4) be incorporated into state/NMFS Joint Enforcement Agreements.

To address these recommendations, special agents from the NMFS Enforcement Division would attend future BDTRT meetings and NMFS staff will provide on-site training to Federal, state, and local enforcement/marine patrols. NMFS would educate enforcement agents on all aspects of this proposed plan and on how to respond to and assist in marine mammal strandings.

The BDTRT also provided the following non-regulatory recommendations for the National Observer Program and Marine Mammal Health and Stranding Network: (1) develop observer programs that provide statistically viable sample sizes throughout all fisheries and sub-fisheries interacting with dolphins; (2) improve observer training and provide observers with adequate equipment; (3) implement a rotational schedule to achieve observer coverage or alternative monitoring programs for all Category II fisheries; (4) establish dedicated beach surveys in geographic areas and time frames during which observer coverage is lacking; (5) increase stranding coverage and improve training for network participants; (6) improve post-mortem assessments; and (7) provide funding to organize and conduct a workshop/training session to assemble the information and staff necessary to accomplish this objective.

NMFS plans to, within the constraints of available funding, address the BDTRT's concerns in future budget cycles. NMFS is currently developing a sampling design to implement a rotational schedule to increase observer coverage and plans to provide additional training to stranding network participants, especially in conducting post-mortem assessments, by funding, developing, and organizing workshops and certification programs. NMFS is continuing to improve observer training via application of recommendations from the National Observer Program Advisory Team, which is an advisory team comprised of NMFS observer program coordinators.

Other non-regulatory recommendations were that NMFS: (1) provide funding for a toll-free hotline for reporting strandings of marine mammals; (2) formally request that Federal, state, and local marine patrols monitor inside waters for dolphin bycatch and fishery interactions and assist the Stranding Network in response to stranded animals; (3) provide funding for seasonal and geographic aerial or platform surveys; and (4) improve communication between the Marine Mammal Health and Stranding Network and National Observer Program.

Presently, NMFS will not fund a centralized toll-free hotline because all states under the jurisdiction of the BDTRP already maintain individual hotlines, and NMFS determined that instituting a new hotline may cause additional reporting delay. NMFS supports the recommendation to solicit state and local marine patrol aid in supporting the Stranding Network and intends to develop workshops to aid in this endeavor. Further, NMFS intends to foster communication between the Stranding Network and Observer Program by developing such workshops/training and improving gear repository (two sites located at NMFS Pascagoula and Narragansett Laboratories) procedures for obtaining gear from the Stranding Network, interacting with enforcement, and standardizing retention time of retained gears.

The final non-regulatory recommendation by the BDTRT was for NMFS to encourage states to develop, implement, and enforce a program for the removal of derelict blue crab traps/pots and associated lines, as a large blue crab fishery exists along the coastal bottlenose dolphin's distributional range. Additionally, NMFS supports and will conduct an outreach program to encourage the following BDTRT-recommended voluntary gear modifications: (1) using sinking or negatively buoyant line; (2) limiting the line to the minimum length necessary; and (3) using inverted or modified bait wells for those areas where dolphins are tipping traps and stealing bait. NMFS also plans to fund a pilot project to examine the use of inverted or modified bait wells and has developed a proposed experimental design with industry assistance.

Proposed Measures to Reduce Bycatch of Endangered Species Act (ESA) Listed Sea Turtles - Background

The purposes of the ESA as stated in section 2(b) are to provide a means whereby the ecosystems, upon which endangered or threatened species depend, may be conserved; to provide a program for the conservation of such endangered or threatened species; and to take such steps as may be appropriate to achieve the treaties and conventions set forth in ESA subsection (a). All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific Coast of Mexico and olive ridleys from the Pacific Coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles, even incidentally, is prohibited, with exceptions for threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement provided, or an incidental take permit issued, pursuant to section 7 or 10 of the ESA, respectively.

Sea Turtle/Fishery Interactions

Sea turtle strandings along the coast of North Carolina dramatically increased during April and May of 1995, and the pattern has continued in subsequent years. The increase in stranding events coincided with an increase in effort in the monkfish gillnet fishery, which first began off North Carolina in 1995. In the spring of 2000, 280 sea turtles stranded in two short time periods, coincident with the monkfish and dogfish gillnet fisheries operating offshore. Large-mesh gillnets are known to be highly effective at catching sea turtles. Four of the carcasses were carrying gillnet gear measuring 10–12 inches (25.4–30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. The majority of turtles that stranded in the 2000 event were loggerhead turtles, but Kemp's ridleys were also documented. According to the Turtle Expert Working Group (TEWG), a team of population biologists, sea turtle scientists, and life history specialists that compiles and examines information on the status of sea turtle species, the northern subpopulation of loggerhead turtles is declining, or is stable at best, and is not showing evidence of recovery. The northern subpopulation of loggerheads is disproportionately represented in the mid-Atlantic waters off North Carolina and Virginia and continued mortality as a result of large mesh gillnet fisheries is likely to impede recovery efforts of this subpopulation (TEWG 2000). Because of the documented strandings and the TEWG's findings, NMFS enacted the mid-Atlantic large mesh gillnet rule in waters of the exclusive economic zone (EEZ)(67 FR 71895, December 3, 2002).

NMFS recently compared previously unavailable data on North Carolina monkfish gillnet landings in state and Federal waters. From 1995 to 2000, state waters only accounted for one to ten percent of monkfish landings. However, in 2002, with gear restrictions in place, landings in state waters accounted for 92 percent of monkfish landings. In 2002, North Carolina state water monkfish landings were five times higher than the average state water landings for 1995 to 2000. NMFS did not anticipate this large shift in fishing effort to North Carolina state waters, which could pose a substantial risk to sea turtles in state waters. Similarly, from 1999–2002, between four and ten boats have targeted monkfish with large mesh gillnets each year in Virginia state waters, also posing a risk to sea turtles in the area. Sea turtles are known to regularly occur in the state waters of North Carolina and Virginia; therefore, large mesh gillnet fisheries in those areas pose a threat, especially during times when the water is warmer and sea turtles are most abundant and active.

History of Sea Turtle Conservation Measures

Various temporary protections to reduce sea turtle interactions and mortality in large mesh gillnets have been enacted by NMFS since the 2000 stranding event (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002). Detailed background information on the events leading to these restrictions may be found in the **Federal Register** documents referenced in this paragraph and is not repeated in this proposed rule. NMFS enacted an interim final rule effective from March 15 to November 10, 2002, which implemented a series of seasonally-adjusted closures to protect sea turtles in Federal waters off North Carolina and Virginia waters when turtles were expected to occur in those areas (67 FR 13098, March 21, 2002). In the interim final rule, NMFS stated that it was considering adopting those restrictions as a final rule and received comments on that proposal through June 19, 2002.

The provisions of the interim final rule established seasonally-adjusted gear restrictions to protect migrating sea turtles by closing portions of the mid-Atlantic EEZ to fishing with gillnets with a mesh size larger than 8–inch (20.3 cm) stretched mesh. The areas and times closed to fishing with gillnets larger than 8–inch (20.3 cm) stretched mesh were as follows: waters north of 33°51.0′ N. (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N. (Oregon Inlet, North Carolina) - at all times; waters north of 35°46.0′ N. (Oregon Inlet) and south of 36°22.5′ N. (Currituck Beach Light, North Carolina) - from March 16 through January 14; waters north of 36°22.5′ N. (Currituck Beach Light, North Carolina) and south of 37°34.6′ N. (Wachapreague Inlet, Virginia) - from April 1 through January 14; waters north of 37°34.6′ N. (Wachapreague Inlet, Virginia) and south of 37°56.0′ N. (Chincoteague, Virginia) - from April 16 through January 14. Waters north of 37°56.0′ N. (Chincoteague, Virginia) were not affected by the interim final rule.

The timing of the restrictions was based upon an analysis of sea surface temperatures for the above areas. Sea turtles are known to migrate into and through these waters when the sea surface temperature is 11 degrees Celsius or greater (Epperly and Braun-McNeill 2002). The January 15 date for reopening the areas north of Oregon Inlet (35°46.0′ N.) to large mesh gillnet fisheries was also based upon the 11 degree Celsius threshold and is consistent with the seasonal boundary established for the summer flounder fishery/sea turtle protection area (50 CFR 223.206(d)(2)(iii)(A)).

Gillnets with 10– and 12–inch (25.4 and 30.5 cm) mesh were associated with the 2000 mass stranding in that four of the carcasses were carrying gillnet gear measuring 10 to 12 inches (25.4–30.5 cm) stretched mesh, which was consistent with the gear used in the monkfish fishery. The potential existed, however, for other fisheries in the area to utilize large mesh gillnets with mesh sizes smaller than the 10–12 inch (25.4 to 30.5 cm) mesh found on the turtles, which could still pose a serious risk of entanglement to sea turtles. The 8–inch (20.3 cm) size restriction was enacted even though gillnets with mesh sizes smaller than 8–inches (20.3 cm) were historically known to capture and kill sea turtles. NMFS selected an 8–inch (20.3 cm) size restriction for the interim final rule (67 FR 13098, March 21, 2002) and considered banning smaller mesh sizes, but the size range chosen was thought to include fisheries in the area that are known to interact with turtles, without affecting other fisheries unintentionally. Therefore, the interim final rule stated that if any new information showed otherwise, NMFS will consider amending the rule to include smaller mesh sizes.

NMFS promulgated the interim final rule (67 FR 13098, March 21, 2002) to prevent further mortalities and other takes of listed species in large mesh gillnet fisheries, of which the federally-managed monkfish fishery was the most likely to be affected. NMFS limited the interim final rule to Federal waters primarily because, at the time, the monkfish fishery was not thought to operate in state waters, and secondarily to avoid unintentionally affecting the black drum gillnet fishery that occurs in the nearshore waters of the eastern shore of Virginia, and which was, at the time, involved in a cooperative agreement with NMFS observers to document sea turtle interactions.

On December 3, 2002, NMFS published a final rule (67 FR 71895) establishing seasonally-adjusted gear restrictions by closing portions of the mid-Atlantic EEZ to fishing with gillnets with a mesh size larger than 8–inch (20.3 cm) stretched mesh to protect migrating sea turtles. This final rule was unchanged from the interim final rule published March 21, 2002 (67 FR 13098). Comments on the interim final rule advocated that the restrictions be extended to North Carolina state waters to prevent gillnet fishermen from relocating effort and contributing substantially to the mortality of sea turtles in those waters, but NMFS did not have sufficient evidence prior to publishing the final rule to predict such a relocation would occur. Following the implementation of the interim final rule, NMFS received comments that several several fishermen had shifted monkfish gillnet effort from Federal waters to North Carolina state waters. This preliminary information was received shortly before the final rule was enacted, and, therefore, NMFS was unable to further investigate and act upon the information prior to promulgating the final rule. Subsequent evaluation revealed that a shift in effort did in fact occur, leading NMFS to propose the rule revisions described herein.

Proposed Sea Turtle Regulations

NMFS is proposing to amend the existing mid-Atlantic large-mesh seasonal closures to include state waters, seaward of the COLREGS lines. Modifying the existing seasonal closures should reduce the overall serious injury and mortality of sea turtles incidentally caught in large-mesh gillnet fisheries. Further, these changes would not only positively affect sea turtle recovery, but would also benefit the western North Atlantic coastal bottlenose dolphin stock. Since gillnet gear is the primary threat to the bottlenose dolphin stock, management measures proposed in this rule that are specifically designed for sea turtle conservation would also reduce overall serious injury and mortality of the Winter Mixed MU (Northern Migratory, Northern North Carolina, and Southern North Carolina MUs) within the bottlenose dolphin stock.

In response to a comment by the North Carolina Division of Marine Fisheries (NCDMF) on the interim final rule (67 FR 71895, December 3, 2002), NMFS is also proposing to change the large gear mesh size limitation. Other state and Federal regulations affecting the area refer to large mesh gillnets as 7–inch (17.8 cm) or greater stretched mesh and regulate based upon that dimension. Three regulations currently define large mesh gillnets as 7–inch (17.8 cm) or greater stretched mesh: (1) the large mesh gillnet management measures of the Harbor Porpoise Take Reduction Plan in the mid-Atlantic (50 CFR 229.34); (2) NCDMF regulation [15A NCAC 03J.0202(7)] states that "it is unlawful to use gillnets in the Atlantic Ocean with a mesh length greater than seven inches from April 15 through December 15;" and (3) the proposed BDTRP measures under this rule, which include gillnets with mesh size of 7 inches (17.8 cm) and greater. Therefore, NMFS is proposing to amend the previous rule to include gillnets with a stretched mesh of 7–inches (17.8 cm) or greater, instead of the current limitation of greater than 8–inches stretched mesh, in response to information received during the public comment period on the interim final rule, to maintain consistency with current state and Federal regulations and management efforts, and to avoid confusion of terminology.

Another fishery that will fall under the provisions of this proposed rule is a portion of the black drum gillnet fishery off Virginia. The fishery utilizes large mesh gillnets and long, often overnight, sets in areas where sea turtles are known to occur and, therefore, can reasonably be expected to pose a significant risk to sea turtles. Black drum gillnetting primarily occurs inside COLREGS lines, but a small number of boats (five or fewer) sometimes move their operation just outside of the COLREGS lines into the ocean. Virginia Marine Resources Commission (VMRC) data for 2002 obtained during times that would have been affected by this rule indicate that the black drum gillnet fishery consisted of 21 vessels. Further, only 4–5 vessels target oceanic black drum during part of the year. Revising this rule will, therefore, only impact a small fraction of the total black drum fishery, and those boats will still have the option of fishing inside COLREGS lines. According to the VMRC, this fishery will not likely benefit from the exemption detailed below because of the characteristics of the fishery (i.e., the fishery typically uses large-mesh gillnets longer than 1,000 feet (304.8 m) and long, overnight sets). Additionally, there are a small number of vessels targeting oceanic black drum.

Striped Bass Exemption

The large mesh striped bass gillnet fishery is prosecuted in state waters off both North Carolina and Virginia. NMFS is proposing to conditionally exempt the striped bass fishery in state waters from the expanded seasonal closures. In North Carolina state waters, the characteristics of this fishery, which typically opens January 1, and the small quotas granted to fishermen may limit the potential for interactions with sea turtles. Striped bass fishermen typically use single, short, large-mesh gillnets under 1,000 feet (304.8 m) in length and soak their gear for a few hours or less. The fishery is prosecuted in a different manner in Virginia state waters, where multiple nets and long soak times with overnight sets are common. According to information from VMRC, the fishery is officially open from February 1– December 31 (unless the quota is reached earlier) and the majority of the fishing occurs in February/March and November/December. The February/March time frame falls outside of the seasonal closures, therefore, only one of the primary fishing periods will be impacted by the amended regulation. Additionally, with the implementation of VMRC's new quota tag system (differentiating between bay/river caught fish and ocean fish) and a quota reduction, it is expected that the total ocean catch will be significantly reduced when compared to data from previous years, but it is uncertain if temporal effort will be affected. NMFS proposes to specify the applicability of the exemption to ensure that it is only used by striped bass fishermen who fish their gear in a manner that limits the potential risk to sea turtles, as described below.

Under these conditions, NMFS is proposing an exemption to the closure provisions of this rule for the large mesh gillnet striped bass fishery. To qualify, fishermen targeting striped bass with large mesh gillnets (as defined above) in state waters, delineated in this rule, must tend the nets (within 0.25 nautical mile) throughout the soak time and no vessel may set more than 1,000 feet (304.8 m) of net per trip. The exemption for the striped bass fishery will only apply within the context of the state-regulated fishery. Therefore, the striped bass exemption of seasonal restrictions will be effective in state waters only in the following cases: (1) in North Carolina waters, the exemption only applies during the North Carolina large mesh gillnet striped bass open season (not applicable to the trawl or beach seine season), which is variable in length and is opened and closed by proclamation of NCDMF; and (2) in Virginia waters, the exemption only applies for those fishermen targeting striped bass and possessing valid ocean (not bay) striped bass quota tags on board during the Virginia striped bass

open season. It is important to note that NMFS does not necessarily consider tending requirements, limited soak time, and restrictions on net length sufficient by themselves to warrant exemption of a fishery from using conservation measures to protect sea turtles. Rather, it is the combination of these fishing practices, in conjunction with limited effort and stringent state regulations, that make the exemption possible. NMFS will continue to monitor and evaluate the exemption to ensure that sea turtles and bottlenose dolphins are adequately protected.

TABLE 4. SUMMARY OF NMFS SEA TURTLE CONSERVATION REGULATORY MEASURES.

Nearshore and Offshore Waters	Large Mesh Gillnet (≥7 inch Stretched Mesh)	Corresponding BDTRP Management Unit
North of 37°34.6′ N (Wachapreague Inlet, Virginia) and south of 37°56.0′ N (Chincoteague, Virginia)	No Fishing from April 16–January 14.	Northern Virginia portion of Summer Northern Migratory and Winter Mixed.
North of 36°22.5′ N (Currituck Beach Light, North Carolina) and south of 37°34.6′ N (Wachapreague Inlet, Virginia)	No Fishing from April 1–January 14.	Southern Virginia portion of the Summer Northern Migratory and Winter Mixed.
North of 35°46.0′ N (Oregon Inlet, North Carolina) and south of 36°22.5′ N (Currituck Beach Light, North Carolina)	No fishing from March 16–January 14.	Northern North Carolina.
North of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet) at any time	No fishing at any time	Southern North Carolina and Southern half of Northern North Carolina.

Conditions: For the above nearshore and offshore waters, during the above-specified time periods: no person may fish with (including, but not limited to, setting, hauling back, or leaving in the ocean), or possess on board a vessel, any gillnet with a stretched mesh size of 7–inches (17.8 cm) or larger, unless all gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6–inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

Exemptions: Fishermen are exempt from these conditions when targeting striped bass with large mesh gillnets in state waters if: gillnet gear is less than or equal to 1,000 feet (304.8 m) in length; and the vessel remains within 0.25 nautical miles (0.46 km) of the net at all times.

In North Carolina waters, the exemption only applies during the North Carolina large mesh gillnet striped bass open season as specified by proclamation of the director of the North Carolina Division of Marine Fisheries.

In Virginia waters, the exemption only applies to those fishermen targeting striped bass and possessing valid ocean striped bass quota tags, issued by the Virginia Marine Resources Commission, aboard the vessel during the Virginia striped bass open season.

Classification

This proposed rule was determined significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, will have on small entities. The analysis is summarized as follows.

NMFS must reduce the incidental mortality and serious injury of marine mammals and the takings of sea turtles associated with commercial fisheries, as mandated by the MMPA and subject to the ESA. Western North Atlantic coastal bottlenose dolphins and sea turtles continue to experience serious injury and mortality incidental to commercial fishing activities at levels that are not sustainable. The specific objective of this proposed rule is to reduce the incidental mortality and serious injury by commercial fishing gear of bottlenose dolphins in waters off the states of Florida through New Jersey and reduce the potential take of sea turtles from large mesh gillnet fisheries in North Carolina and Virginia state waters. This objective will be accomplished through restrictions on the seine/gillnet fisheries in Florida through New Jersey, and gear marking requirements for these same fisheries, plus stop net and long haul seine fisheries. Both the MMPA and ESA provide the legal basis for the proposed rule.

The proposed rule will not impose additional reporting, recordkeeping, or compliance requirements other than gear marking requirements. The gear marking requirements, however, are standard methods to enhance visibility and gear identification and no special skills will be required for compliance.

A total of 3,079 entities were identified as having recorded landings in the 2001 fishing season using gillnet gear in Florida through New Jersey and will be affected by the fishing restrictions and gear marking requirements contained in the proposed rule. Total harvests from all fisheries by these entities are estimated to have an ex-vessel value of $98 million, or an average of approximately $32,000 per entity. Eighty unique participants, some of whom are also included among the 3,079 gillnet entities, were identified as having participated in the North Carolina beach haul seine fishery and produced $2.55 million in ex-vessel value (all fisheries included), for an average of approximately $32,000 per entity.

All commercial fishing operations in the respective seine/gillnet fisheries that operate in the manner and location encompassed by the proposed rule will be affected by the proposed rule. The benchmark for a fish-harvesting business to be considered a small entity is if the entity is independently owned and operated, not dominant in its field of operation, and has annual receipts not in excess of $3.5 million. Given the average revenue information provided above, all operations in the seine/gillnet fisheries are assumed to be small entities.

Information on the profit profile of participants in the respective seine/gillnet fisheries covered by the proposed rule is not available. Inferences on the effects of the proposed rule on profitability of the impacted entities, however, may be drawn from examining the expected impacts on ex-vessel revenues. Total costs associated with harvest reductions (lost ex-vessel revenue) and gear marking devices (purchase costs) across all seine/gillnet fisheries are estimated at $1.62-$1.73 million. This represents less than 2 percent of total ex-vessel revenues for the entities involved in all these fisheries. However, certain sub-sectors or fisheries are expected to be more severely impacted. Impacts range from no expected impacts on participants in the large mesh gillnet fishery in North Carolina state waters due to the night fishing restrictions, to an estimated 14 percent reduction in ex-vessel revenues for participants in the large mesh gillnet fishery in the range of the Winter Mixed MU due to similar night fishing restrictions. A second example is an estimated 11 percent reduction in ex-vessel revenues for participants in the Delaware-Maryland-New Jersey Summer

Northern oceanic medium and large mesh gillnet fishery due to the gear proximity and return-to-shore provisions of the proposed rule. In total, these two sub-sectors encompass approximately 12.82 percent of identified entities that will be affected by the entire proposed rule.

These results indicate that over 12 percent of identified entities in the seine/gillnet fisheries are estimated to experience greater than 10 percent reductions in ex-vessel revenues in addition to further gear marking expenses that amount to approximately 1 percent of average annual ex-vessel revenues.

Five alternatives to the proposed rule were considered. One alternative would allow status quo operation of the fisheries, thereby eliminating all adverse economic impacts. This alternative would not, however, achieve the required reduction in the incidental mortality and serious injury of bottlenose dolphin and takings of sea turtles by commercial fishing gear and would not meet the objectives of the MMPA or ESA. The other four alternatives would achieve the objectives of the MMPA and the ESA.

One alternative will add a daily hauling requirement and mandatory bycatch certification training to the measures in the proposed rule. Although it was concluded that the hauling provision is unenforceable, in theory, this requirement would constitute an even more restrictive action and will not reduce the adverse impacts of the proposed rule. This alternative would also impose additional, but unquantifiable, costs on the fishery participants as a result of the mandatory bycatch certification training. These costs will be associated with direct costs for participation in the training, potential time taken away from fishing or other revenue generating activities in order to receive the training, and potential lost fishing revenues if fishing activities are restricted due to failure to receive the certification. This alternative would also impose additional gear marking requirements, notably on participants in the Atlantic blue crab trap/pot fishery, that would substantially increase costs over those included in the proposed rule.

Three alternatives were considered that prohibit all ocean gillnet fishing within 3 km (1.62 nautical miles) from shore, limit all ocean gillnet fishing to at most 12 consecutive hours, or prohibit all ocean gillnet fishing in state waters. Each of these alternatives is projected to result in greater direct adverse economic impacts on small entities than the proposed rule. For example, the proposed rule harvest reductions across all areas and fisheries are estimated at 855,000 pounds (387,821.48 kg) with an ex-vessel value of $1.009 million; whereas, the above mentioned three alternatives reduce the average annual harvest by 7.79 million pounds (3.533 million kg) with an ex-vessel revenues at $4.04 million, 5.62 million pounds (2.549 million kg) with $3.18 million in ex-vessel revenues, and 16.63 million pounds (7.543 million kg) with $9.71 million in ex-vessel revenues, respectively. These three alternatives would also impose additional gear marking requirements, notably on participants in the Atlantic blue crab trap/pot fishery, that would substantially increase costs over those included in the proposed rule.

Compared to the other alternatives considered that achieve the required reduction in the mortality and serious injury of bottlenose dolphins and sea turtles incidental to commercial fishing, the proposed rule presents the least potential for negative economic impacts.

No duplicative, overlapping, or conflicting Federal rules have been identified.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) because of the proposed requirement to include gear marking requirements. This requirement was submitted to the Office of Management and Budget (OMB) for approval. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the OMB [see **ADDRESSES**].

Most vessels engaged in the Category I and II fisheries affected by this proposed rule are currently required to adhere to some of the gear marking requirements based upon other fishery regulations. Therefore, these fisheries should not experience significant and adverse economic impacts as a result of this rule. The following are approximate cost and time burden estimates per fishery (except the Virginia pound net and Atlantic blue crab trap/pot fisheries, which are not required by this proposed rule to mark gear) to comply with proposed gear marking requirement:

1. North Carolina inshore gillnet fishery annual estimate for gear marking is $16.30 per vessel, with a cumulative fishery estimate of $65,037.00. The burden time to implement gear marking is 3–6 hours per vessel and 11,970–23,940 hours for the entire fishery.

2. Southeast Atlantic gillnet fishery annual estimate for gear marking is $17.40 per vessel, with a cumulative fishery estimate of $278,400.00. The burden time to implement gear marking is 3–6 hours per vessel and 48,000–96,000 hours for the entire fishery.

3. Southeastern U.S. Atlantic shark gillnet fishery annual estimate for gear marking is $24.00 per vessel, with a cumulative fishery estimate of $576.00. The burden time to implement gear marking is 1–2 hours per net and 72–144 hours for the entire fishery.

4. U.S. mid-Atlantic coastal gillnet fishery annual estimate for gear marking is $17.40 per vessel, with a cumulative fishery estimate of $227,940.00. The burden time to implement gear marking is 3–6 hours per vessel and 39,300–117,900 hours for the entire fishery.

5. Mid-Atlantic haul/beach seine fishery annual estimate for gear marking is $8.80 per net, with a cumulative fishery estimate of $893.75. The burden time to implement gear marking is 1 hour per net and 125 hours for the entire fishery.

6. North Carolina long haul seine fishery annual estimate for gear marking is $4.40 per net, with a cumulative fishery estimate of $1,452.00. The burden time to implement gear marking is 1 hour per net and 330 hours for the entire fishery.

7. North Carolina roe mullet stop net fishery annual estimate for gear marking is $4.40 per net, with a cumulative fishery estimate of $114.40. The burden time to implement gear marking is 1–2 hours per net and 78–156 hours for the entire fishery.

Notwithstanding any other provision of the 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.

References

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List of Subjects

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: November 2, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 and 50 CFR part 229 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.206, paragraph (d)(8) is revised to read as follows:

§ 223.206 Exceptions to porhibitions relating to sea turtles.

* * * * *

(d) * * *

(8) *Restrictions applicable to large-mesh gillnet fisheries in the mid-Atlantic region.* (i) No person may fish with or possess on board a boat, any gillnet with a stretched mesh size 7–inches (17.8 cm) or larger, unless gillnet is covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6–inches (15.24 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies to all offshore waters during the following time periods and in the following areas with the exception of the striped bass fishery in state waters (as detailed below):

(A) Waters north of 33° 51.0′ N. (North Carolina/South Carolina border at the coast) and south of 35° 46.0′ N. (Oregon Inlet, North Carolina) at any time;

(B) Waters north of 35°46.0′ N. (Oregon Inlet, North Carolina) and south of 36°22.5′ N. (Currituck Beach Light, North Carolina) from March 16 through January 14;

(C) Waters north of 36°22.5′ N. (Currituck Beach Light, North Carolina) and south of 37°34.6′ N. (Wachapreague Inlet, Virginia) from April 1 through January 14; and

(D) Waters north of 37°34.6′ N. (Wachapreague Inlet, Virginia) and south of 37°56.0′ N. (Chincoteague, Virginia) from April 16 through January 14.

(ii) A fisherman targeting striped bass with large-mesh gillnets in state waters is exempt from the restrictions of paragraph (d)(8)(i) of this section if the fisherman complies with the following restrictions: no more than 1,000 feet (308.4 m) of net may be set; and the vessel must remain within 0.25 nautical miles (0.46 kilometers) of the net at all times. Additionally, in North Carolina state waters, this exemption only applies during the North Carolina large-mesh gillnet striped bass open season as specified by proclamation of the Director of the North Carolina Division of Marine Fisheries; and in Virginia waters, this exemption only applies for those fishermen targeting striped bass and possessing valid ocean striped bass quota tags, issued by the Virginia Marine Resources Commission, aboard the vessel during the Virginia striped bass open season.

* * * * *

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, add the definitions "Fishing or to fish," "New Jersey, Delaware, and Maryland state waters," "Northern North Carolina state waters," "Northern Virginia state waters," South Carolina, Georgia, and Florida," "Southern North Carolina state waters," and "Southern Virginia state waters" in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Fishing or to fish means any commercial fishing operation activity that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

* * * * *

New Jersey, Delaware, and Maryland state waters means the area consisting of all regulated waters bounded on the north by a line extending eastward from the New York/New Jersey border, on the east within 3 nautical miles (5.56 km) of shore, and on the south by a line extending eastward from the Maryland/Virginia border.

* * * * *

Northern North Carolina state waters means the area consisting of all regulated waters bounded on the north by a line extending eastward from the Virginia/North Carolina state border, on the east within 3 nautical miles (5.56 km) of shore, and on the south by a line extending eastward from Cape Lookout, North Carolina (34°37.22′ N. latitude).

Northern Virginia state waters means the area consisting of all regulated waters bounded on the north by a line extending eastward from the Virginia/Maryland border, on the east within 3 nautical miles (5.56 km) of shore, and on the south by a line extending eastward from Cape Charles Light on Smith Island in the Chesapeake Bay mouth (37°07.23′ N. latitude).

* * * * *

South Carolina, Georgia, and Florida waters means the area consisting of all regulated waters bounded on the north by a line extending eastward from the North Carolina/South Carolina border, on the east within 14.6 nautical miles (27 km) from shore, and on the south by the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

* * * * *

Southern North Carolina state waters means the area consisting of all

regulated waters bounded on the north by a line extending eastward from Cape Lookout, North Carolina (34°37.22′ N. latitude), on the east within 3 nautical miles (5.56 km) from the shoreline, and on the south by a line extending eastward from the North Carolina/South Carolina border.

Southern Virginia state waters means the area consisting of all regulated waters bounded on the north by a line extending eastward from the Cape Charles Light on Smith Island in the Chesapeake Bay mouth (37°07.23′ N. latitude), on the east within 3 nautical miles (5.56 km) of shore, and on the south by a line extending eastward from the Virginia/North Carolina border.

* * * * *

3. In subpart A, § 229.3, paragraphs (r), (s), and (t) are added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(r) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove any gillnet gear from the areas specified in § 229.35(c)(1) and (c)(2) unless the gear complies with the specified gear marking requirements and other restrictions set forth in § 229.35(d) and (e).

(s) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove any North Carolina long haul seine as defined in § 229.35(b) from the areas specified in § 229.35(c)(1) and (c)(2) unless the gear complies with the specified gear marking requirements set forth in § 229.35(d)(1).

(t) It is prohibited to fish with, or possess on board a vessel unless stowed, or fail to remove any seine gear as defined in § 229.35(b) from the areas specified in § 229.35(c)(1) and (c)(2) unless the gear complies with the specified gear marking requirements and other restrictions set forth in § 229.35(d)(1) and § 229.35(e)(3)(i)(A).

4. In subpart C, § 229.35 is added to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan to reduce incidental mortality and serious injury of western North Atlantic coastal bottlenose dolphins in specific Category I and Category II commercial fisheries from New Jersey through Florida. Gear affected by this section includes gillnets, seines, North Carolina long haul seines, and North Carolina roe mullet stop nets.

(b) *Definitions.* Unless otherwise noted, in this § 229.35:

Beach means landward of and including the mean low water line.

Beach/water interface means the mean low water line.

Large mesh gillnet means a gillnet constructed with a mesh size greater than or equal to 7–inches (17.8 cm) stretched mesh.

Medium mesh gillnet means a gillnet constructed with a mesh size of greater than 5–inches (12.7 cm) to less than 7–inches (17.8 cm) stretched mesh.

Night means any time between one hour after sunset and one hour prior to sunrise.

North Carolina long haul seine gear means all fishing efforts in North Carolina state waters that use a nylon or twine net towed between two boats. Fish are encircled and concentrated by pulling the net around a fixed stake.

North Carolina roe mullet stop net gear means a gillnet that targets striped mullet that is deployed from shore and retrieved to catch fish that have been corralled.

Seine means a net that fishes vertically in the water, is pulled by hand or by power, and captures fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used. The net typically is constructed with a capture bag in the center of the net which concentrates the fish as the net is closed.

Small mesh gillnet means a gillnet constructed with a mesh size of less than or equal to 5–inches (12.7 cm) stretched mesh.

Sunrise means the time of sunrise as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

Sunset means the time of sunset as determined for the date and location in The Nautical Almanac, prepared by the U.S. Naval Observatory.

(c) *Affected area* (1) *Regulated waters.* The regulations in this section apply to all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title), except for the areas exempted in paragraph (c)(2) of this section, or where otherwise noted.

(2) *Exempted waters.* The regulations in paragraph (e) of this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet. In those instances where there is no bridge over said embayment, harbor, or inlet or close to the mouth of said embayment, harbor, or inlet, including, but not limited to Delaware Bay, the regulations in this section do not apply to marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. The regulations in this section do not apply to waters landward of the lines in § 229.34(a)(2).

(d) *Gear marking requirements* (1) *Universal gear marking requirements.* Any person who owns or fishes with gear in Category I or II fisheries affected by this section (as described in paragraph (a) of this section, except the Atlantic blue crab trap/pot and Virginia pound net fisheries) in areas specified in paragraphs (c)(1) and (c)(2) of this section shall permanently mark their gear with identification tags containing the last name and first and middle initials of the owner, gear mesh size, and one of the following: state vessel registration number, U.S. Coast Guard documentation number, or state commercial fishing license number. These identification tags, made of plastic or metal, shall be attached along the floatline, as close to the floatline as operationally feasible, at least once every 300 feet (91.4 m).

(2) *Special gear marking requirement for gillnets.* For gillnet gear, in addition to the identification tags described in paragraph (d)(1) of this section, gear shall be marked on the end flag or ball by using engraved flag(s) or ball buoy(s), or by attaching engraved metal or plastic tags to the flag(s) and ball buoy(s). One end of the net shall be marked by a square flag not less than 144 square inches (929.03 square cm) and at least 3 feet (0.91 m) above the water. The opposite end of the net shall also be marked by such a square flag or an 8–inch (20.32 cm) minimum diameter ball buoy with the gear mesh size. All such flag(s) and ball buoy(s) shall be marked with at least two stripes of reflective material that are not less than 2 inches (5.08 cm) in width and visible for 360 degrees.

(e) *Regional Management Measures* (1) *New Jersey, Delaware, and Maryland state waters* (i) *Medium and large mesh.* From June 1 through October 31, in the state waters of New Jersey, Delaware, and Maryland, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person

remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(ii) [Reserved]

(2) *Virginia state waters* (i) *Area-wide restrictions* (A) *Medium and large mesh.* From June 1 through October 31, in Southern and Northern Virginia state waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

(B) [Reserved]

(ii) *Area-specific gear restrictions* (A) *Southern Virginia state waters* (1) *Large mesh gillnets.* From November 1 through December 31, in Southern Virginia state waters, no person may fish with, possess on board a vessel unless stowed, or fail to remove from the water, any large mesh gillnet gear at night.

(B) [Reserved]

(3) *North Carolina state waters* (i) *Area-wide restrictions* (A) *Beach Gear.* Year-round, along the coast of North Carolina, no person may fish with gillnet gear or seine gear within 300 feet (91.4 m) of the beach/water interface unless it consists of multi-fiber nylon that is 4 inches (10.2 cm) or less stretched mesh. Use of nets consisting of monofilament material is prohibited in this area.

(B) [Reserved]

(ii) *Area-specific restrictions*–(A) *Northern North Carolina state waters* – (*1*) *Small mesh gillnets.* From May 1 through October 31, in Northern North Carolina state waters, no person may fish with any small mesh gillnet gear longer than 1,000 feet (304.8 m).

(*2*) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina state waters, no person may fish with any medium mesh gillnet at night. This provision expires on November 12, 2007.

(*3*) *Large mesh gillnets.* (*i*) From April 15 through December 15, in Northern North Carolina state waters, no person may fish with any large mesh gillnet.

(*ii*) From December 16 through April 14 of the following year, in Northern North Carolina state waters, no person may fish with any large mesh gillnet without tie-downs at night.

(B) *Southern North Carolina state waters* (*1*) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina state waters, no person may fish with any medium mesh gillnet at night. This provision expires on November 12, 2007.

(*2*) *Large mesh gillnets.* (*i*) From April 15 through December 15, in Southern North Carolina state waters, no person may fish with any large mesh gillnet.

(*ii*) From December 16 through April 14 of the following year, in Southern North Carolina state waters, no person may fish, possess on board unless stowed, or fail to remove from the water, any large mesh gillnet at night.

(4) *South Carolina, Georgia, and Florida waters* (A) *Gillnets.* Year-round, in South Carolina, Georgia, and Florida waters, no person may fish with any gillnet gear unless such person remains within 0.25 nautical miles (0.46 km) of the closest portion of the gillnet. Gear shall be removed from the water and stowed on board the vessel before the vessel returns to port.

(B) [Reserved]

* * * * *

[FR Doc. 04–25113 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 217
Wednesday, November 10, 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

Commodity Credit Corporation

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 2005

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On November 2, 2004, the President, Commodity Credit Corporation (CCC), who is the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, determined that 65,000 metric tons of non-fortified, low heat, nonfat dry milk in CCC inventory will be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended ("section 416(b)"), during fiscal year 2005. Of this 65,000 metric tons, approximately 50,000 metric tons will be used to supply existing multi-year agreements and proposals that were approved but not finalized in agreements in fiscal year 2004. CCC will solicit proposals under section 416(b) for the use of the balance and give priority to proposals that involve direct feeding or would have other direct humanitarian benefits.

FOR FURTHER INFORMATION CONTACT: William Hawkins, Director, Program Administration Division, FAS, USDA, (202) 720–3241.

Dated: November 3, 2004.

A. Ellen Terpstra,

Vice President, Commodity Credit Corporation.

[FR Doc. 04–25043 Filed 11–9–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Foreign Agricultural Service announced on October 8, 2004, the re-certification of the trade adjustment assistance (TAA) petition for the United Fishermen of Alaska that was initially certified on November 6, 2003. As part of the fiscal year 2005 TAA program for Alaska Salmon fishermen, the Marine Advisory Program (MAP) of the University of Alaska Fairbanks will be offering salmon fishermen who apply for TAA benefits a variety of technical courses at no cost. Applicants in fiscal year 2005 who did not receive technical assistance under the fiscal year 2004 TAA program must obtain the technical assistance from MAP by June 15, 2005, in order to be eligible for financial payments.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: October 27, 2004.

Kenneth Roberts,

Administrator, Acting Foreign Agricultural Service.

[FR Doc. 04–24997 Filed 11–9–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, November 15, 2004. The Madera Resource Advisory Committee will meet at the Spring Valley School, O'neals, CA 93644. The purpose of the meeting is: review FY 2004 RAC proposals.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, November 15, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley School, 46655 Road 200, North Fork, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) review of FY 2004 RAC proposals.

Dated: November 4, 2004.

Curt E. Palmer,

Acting District Ranger, Bass Lake Ranger District.

[FR Doc. 04–25026 Filed 11–9–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Second Creek Watershed, Adams County, MS

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Second Creek Watershed, Adams County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone: 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Second Creek Watershed, Adams County, Mississippi; Notice of a Finding of No Significant Impact

The project concerns a watershed plan to provide supplemental flood protection and reduce threat to loss of life from sudden dam failure to the residents of the Second Creek Watershed and others. The planned works of improvement consists of rehabilitating Floodwater Retarding Structure (FWRS) Nos. 6A, 6B and 12.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: November 1, 2004.

Homer L. Wilkes,

State Conservationist.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

[FR Doc. 04–25110 Filed 11–9–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three revised conservation practice standards in Section IV of the FOTG. The revised standards are: Prescribed Burning (338); Manure Transfer (634); and Pumping Plant (533). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: October 18, 2004.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 04–25111 Filed 11–9–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[I.D. 110504B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0360.

Type of Request: Regular submission.

Burden Hours: 1,420.

Number of Respondents: 232.

Average Hours Per Response: Two minutes.

Needs and Uses: This collection of information covers regulatory requirements for fishing gear identification authorized under the Magnuson-Stevens Fishery Conservation and Management Act. The regulations specify that fishing gear must be marked with the vessel's official identification number. The regulations further specify how the gear is to be marked, e.g., location and visibility. Vessels in the western Pacific pelagic longline and Northwestern Hawaiian Islands crustacean fisheries are affected. This information is used for enforcement purposes, and for purposes of gear identification concerning damage, loss, and civil proceedings.

Affected Public: Business or other for-profit organizations; and individuals or households.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25086 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110504A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0350.

Type of Request: Regular submission.

Burden Hours: 4,125.

Number of Respondents: 5,500.

Average Hours Per Response: 45 minutes.

Needs and Uses: Federally permitted fishing vessels in the Northeast Region of the U.S. must display their vessel identification numbers on three locations on the vessel at a specified size. The requirement is needed to assist NMFS and the Coast Guard in enforcing fishery regulations.

Affected Public: Business or other for-profit organizations; and individuals or households.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25087 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110404J]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Customer Surveys.

Form Number(s): None.

OMB Approval Number: 0648–0342.

Type of Request: Regular submission.

Burden Hours: 10,440.

Number of Respondents: 170,000.

Average Hours Per Response: One to 15 minutes depending on the survey conducted.

Needs and Uses: This is a request for a generic clearance of voluntary customer surveys to be conducted by NOAA program offices to determine whether their customers are satisfied with products and/or services being received and whether they have suggestions for improving those products and services. The request is for approval of generic lists of questions (quantitative and qualitative) which individual program offices would select from and adapt to meet their specific needs. Those specific surveys would then be sent to OMB for fast-track review to ensure that the proposal is consistent with the generic clearance and well-planned. NOAA is not planning a NOAA-wide survey.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25088 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

[I.D. 110404I]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Implantation and Recovery of Archival Tags.

Form Number(s): None.

OMB Approval Number: 0648–0338.

Type of Request: Regular submission.

Burden Hours: 17.

Number of Respondents: 24.

Average Hours Per Response: 30 minutes for tag recovery; 30 minutes for implantation notification; and one hour for implantation report.

Needs and Uses: Under a scientific research exemption any person may catch, possess, retain, and land any regulated species in which an archival tag has been affixed or implanted, provided that the person immediately reports the landing to NMFS. In addition, any person affixing or implanting an archival tag into a regulated species is required to provide NMFS with written notification in advance of beginning the tagging activity, and to provide a written report upon completion of the activity.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25089 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110404H]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management

and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Billfish Certificate of Eligibility.

Form Number(s): None.

OMB Approval Number: 0648–0216.

Type of Request: Regular submission.

Burden Hours: 43.

Number of Respondents: 350.

Average Hours Per Response: 20 minutes for initial completion of certificate; and two minutes for subsequent billfish purchase recordkeeping.

Needs and Uses: Persons who are first receivers of billfish, except for billfish landed in a Pacific state and remaining in the state of landing, are required to complete a Certificate of Eligibility for Billfish as a condition for domestic trade of fresh or frozen billfish shipment. The dealers or processors who subsequently receive or possess billfish must retain a copy of the Certificate of Eligibility for Billfish while processing the billfish. The purpose of the requirement is to ensure the Atlantic billfish are retained as a recreational resource, and that any billfish entering the commercial trade have not been harvested from the Atlantic Ocean management unit.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: November 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25090 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110404G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Saltonstall-Kennedy Grant Program (S-K Program) Applications and Reports.

Form Number(s): NOAA Forms 88–204, 88–205.

OMB Approval Number: 0648–0135.

Type of Request: Regular submission.

Burden Hours: 985.

Number of Respondents: 210.

Average Hours Per Response: One hour for a project summary form; one hour for a budget form; 2.5 hours for a semi-annual report; and 13 hours for a final report.

Needs and Uses: The S-K Program provides financial assistance on a competitive basis for research and development projects that benefit U.S. fishing communities. The respondents must submit applications, and grant recipients must submit semi-annual progress reports and final reports.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; State, Local or Tribal Government.

Frequency: On occasion, semi-annually, annually.

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

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: November 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25091 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110404F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishermen's Contingency Fund.

Form Number(s): NOAA Forms 88–164 and 88–166.

OMB Approval Number: 0648–0082.

Type of Request: Regular submission.

Burden Hours: 1,008.

Number of Respondents: 100.

Average Hours Per Response: 10 hours for an application; 5 minutes for a report.

Needs and Uses: The Fishermen's Contingency Fund compensates U.S. commercial fishermen for loss of or damage to their fishing vessels or fishing gear, plus 50 percent of any gross economic loss, caused by oil and gas industry activities on the U.S. Outer Continental Shelf. In order to be compensated, fishermen must file a report and an application to NOAA.

Affected Public: Business or other for-profit organizations; and individuals or households.

Frequency: On occasion.

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

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: November 3, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25092 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Membership of the Office of the Secretary Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of additional membership on the Office of the Secretary Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4313(c)(4), DOC announces the appointment of persons to serve as members of the Office of the Secretary (OS) Performance Review Board (PRB). The OS/PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members. The appointment of this additional member to the OS/PRB will be for a period of 24 months.

EFFECTIVE DATE: The effective date of service of appointee to the Office of the Secretary Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mary King, Acting Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3321.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the OS/PRB are set forth below by organization:

Department of Commerce

Office of the Secretary

2004–2006 Performance Review Board Membership

Bureau of Industry and Security

Eileen M. Albanese, Director, Office of Exporter Services

Dated: October 28, 2004.

Mary King,

Acting Director, Office of Executive Resources.

[FR Doc. 04–25052 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 041029299–4299–01]

Current Industrial Reports

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) plans to cancel 13 surveys that are part of its Current Industrial Report (CIR) program. The Census Bureau plans to do so in order to redirect its resources to areas of the manufacturing sector that are of increasing importance. The surveys would be canceled on December 31, 2004.

DATES: Written comments on this notice must be submitted on or before December 10, 2004.

ADDRESSES: Direct all written comments to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Judy M. Dodds, Assistant Division Chief, Census and Related Programs, Manufacturing and Construction Division, on (301) 763–4587 or by e-mail at *judy.m.dodds@census.gov*.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts 53 diverse surveys within its CIR program. The data from these surveys serve a wide variety of data users and meet a wide variety of needs. Most of these surveys were started before 1970, and many were started before 1950. While the Census Bureau regularly receives requests to expand the program in order to cover areas that have grown in economic significance, new resources to do that have not been made available. In order to identify resources that might be assigned to areas of the manufacturing sector that are of increasing importance, the Census Bureau conducted a comprehensive review of its CIR program. In that evaluation, the Census Bureau found that it could best serve the broadest group of data users by expanding its collection of information on certain industries, such as electronics equipment, communications equipment, and computers. The only way to accomplish this task without additional resources is to eliminate some existing surveys.

Determining which surveys to eliminate is always a difficult task since there are users of all the data. The Census Bureau made every effort to determine the types of data that are no longer as significant to the overall assessment of our economy or are of lessor quality. Based on that evaluation, the Census Bureau proposes to cancel the following 13 surveys:

- MQ313D, Consumption of the Woolen System.
- MA313F, Yarn Production.
- MA313K, Knit Fabric Production.
- MQ314X, Bed and Bath Furnishings.
- MA315D, Gloves and Mittens.
- MA316A, Footwear.
- MQ325C, Industrial Gases.
- MA327C, Refractories.
- MA331A, Iron and Steel Castings.
- MA331E, Nonferrous Castings.
- M331J, Inventories of Steel Producing Mills.
- MA333L, Internal Combustion Engines.
- MA335H, Motors and Generators.

Canceling the above surveys will be the first step in the restructuring of the CIR program. The next step will be to redesign and expand or reduce individual surveys or groups of surveys. The Census Bureau will conduct that work over the coming year. Those proposals will be submitted through future notices requesting comments. We expect the first proposal to be a quarterly textile survey that consolidates several ongoing textile surveys. We expect that information to be published in January.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the current group of CIR surveys under OMB Control Numbers 0607–0392, 0607–0395, and 0607–0476. We will provide copies of associated forms and publications upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0001.

Dated: November 5, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–25105 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–549–807

Certain Carbon Steel Butt–Weld Pipe Fittings from Thailand: Notice of Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from Thai Benkan Company Limited of Thailand (TBC), a foreign producer and

exporter of subject merchandise, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain carbon steel butt–weld pipe fittings (pipe fittings) from Thailand. The period of review (POR) is July 1, 2003, through June 30, 2004. For the reasons discussed below, we are rescinding this administrative review.

EFFECTIVE DATE: November 10, 2004.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114 or 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is certain carbon steel butt–weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classifiable under subheading 7307.93.30 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 proceeding is dispositive.

Background

On July 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pipe fittings from Thailand. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 39903 (July 1, 2004). On August 30, 2004, pursuant to a request made by TBC, the Department initiated an administrative review of the antidumping duty order on pipe fittings from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 52857 (August 30, 2004). On October 29, 2004, TBC timely withdrew its request for an administrative review of pipe fittings from Thailand.

Rescission of Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). In this case, TBC withdrew its request for an administrative review within 90 days from the publication date of the initiation. No other interested party requested a review and we have received no comments regarding TBC's withdrawal of its request for a review. Therefore, we are rescinding the initiation of this review of the antidumping duty order on pipe fittings from Thailand.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double 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 in accordance with 19 CFR 351.305(a)(3). 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.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 251.213(d)(4).

Dated: November 4, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3128 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002–2003 Administrative Review.

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

ACTION: Notice of Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002–2003 Administrative Review.

SUMMARY: We have determined that sales of certain non–frozen apple juice concentrate from the People's Republic of China were not made below normal value during the period June 1, 2002, through May 31, 2003, by Gansu Tongda Fruit Juice Beverage Company Ltd. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3) and terminating an earlier deferral of the initiation of the administrative review for four respondents.

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations for Gansu Tongda Fruit Juice Beverage Company Ltd. The final weighted–average dumping margin for Gansu Tongda Fruit Juice Beverage Company Ltd. is 0.03 percent, which is *de minimis*. Based on these final results of review, we will instruct U.S. Customs and Border Protection to liquidate all appropriate entries without regard to antidumping duties.

EFFECTIVE DATE: November 10, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho, or John Brinkmann, AD/CVD Operations, Office I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3534, (202) 482–3798, and (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2004, the Department published the preliminary results of this review of certain non–frozen apple juice concentrate from the People's Republic of China ("PRC"). *See Certain Non–Frozen Apple Juice Concentrate From the People's Republic of China:*

Preliminary Results, Partial Rescission, and Partial Deferral of 2002–2003 Administrative Review, 69 FR 40612 (July 6, 2004) (''*Preliminary Results*''). The period of review (''POR'') is June 1, 2002, through May 31, 2003. This review covers Gansu Tongda Fruit Juice Beverage Company Ltd. (referred to as ''the respondent'' or ''Gansu Tongda'').

We sent a fourth supplemental questionnaire on July 1, 2004, and received a response on July 26, 2004.

We invited parties to comment on the *Preliminary Results*. On August 6, 2004, we received a case brief from Gansu Tongda. No rebuttal briefs were submitted. No hearing was held because none was requested.

The Department has conducted this administrative review in accordance with section 751 of the the Tariff Act of 1930, as amended (''the Act'').

Scope of Review

The product covered by this order is certain non–frozen apple juice concentrate (''AJC''). Certain AJC is defined as all non–frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non–frozen concentrated apple juice that has been fermented; and non–frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results*, Xian Asia Qin Fruit Co., Ltd. (''Xian Asia''), Xian Yang Fuan Juice Co., Ltd. (''Xian Yang''), and Shaanxi Hengxing Fruit Juice Co., Ltd. (''Hengxing'') requested that the Department rescind their administrative reviews. Pursuant to 19 CFR 351.213(d)(1), because Xian Asia, Xian Yang, and Hengxing withdrew their requests for review within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we are rescinding the administrative reviews of Xian Asia, Xian Yang, and Hengxing.

Termination of Deferral of Review

As noted in the *Preliminary Results*, based upon requests from Yantai Oriental Juice Co., Ltd. (''Oriental''), SDIC Zhonglu Fruit Juice Co., Ltd. (''Zhonglu''), Sanmenxia Lakeside Fruit Juice Co., Ltd. (''Lakeside''), and Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. (''Haisheng''), pursuant to 19 CFR 351.213(c) we granted a one–year deferral of the administrative review for the period June 1, 2002, through May 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation, in Part, and Deferral of Administrative Reviews*, 2003 68 FR 44524 (July 29, 2003). However, as Oriental, Zhonglu, Haisheng and Lakeside were subsequently excluded from the order pursuant to the February 13, 2004, *Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, (69 FR 7197), the Department did not initiate the administrative review for these companies in July 2004, the month following the next anniversary month. Accordingly, the deferral of the 2002–2003 administrative review is terminated for these companies.

Collapsing Gansu Tongda and Affiliates

In the *Preliminary Results*, we collapsed Gansu Tongda with its two affiliated producers/exporters of subject merchandise (*i.e.*, Tongda Fruit Juice and Beverage Liquan Co., Ltd. (''Liquan'') and Tongda Fruit Juice & Beverage Binxian Co., Ltd. (''Binxian'')). We emphasized in the *Preliminary Results* that we would consider collapsing affiliated producers in the non–market economy (''NME'') context on a case–by-case basis as long as it did not conflict with our NME methodology or separate–rates test. We assigned the resulting margin only to Gansu Tongda, not the collapsed entity, in accordance with our normal NME practice to assign separate rates only to respondent exporters. We did not specifically address the issue of whether Gansu Tongda's rate should be applied to its affiliates because we needed to obtain information from its affiliates in order to make a separate–rates determination in relation to the entity as a whole. Since the *Preliminary Results*, we issued separate–rates questionnaires to Gansu Tongda's two affiliated producers of subject merchandise.

After reconsideration of the record facts, in accordance with section 771(33) of the Act and the criteria enumerated in 19 CFR 351.401(f), for purposes of the final results, we determined it appropriate to collapse Gansu Tongda with its affiliates, Liquan and Binxian. We note that our rationale for collapsing, *i.e.*, to prevent manipulation of price and/or production (see 19 CFR 351.401(f)(2)), applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their relationship with an exporter. Furthermore, we applied the ''collapsed'' rate to Gansu Tongda and all of the above–mentioned affiliates comprising the collapsed entity because we determined that the entity as a whole is entitled to a separate rate (*see* ''Separate Rates'' section below). This determination is specific to the facts presented in this review and based on several considerations, including the structure of the collapsed entity, the level of control between/among affiliates and the level of participation by each affiliate in the proceeding.

Separate Rates

In the *Preliminary Results* we considered Gansu Tongda in our separate–rates analysis and granted a separate rate to Gansu Tongda. For purposes of the final results, we have revisited our separate–rates analysis as a result of our collapsing decision discussed above, and have now considered Gansu Tongda, Liquan, and Binxian as a collapsed entity for purposes of determining whether or not the collapsed entity as a whole is entitled to a separate rate.

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC–wide rate). Thus, a separate–rates analysis is necessary to determine whether the export activities of the collapsed entity as a whole are independent from government control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China (''Bicycles''*), 61 FR 56570 (April 30, 1996).) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate–rates criteria, the Department assigns separate

rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Gansu Tongda and its affiliates have placed on the administrative record the following documents to demonstrate absence of *de jure* control: the "Foreign Trade Law of the People's Republic of China", the "Company Law of the People's Republic of China", and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control absent proof on the record to the contrary. (*See, e.g.*, Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22544 (May 8, 1995) ("*Furfuryl Alcohol*"), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial–Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995).)

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See Silicon Carbide, 59 FR at 22587, and Furfuryl Alcohol, 60 FR at 22544.) Therefore, the Department has determined that an analysis of de facto control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. (*See Silicon Carbide*, 59 FR at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.)

Gansu Tongda and its collapsed affiliates each have asserted the following: (1) they establish their own export prices; (2) they negotiate contracts without guidance from any government entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, use profits according to their business needs, and have the authority to sell their assets and to obtain loans. Additionally, their questionnaire responses indicate that their pricing during the POR does not suggest coordination among unaffiliated exporters. As a result, there is a sufficient basis to determine that Gansu Tongda, Liquan and Binxian have demonstrated as a whole a *de facto* absence of government control of their export functions and are entitled to a separate rate. Consequently, we have determined that the "collapsed" entity has met the criteria for the application of a separate rate.

Analysis of Comments Received

All issues raised in the case brief are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary for Import Administration to James J. Jochum, Assistant Secretary for Import Administration, dated November 3, 2004, ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. 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 on the Internet at http://www.ia.ita.doc.gov/frn/ under the heading "China PRC." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received, and a reexamination of surrogate value data, we have made one change to the calculations for the final results. This change is discussed in the following Comment in the *Decision Memorandum*:

Drum Label: We have revised the weight of a Drum label weight was revised from 0.28 kg per label to 0.00458 kg per label. See Comment 2 of the *Decision Memorandum*.

Pomace: We have inflated the value for pomace to the POR because we state in the June 29, 2004, "Factors of Production Values Used for the Preliminary Results," that "{f}or all factors where we could not obtain publicly available prices contemporaneous with the POR, we adjusted FOP values to the POR using the...U.S. producer price index ("PPI")." The resulting surrogate value for pomace is $26.23 US$/MT. *See* Comment 3 of the *Decision Memorandum*.

Final Results of Review

We determine that the following dumping margin exists for the following companies for the period June 1, 2002, through May 31, 2003:

Exporter/manfacturer/producer	Weighted–average margin percentage
Gansu Tongda Fruit Juice Beverage Company Ltd. (which includes its affiliates Tongda Fruit Juice and Beverage Liquan Co., Ltd. and Tongda Fruit Juice & Beverage Binxian Co., Ltd.)	0.03 *de minimis*

The PRC–wide rate of 51.74 percent applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

Assessment Rates

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") within 15 days of publication of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the inporter–specific duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total

value of the sales to that importer (or customer). Where an importer (or customer)-specific ad valorem rate was greater than *de minimis*, we will direct CBP to apply the *ad valorem* assessment rates against the entered value of each of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order CBP to liquidate without regard to antidumping duties. All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty cash deposit rate in place at the time of entry.

Cash Deposit Requirements for Administrative Review

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Gansu Tongda, Liquan and Binxian is *de minimis*, *i.e.*, less than 0.5 percent. Therefore, a cash deposit of zero will be required for those firms; (2) for previously–reviewed PRC and non–PRC exporters with separate rates, the cash deposit rate will be the company–specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country–wide rate, which is 51.74 percent; and (4) for all other non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with section 751(a)(1) and 777(i) of the Act.

Dated: November 3, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: The Department's use of Poland as the primary surrogate country is contrary to law and unsupported by the administrative record.
Comment 2: The Department should correct the weight for drum labels.
Comment 3: The Department should revise its surrogate value for pomace by applying the "PPI" inflation factor.

[FR Doc. E4–3127 Filed 11–9–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 10, 2004.

SUMMARY: The Department of Commerce is extending the time limits for completion of the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey. The period of review is April 1, 2003, through March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Alice Gibbons at (202) 482–0656 or (202) 482–0498, respectively, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (69 FR 30282). The period of review is April 1, 2003, through March 31, 2004, and the preliminary results are currently due no later than December 31, 2004. The review covers twenty-three producers/exporters of the subject merchandise to the United States.

Extension of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because this review involves a number of complicated issues for certain of the respondents, including the reporting of downstream sales for affiliated resellers. Analysis of these issues requires additional time. Moreover, because one respondent, ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S., has requested revocation in this review, we must verify its submitted data pursuant to section 782(i)(2) of the Act. However, we will be unable to complete this verification before the date of the preliminary results as currently scheduled. Therefore, we have extended the deadline for completing the preliminary results until May 2, 2005.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)) and 19 CFR 351.213(h)(2).

Dated: November 4, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–25094 Filed 11–9–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability for Public Comment on Proposed Data Management and Communications Standards for U.S. Integrated Ocean Observing System

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: Notice of availability is hereby given for a 30-day public comment period on proposed Data Management and Communications (DMAC) standards for the initial implementation of the U.S. Integrated Ocean Observing System (IOOS). The proposed standards are contained in the draft Ocean.US Data Management and Communications Plan for Research and Operational Integrated Ocean Observing Systems—I. Interoperable Data Discovery, Access, and Archive (May 2004). The Plan, developed by the Ocean.US office under the auspices of the inter-agency National Ocean Research Leadership Council's (NORLC) Ocean Observations Executive Committee (EXCOM), provides guidance to ocean and coastal data providers regarding data documentation (metadata) and discovery, data transport, Internet-enabled data browsing, and data archiving of the U.S. Integrated Ocean Observing System. The Plan provides additional recommendations regarding the incorporation of marine data buoy observations into IOOS by way of establishing cooperative arrangement(s) with the NOAA National Data Buoy Center (NDBC). Review and comment from the public and all interested parties on the proposed standards are hereby solicited. All substantive comments received during the review period will be considered by a broadly based, expert panel convened by Ocean.US for that purpose. The final Plan will subsequently be announced in the **Federal Register**, and the standards contained therein shall be adopted for the initial implementation of IOOS. Any subsequently proposed modifications or additions to these standards shall be subject to public review and comment as described herein.

DATES: Written comments on the proposed standards must be received no later than 5 p.m. eastern standard time, on December 10, 2004. Written comments should be sent to: Ocean.US, Attention: Ms. Rosalind E. Cohen, 2300 Clarendon Blvd. Suite 1350, Arlington, VA 22201. Comments may also be sent via e-mail to the following address: *Rosalind.E.Cohen@noaa.gov*, or by FAX to (703) 588–0872. The Plan is available on-line to interested parties from the Office of Ocean.US Web site at the following URL: *http://dmac.ocean.us/dacsc/imp_plan.jsp*. In addition, copies of the Plan may be obtained by contacting Ocean.US at the above Ocean.US address.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact Rosalind E. Cohen, Office of Ocean.US, telephone: (703) 588–0854. E-mail: *Rosalind.E.Cohen@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Ocean.US Office, operating by inter-agency agreement under the statutory authority of the National Oceanographic Partnership Program (NOPP, 10 U.S.C. 7901 *et seq.*), serves as the national agent for integrating ocean observing activities (*http://www.ocean.us*). Ocean.US is also the focal point for relating U.S. ocean observing system elements to associated international efforts, such as the Global Earth Observing System of Systems (GEOSS) and the Intergovernmental Oceanographic Commission (IOC) sponsored Global Ocean Observing System (GOOS). The U.S. IOOS represents the U.S. contribution to the ocean components of these international partnership efforts. Key to the realization of the U.S. IOOS is the establishment of an integrated DMAC infrastructure. This infrastructure will enable users to discover, retrieve, and use data from federal and state government, government-sponsored, other public, private, and commercial coastal and ocean observing activities regardless of source or location.

In 2002 Ocean.US established a broad-based national IOOS DMAC Steering Committee that was charged with developing a plan for the assessment of IOOS DMAC standards needs, making initial recommendations, and formulating a process by which standards gaps so identified could be addressed. This assessment resulted in the current DMAC Plan: Data Management and Communications Plan for Research and Operational Integrated Ocean Observing Systems—I. Interoperable Data Discovery, Access, and Archive, May 2004. The DMAC Plan provides prioritized recommendations, with additional concrete guidance to data providers, to establish initial DMAC standards and practices for the U.S. IOOS. The areas addressed include: (1) Metadata, data discovery and data location; (2) data transport; (3) data archival; and, (4) data policy.

Review to Date of the Plan and Proposed Standards

Over the past 18 months the DMAC Plan has undergone several levels of review, and substantive comments received at each stage have been incorporated into the current May 2004 draft. Comments were received from internal and external reviews by national and international technical and scientific experts, federal and state ocean and coastal resource managers, as well as organized discussions at various national and regional professional workshops and conferences. Comments were also solicited and received electronically via the Ocean.US Web site. This current solicitation formalizes and completes the public review of the Plan.

Authority: 10 U.S.C. 7901 *et seq.*

Dated: November 3, 2004.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–25109 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of the Final Reserve Operations Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (DOC).

ACTION: Notice; correction.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announcement of the availability of the Final Reserve Operations (ROP) Plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) appeared in the **Federal Register** dated October 15, 2004 (69 FR 199), pages 61205–61207. The document contained an incorrect point of contact for information. In addition, the ROP is not yet available.

FOR FURTHER INFORMATION CONTACT: Vicki Wedell, 301–713–3125, extension 137.

Correction

In the **Federal Register** of October 15, 2004, in FR Doc. 04–23165, on page 61205, in the second column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Malia Chow, (808) 397–2660, *nwhi@noaa.gov*.

In the same notice, on page 61205, in the second column, add a **DATES** caption to read:

DATES: The date of the release of the final ROP for distribution to the public will be announced when available in the **Federal Register**.

Dated: November 3, 2004.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 04–25108 Filed 11–9–04; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; cancellation.

SUMMARY: The Chief of Engineers Environmental Advisory Board meeting scheduled for November 19, 2004, from 9 a.m. to 12 p.m. published in the **Federal Register** on Thursday, November 4, 2004 (69 FR 64282), has been cancelled.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Edwards, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000; Ph: 202–761–1934.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–25051 Filed 11–9–04; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meetings.

SUMMARY: The CNO Executive Panel will hear classified briefings and provide consensus advice to the Chief of Naval Operations on "The Navy Role in Near East Security." The Panel will also receive CNO direction regarding future studies to be conducted.

DATES: Meetings will be held on November 18–19, 2004, from 8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Center for Naval Analyses, 4825 Mark Center Drive, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Commander Gary Herbert, CNO Executive Panel, (703) 681–4941 or Commander Kevin Wilson, CNO Executive Panel, (703) 681–6206.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: November 5, 2004.

J.H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–25182 Filed 11–9–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 10, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 5, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Extension.

Title: Application for Federal Education Assistance (ED Form 424) Clearance Package.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; individuals or household; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 25,326.

Burden Hours: 6,331.

Abstract: Need to collect information necessary for the processing of various Department of Education grant program's application packets from State and Local educational agencies, institutions of higher education. Information is used by program offices to determine eligibility and facilitate in the disbursement of program funds.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2619. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–3122 Filed 11–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–50–000]

Canyon Creek Compression Company; Notice of Proposed Changes In FERC Gas Tariff

November 2, 2004.

Take notice that on October 29, 2004, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2004:

Twelfth Revised Sheet No. 6
Fourth Revised Sheet No. 6A

Canyon states that the purpose of this filing is to make a periodic adjustment in Canyon's rates under its cost-of-service tracking mechanism. This filing represents Canyon's fourth tracking filing under section 37 of the General Terms and Conditions of its Tariff.

Canyon states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3121 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–132]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

November 2, 2004.

Take notice that on October 29, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Dynegy Marketing and Trade. CEGT states that it has entered into an agreement to provide parking service to this shipper under Rate Schedule PHS to be effective November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Magalie R. Salas,

Secretary.

[FR Doc. E4–3116 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–53–000]

Distrigas of Massachusetts LLC; Notice of Tariff Filing

November 2, 2004.

Take notice that on October 31, 2004, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised

Volume No. 1, Eighteenth Revised Sheet No. 94, to become effective as of December 1, 2004.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3110 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–43–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on October 28, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective December 27, 2004:

Fifth Revised Sheet No. 5
Fifth Revised Sheet No. 6
Fifth Revised Sheet No. 8
Sixth Revised Sheet No. 11
Third Revised Sheet No. 23
Second Revised Sheet No. 51
Third Revised Sheet No. 71
Third Revised Sheet No. 72
Second Revised Sheet No. 203
Second Revised Sheet No. 213
First Revised Sheet No. 214
First Revised Sheet No. 215
Second Revised Sheet No. 243
Second Revised Sheet No. 400
First Revised Sheet No. 450
First Revised Sheet No. 455
First Revised Sheet No. 460
First Revised Sheet No. 465
Second Revised Sheet No. 475

Cove Point states that it is proposing a series of clarifications and/or modifications of its tariff to bring certainty to issues related to contract expirations and renewals and rights of first refusal (ROFR), and to the potential future uses of FPS capacity. Specifically, Cove Point states that it is addressing the following: negotiation of a contractual ROFR, negotiation of evergreen provisions, extension of contract terms, elimination of "Elected FTS" service option, and future allocation of FPS storage capacity to LTD–1 service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3099 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–009, and CP01–77–009]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

November 2, 2004.

Take notice that on October 26, 2004, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective the later of December 1, 2004 or the in-service date of its new 850,000 barrel LNG storage tank (Fifth Tank):

Fourth Revised Sheet No. 8
Fifth Revised Sheet No. 11

Cove Point states that the proposed changes would increase revenues from jurisdictional service by $7.5 million based on the 12-month period ending November 30, 2005, as adjusted.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3104 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–51–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on October 29, 2004, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2004:

First Revised Sheet No. 150
First Revised Sheet No. 204
First Revised Sheet No. 300
Fifth Revised Sheet No. 1001
Second Revised Sheet No. 1045
First Revised Sheet No. 1046
First Revised Sheet No. 1047
Second Revised Sheet No. 1048
First Revised Sheet No. 1049
First Revised Sheet No. 1050
First Revised Sheet No. 1051
First Revised Sheet No. 1158
Second Revised Sheet No. 1159
Second Revised Sheet No. 1160
First Revised Sheet No. 1161
First Revised Sheet No. 1505
Original Sheet No. 1506
Original Sheet No. 1507
Original Sheet No. 1508
Original Sheet No. 1509
Sheet Nos. 1510–1999
Third Revised Sheet No. 2005
First Revised Sheet No. 2055

DTI states that the purpose of this filing is to revise DTI's Tariff to clarify and update all procedures related to the allocation of capacity. DTI proposes specifically (i) to update the right of first refusal (ROFR) of applicable customers and related procedures in a modified Section 24 of the General Terms and Conditions of DTI's tariff (GT&C) to reflect the Commission's current policies, (ii) to clarify and update procedures for the allocation of unsubscribed firm capacity on DTI to reflect the Commission's current policies in new GT&C Section 43, (iii) to add provisions permitting DTI, under certain conditions well established in past proceedings, to reserve available capacity for future expansion projects in new GT&C Section 44, and (iv) to modify or eliminate various existing, out-dated tariff provisions that conflict with the new proposals.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3108 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–586–001]

Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Compliance Filing

November 2, 2004.

Take notice that on October 26, 2004, Enbridge Pipelines (AlaTenn) L.L.C., (AlaTenn) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 4, Substitute First Revised Sheet No. 4, to be made effective October 1, 2004.

AlaTenn states that on September 10, 2004 in FERC Docket No. RP04–586–000, AlaTenn filed First Revised Sheet No. 4 in compliance with the Commission's Notice of Corrections issued on August 6, 2004, to reflect the Annual Charge Adjustment (ACA) unit rate for the twelve-month period beginning October 1, 2004. AlaTenn explains that such sheet was changed to reflect a $0.0002 per dekatherm decrease in its ACA rates. AlaTenn states that by Letter Order dated October 6, 2004, the Commission accepted the instant substitute sheet to become effective on October 1, 2004.

AlaTenn states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that

document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3098 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–59–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on November 1, 2004, Enbridge Pipelines (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be made effective November 1, 2004.

KPC states that the purpose of the filing is to reflect an overall increase in its fuel reimbursement percentages pursuant to section 23 of the General Terms and Conditions of its FERC Gas Tariff.

KPC further states that upon approval of this filing and acceptance of the tariff sheets, it seeks a waiver of the requirements under section 154.207 of the Commission's Regulations, and section 23 of its FERC Gas Tariff, to permit the proposed tariff sheets to become effective on November 1, 2004.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3115 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–56–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on November 1, 2004, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective December 1, 2004:

Sixth Revised Sheet No. 2
Sixth Revised Sheet No. 57
First Revised Sheet No. 125
First Revised Sheet No. 126
First Revised Sheet No. 300
First Revised Sheet No. 301

GBGP states that the above-referenced tariff sheets are being filed in accordance with section 154.204 of the Commission's regulations in order to make minor conforming changes to its Tariff to reflect the requirements of Order No. 2004 *et seq.* and the Standards of Conduct regulations pursuant to part 358 of the Commission's regulations, 18 CFR part 358.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3112 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–065]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

November 2, 2004.

Take notice that on October 29, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective November 1, 2004:

Fourteenth Revised Sheet No. 15,
Fourth Revised Sheet No. 17.

GTN states that these sheets are being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3107 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–52–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on October 29, 2004, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2004:

Eighteenth Revised Sheet No. 1
First Revised Sheet No. 9A
Ninth Revised Sheet No. 10
Third Revised Sheet No. 14A
Sixth Revised Sheet No. 16
Fifth Revised Sheet No. 16A
Fifth Revised Sheet No. 29
Fourth Revised Sheet No. 39B
Eleventh Revised Sheet No. 40
Ninth Revised Sheet No. 40A
Seventh Revised Sheet No. 40B
First Revised Sheet No. 40C
Twelfth Revised Sheet No. 41
Ninth Revised Sheet No. 42
Third Revised Sheet No. 50L

Great Lakes states that these tariff sheets are being filed to incorporate administrative, clarifying, and conforming changes to Great Lakes' tariff. Great Lakes states that none of the proposed changes will affect any of Great Lakes' currently effective rates and charges.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3109 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–041]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

November 2, 2004.

Take notice that on October 29, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet Nos. 8.01h, 8.01i and 8.01j, each reflecting an effective date of November 1, 2004.

Gulfstream states that this filing is being made in connection with three negotiated rate transactions pursuant to

section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3095 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–13–000, CP05–11–000, CP05–12–000, CP05–14–000]

Ingleside Energy Center, LLC; San Patricio Pipeline LLC; Notice of Applications

November 2, 2004.

Take notice that on October 25, 2004, Ingleside Energy Center LLC (Ingleside); 5 Greenway Plaza, Suite 1600, Houston, Texas 77046, filed in Docket No. CP05–13–000 an application pursuant to section 3(a) of the Natural Gas Act (NGA) seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal located near Ingleside, Texas. The LNG terminal will provide LNG tanker terminal services to third party shippers who would be importing LNG.

Also take notice that on October 25, 2004, San Patricio Pipeline LLC (San Patricio Pipeline) filed in Docket No. CP05–11–000 an application seeking a certificate of public convenience and necessity, pursuant to section 7(c) of the NGA, to construct and operate a 26.4-mile pipeline and related facilities to transport natural gas on an open access basis. Also, in Docket No. CP05–12–000, San Patricio Pipeline requests a blanket certificate under section 7(c) of the NGA and part 157, subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed pipeline. Finally, San Patricio Pipeline requests authorization in Docket No. CP05–14–000 to provide the natural gas transportation services on a firm and interruptible basis pursuant to section 7(c) of the NGA and part 284 of the Commission's regulations. Both Ingleside and San Patricio Pipeline are subsidiaries of Occidental Energy Ventures Corp.

On September 24, 2004, San Patricio Pipeline announced the commencement of an open season for the purpose of obtaining binding commitments for firm transportation capacity. San Patricio Pipeline states that the construction and operation of the pipeline will enable new competitively priced supplies of natural gas imported through the Ingleside LNG terminal to reach markets throughout the United States.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659. Any initial questions regarding these applications should be directed to Lawrence G. Acker, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Avenue, NW., Suite 1200, Washington, DC 20009–5728. Telephone: (202) 986–8000, Fax: (202) 986–8102.

On April 19, 2004 the Commission staff granted Ingleside's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF04–9–000 to staff activities involving Ingleside. The San Patricio Pipeline was also assessed in the NEPA pre-file process in Docket No. PF04–9–000. Now, as of the filing of Ingleside's and San Patricio Pipeline's applications on October 25, 2004, the NEPA Pre-Filing Process for those projects has ended. From this time forward, Ingleside's and San Patricio Pipeline's proceeding will be conducted in Docket Nos. CP05–13–000, *et. al*, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date listed below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of this filing and all subsequent filings made with the Commission and must mail a copy of all filing to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, other persons do not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in

determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to this project provide copies of their protests only to the party or parties directly involved in the protest.

Persons may also wish to comment further only on the environmental review of this project. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Those persons, organizations, and agencies who submitted comments during the NEPA Pre-Filing Process in Docket No. PF04–9–000 are already on the Commission staff's environmental mailing list for the proceeding in the above dockets and may file additional comments on or before the below listed comment date. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, environmental commenters are also not parties to the proceeding and will not receive copies of all documents filed by other parties or non-environmental documents issued by the Commission. Further, they will not have the right to seek court review of any final order by Commission in this proceeding.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: November 23, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3090 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–274–005]

Kern River Gas Transmission Company; Notice of Tariff Filing

November 2, 2004.

Take notice that on October 25, 2004, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective November 1, 2004

Second Substitute Ninth Revised Sheet No. 5–A

Effective January 1, 2005

Second Substitute Tenth Revised Sheet No. 5–A

Kern River States that the purpose of this filing is to make a correction to the footnote on Sheet No. 5–A that sets forth the electric compressor fuel surcharges applicable to shippers receiving incremental rate service on Kern River's 2003 expansion project.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3096 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–58–000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on November 1, 2004, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective December 1, 2004:

Fourth Revised Sheet No. 2,
Third Revised Sheet No. 55,
First Revised Sheet No. 143,
First Revised Sheet No. 144.

MCGP states that the above-referenced tariff sheets are being filed in accordance with section 154.204 of the Commission's regulations in order to make minor conformation changes to its tariff to reflect the requirements of Order No. 2004 *et seq.* and the Standards of Conduct regulations pursuant to part 358 of the Commission's regulations, 18 CFR part 358.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3114 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–49–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

November 2, 2004.

Take notice that on October 29, 2004, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixty Ninth Revised Sheet No. 9, to become effective November 1, 2004.

National states that Article II, sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3089 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–104]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

November 2, 2004.

Take notice that on November 1, 2004, Natural Gas Pipeline Company of America (Natural Gas) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2004:

First Revised Sheet No. 26W.16
First Revised Sheet No. 26W.17
First Revised Sheet No. 26W.18
First Revised Sheet No. 26W. 19

Natural states that the purpose of the filing is to reflect the second amendment to the existing Firm Transportation Negotiated Rate Agreement between Natural Gas and Northern Indiana Public Service Company dated August 8, 2002, as amended.

Natural Gas states that copies of its filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3120 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–55–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on November 1, 2004, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective December 1, 2004:

Third Revised Sheet No. 2
Seventh Revised Sheet No. 69
First Revised Sheet No. 202

Nautilus states that the above-referenced tariff sheets are being filed in accordance with section 154.204 of the

Commission's regulations in order to make minor conformation changes to its tariff to reflect the requirements of Order No. 2004, *et seq.* and the Standards of Conduct regulations pursuant to part 358 of the Commission's regulations, 18 CFR part 358.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3111 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–016]

Northern Natural Gas Company; Notice of Compliance Filing

November 2, 2004.

Take notice that on October 29, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 12 Substitute First Revised Sheet No. 306, with an effective date of November 1, 2003.

Northern states that it is filing the above-referenced tariff sheet to provide clarity in the definition of scheduled volumes which will be eligible for DDVC penalty crediting.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3094 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–054]

Northern Natural Gas Company; Notice of Negotiated Rate

November 2, 2004.

Take notice that on October 29, 2004 Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on November 1, 2004:

35 Revised Sheet No. 66
29 Revised Sheet No. 66A

Northern states that the above sheets are being filed to implement specific negotiated rate transactions with Conoco Phillips Company and Merrick's Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3117 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–45–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

November 2, 2004.

Take notice that on October 29, 2004, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised sheets, to be effective December 1, 2004:

Tenth Revised Sheet No. 5,
Tenth Revised Sheet No. 6.

SLNG states that the revised sheets are being filed in accordance with section 24.2 of the tariff to changes the electric power cost adjustment from $0.0305/Dth to $0.0203/Dth.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street. NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3101 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–276–002]

Southern Star Central Gas Pipeline, Inc.; Notice To Place Suspended Rates Into Effect

November 2, 2004.

Take notice that on October 29, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume Nos. 1 and 2, the revised tariff sheets as listed on Attachment A to the filing, to become effective November 1, 2004.

Southern Star states that the purpose of Southern Star's instant filing is to move the suspended rates and tariff provisions into effect on November 1, 2004, in accordance with the Commission's regulations at 18 CFR 154.206. Southern Star further states that the motion rates have been revised pursuant to 18 CFR 154.303(c)(2) to exclude the costs associated with facilities that will not be in service as of October 31, 2004, the end of the test period.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3097 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–46–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 2, 2004.

Take notice that on October 29, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised

Volume No. 1, Revised Title Page, to be made effective on December 1, 2004.

Tennessee states that the purpose of this filing is to change the mailing address on the title page of Tennessee's tariff. Tennessee is currently consolidating its Houston area office locations into one centralized office.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3102 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–47–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 2, 2004.

Take notice that on October 29, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Twentieth Revised Sheet No. 25 and Ninth Revised Sheet No. 356, with an effective date of December 1, 2004.

Tennessee states that it is tendering the revised sheets to make ministerial cleanup changes to its tariff that include two typographical errors.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3103 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–143]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

November 2, 2004.

Take notice that on October 29, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing and approval one amendment to an existing negotiated rate letter agreement between Tennessee and Tennessee Valley Authority.

Tennessee requests that the Commission accept and approve the subject negotiated rate letter agreement amendment to be effective November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3118 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–023]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rate

November 2, 2004.

Take notice that on October 27, 2004 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a copy of an executed service agreement amendment that contains a revised negotiated daily facilities reservation rate surcharge (facilities surcharge) under Transco's Rate Schedule FT for the costs of the expansion of the U.S. Steel Meter Station, a delivery point to PECO Energy Company (PECO). The effective date of this revised facilities surcharge is November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3119 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–57–000]

Trunkline Gas Company, LLC; Notice of Revenue Credit Report

November 2, 2004.

Take notice that on October 29, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with section 24 of the General Terms and Conditions of its FERC Gas Tariff, which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge adjustment. Trunkline further states that no adjustment is required to the Base Transportation Rates because the Interruptible Storage Revenue Credit Surcharge Amount was zero.

Trunkline states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time on November 10, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3113 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–44–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2004.

Take notice that on October 29, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Fourteenth Revised Sheet

No. 4B, to become effective December 1, 2004.

WIC states that the tendered tariff sheet revises the FL&U reimbursement percentages applicable to transportation service on WIC's system.

WIC states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*; or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3100 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–474–002, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

November 1, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. ER04–474–002]

Take notice that, on October 26, 2004, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power, submitted a compliance filing pursuant to *PJM Interconnection, L.L.C.,* 109 FERC ¶ 61,030 (2004).

Allegheny Power states that copies of the filing were served on parties on the official service list in the above-captioned proceeding and the interested state commission.

Comment Date: 5 p.m. Eastern Time on November 16, 2004.

2. Portland General Electric Company

[Docket No. ER04–1204–001]

Take notice that on October 27, 2004, Portland General Electric Company (PGE) tendered for filing with the Commission, pursuant to 18 CFR section 35.13, new and revised tariff sheets to its Open Access Transmission Tariff (OATT). PGE states that the new and revised sheets are intended to incorporate the Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) issued by the Commission in FERC Order No. 2003–A and make minor corrections from the original filing made by the Company on September 7, 2004. PGE requests an effective date of December 25, 2004.

PGE states that a copy of this filing was supplied to the Public Utility Commission of Oregon.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–75–000]

Take notice that on October 27, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an Interconnection and Operating Agreement among Superior Renewable Energy, LLC, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on Superior Renewable Energy, LLC and Montana-Dakota Utilities Co.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

4. New York State Electric & Gas Corporation

[Docket No. ER05–76–000]

Take notice that on October 27, 2004 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, a supplement to Rate Schedule 72 filed with FERC corresponding to an Agreement with the Municipal Board of the Village of Bath (the Village). NYSEG states that this rate filing is made pursuant to section 2 (a) through (c) of Article IV of the December 1, 1977 Facilities Agreement between NYSEG and the Village, filed with FERC. NYSEG also states that the annual charges are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period ending December 31, 2003. NYSEG requests an effective date of January 1, 2005.

NYSEG states that copies of the filing were served upon the Municipal Board of the Village of Bath and the Public Service Commission of the State of New York.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

5. Commonwealth Edison Company

[Docket No. ER05–78–000]

Take notice that on October 26, 2004, Exelon Corporation, on behalf of its subsidiary Commonwealth Edison Company, submitted to the Commission a Notice of Cancellation for Service Agreement No. C1057, under PJM L.L.C.'s FERC Electric Tariff, Sixth Revised Volume No. 1, with Indeck-Bourbonnais, L.L.C. Exelon requests an effective date of October 7, 2004.

Exelon states that a Notice of the proposed cancellation has been served on Indeck-Bourbonnais L.L.C., PJM Interconnection, L.L.C. and the Illinois Commerce Commission.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

6. New York State Electric & Gas Corporation

[Docket No. ER05–79–000]

Take notice that on October 27, 2004 New York State Electric & Gas Corporation (NYSEG) tendered for filing

pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission regulations, a supplement to Rate Schedule 117 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (the Cooperative). NYSEG states that this rate filing is made pursuant to section 1 (c) and section 3(a) through (c) of Article IV of the June 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. NYSEG also states that the annual charges are revised based on data taken from NYSEG's Annual Report to the Commission (FERC Form 1) for the twelve month period ending December 31, 2003. NYSEG requests an effective date of January 1, 2005.

NYSEG states that copies of the filing were served upon the Delaware County Electric Cooperative, Inc. and the Public Service Commission of the State of New York.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

7. California Independent System Operator Corporation

[Docket No. ER05–80–000]

Take notice that the California Independent System Operator Corporation (ISO), on October 27, 2004, tendered for filing an unexecuted Meter Service Agreement for ISO Metered Entities between the ISO and the City of Azusa, California (Azusa) for acceptance by the Commission. The ISO requests an effective date of October 27, 2004.

The ISO states that this filing has been served on Azusa, the California Public Utilities Commission, and the parties on the official service list in Docket No. ER04–667–000.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

8. California Independent System Operator Corporation

[Docket No. ER05–81–000]

Take notice that on October 27, 2004, the California Independent System Operator Corporation (ISO) tendered for filing an amendment (Amendment No. 3) to revise the Metered Subsystem Agreement between the ISO and Silicon Valley Power (SVP) for acceptance by the Commission. ISO states that the purpose of Amendment No. 3 is to revise Schedules 1, 14, and 15.1 of the Metered Subsystem Agreement to include the new Donald Von Raesfeld power plant. The ISO requests an effective date of October 27, 2004.

The ISO states that this filing has been served on SVP, the California Public Utilities Commission, and all entities on the official service list for Docket Nos. ER02–2321–000, ER04–185–000, and ER04–940–000.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

9. CalPeak Power—El Cajon, LLC

[Docket No. ER05–83–000]

Take notice that on October 27, 2004 CalPeak Power—El Cajon, LLC (El Cajon) submitted modifications to certain schedules contained in the Reliability Must-Run Service Agreement between El Cajon and the California Independent System Operator Corporation (ISO).

El Cajon states that copies of the filing were served upon the ISO, San Diego Gas & Electric Company, the California Public Utilities Commission and the California Electricity Oversight Board, as well as all parties on the official service list compiled by the Secretary in Docket No. ER04–517–000.

Comment Date: 5 p.m. Eastern Time on November 17, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3105 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1527–004, et al.]

Sierra Pacific Power Company, et al.; Electric Rate and Corporate Filings

November 2, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sierra Pacific Power Company; Nevada Power Company

[Docket Nos. ER01–1527–004, ER01–1529–004]

Take notice that, on October 28, 2004, Sierra Pacific Power Company and Nevada Power Company (together, Sierra) submitted an updated market power analysis and revised tariff sheets incorporating the Commission's new Market Behavior Rules adopted in the Commission's Order Amending Market-Based Rate Tariffs and Authorizations issued on November 17, 2003 in Docket No. EL01–118–000, 107 FERC ¶ 61,018 (2004).

Sierra states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

2. Pacific Gas and Electric Company

[Docket Nos. ER04–688–001, ER04–689–000, ER04–690–001, ER04–693–001]

On October 15, 2004, Pacific Gas and Electric Company (PG&E), the Western Area Power Administration (Western), and the California Independent System Operator Corporation (CAISO) filed an Offer of Settlement in the above-referenced proceedings. On October 22, 2004, PG&E submitted the following agreements to complete the Offer of Settlement:

Docket No. ER04–688–001: PG&E Rate Schedule FERC No. 231, Original Sheet Nos. 1 to 50, CAISO Rate Schedule No. 51, Original Sheet Nos. 1 to 50.

Docket No. ER04–689–001: PG&E First Revised Rate Schedule FERC No. 77, First Revised Sheet Nos. 115 to 141.

Docket No. ER04–690–001: Substitute Service Agreement No. 59 under PG&E

Electric Tariff, Sixth Revised Volume No. 5, Original Sheet Nos. 1 to 107, Substitute PG&E Rate Schedule FERC No. 228, Original Sheet Nos. 1 to 79, Substitute Service Agreement No. 17 under PG&E Electric Tariff, First Revised Volume No. 4, Service Agreement No. 63 under PG&E Electric Tariff, Sixth Revised Volume No. 5.

Docket No. ER04–693–001: (As corrected by October 27, 2004 filing) Substitute Original Sheet Nos. 1, 11, 60 and 61 to Substitute PG&E Rate Schedule FERC No. 229, Substitute Original Sheet Nos. 18–21 and 48 to CAISO Rate Schedule FERC No. 50.

Comment Date: 5 p.m. Eastern Time on November 12, 2004.

3. PJM Interconnection, L.L.C.

[Docket Nos. ER04–1068–003, R04–1074–002]

Take notice that on October 28, 2004, PJM Interconnection, L.L.C. (PJM), the American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company (AEP), and The Dayton Power and Light Company (Dayton) submitted a filing in compliance with the Commission's September 28, 2004 Order, *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,318 (2004). PJM requests an effective date of October 1, 2004.

PJM states that copies of the filing were served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the service lists for these proceedings.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

4. American Electric Power Service Corporation

[Docket No. ER04–1141–001]

Take notice that on October 28, 2004, American Electric Power Service Corporation (AEPSC), on behalf of Ohio Power Company (Ohio Power) submitted changes to tariff Sheet No. 69 in compliance with the Commission's letter order issued October 15, 2004 in Docket No. ER04–1141–000.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

5. Pacific Gas and Electric Company

[Docket No. ER05–82–000]

Take notice that on October 28, 2004, Pacific Gas and Electric Company (PG&E) submitted its Transmission Owner Tariff for the Transmission Revenue Balancing Account Adjustment rate and the Reliability Services rates. PG&E requests an effective date of January 1, 2005.

PG&E states that copies of the filing were served upon the California Independent System Operator (ISO), Scheduling Coordinators registered with the ISO, Southern California Edison Company, San Diego Gas and Electric Company, and California Public Utilities Commission, and The Western Area Power Administration.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

6. Pacific Gas and Electric Company

[Docket No. ER05–84–000]

Take notice that on October 28, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter of Agreement (LOA) between PG&E and Alameda Power and Telecom (Alameda) (collectively, Parties).

PG&E states that copies of this filing were served upon Alameda, the California Independent System Operator, and the California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

7. PJM Interconnection, L.L.C.

[Docket No. ER05–85–000]

Take notice that on October 28, 2004, PJM Interconnection, L.L.C. (PJM) and Duquesne Light Company (Duquesne Light) submitted conforming tariff revisions associated with the integration of Duquesne Light into the PJM markets and tariff on January 1, 2005.

PJM states that copies of the filing were served upon all members of PJM, all transmission customers of Duquesne Light, and the affected state utility commissions.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER05–86–000]

Take notice that on October 28, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed agreement of intent among PJM, American Municipal Power-Ohio, Inc. as agent for Ohio Municipal Electric Generation Agency Joint Venture 5, and American Electric Power Service Corporation as agent for Ohio Power Company. PJM requests an effective date of October 4, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

9. PJM Interconnection, L.L.C. and Virginia Electric and Power Co.

[Docket No. ER05–87–000]

Take notice that on October 28, 2004, PJM Interconnection, L.L.C. (PJM) and Virginia Electric and Power Company (Dominion) submitted revised pages to the PJM Open Access Transmission Tariff and to the Reliability Assurance Agreement among Load Serving Entities in the PJM South Region associated with the integration of Dominion as PJM South into the PJM markets and tariff.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

10. Upper Peninsula Power Company

[Docket No. ER05–89–000]

Take notice that on October 28, 2004, Upper Peninsula Power Company (UPPCO) tendered for filing a rate schedule designated as Original Rate Schedule FERC No. 53 (Rate Schedule No. 53) between UPPCO and PJM Interconnection LLC (PJM) and a Notice of Cancellation and Order No. 614 compliant cancellation sheet to terminate Rate Schedule No. 53 (collectively, Cancellation Documents). Rate Schedule No. 53 sets forth the dates, quantity and rates at which UPPCO sold energy to PJM on fourteen occasions for the period beginning May 14, 2004 and ending on July 23, 2004. UPPCO also tendered for filing its Tariff for Sales to the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. (LMP Tariff) for prospective sales into the Midwest Independent Transmission System Operator, Inc. (MISO) and PJM spot markets. UPPCO requests an effective date of May 14, 2004 for Rate Schedule No. 53 and an effective date of July 24, 2004 for the Cancellation Documents. UPPCO further requests an effective date of October 29, 2004 for the LMP Tariff.

UPPOC states that copies of the filing were served upon PJM, MISO and the Michigan Public Service Commission.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

11. New Millennium Power Partners, LLC

[Docket No. ER05–90–000]

Take notice that on October 28, 2004, New Millennium Power Partners, LLC (New Millennium) submitted a Notice of Cancellation of FERC Electric Tariff, Original Volume No. 1 which was accepted for filing and made effective May 30, 2003. New Millennium requests an effective date of August 16, 2004 for the cancellation.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

12. Idaho Power Company

[Docket No. ER05–91–000]

Take notice that on October 28, 2004, Idaho Power Company (Idaho Power) submitted a Contract Demand Notice relating to an agreement between Idaho Power and Seattle City Light, FERC Rate Schedule No. 72. Idaho Power requests an effective date of January 1, 2005.

Idaho Power states that copies of the filing were served upon Seattle City Light.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

13. PJM Interconnection, L.L.C.

[Docket No. ER05–93–000]

Take notice that on October 28, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an interim interconnection service agreement among PJM, City of Rochelle, Illinois, and Commonwealth Edison Company. PJM requests an effective date of October 1, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

14. Virginia Electric and Power Company

[Docket No. ER05–94–000]

Take notice that on October 28, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered the pro forma Facilities Agreement for Wholesale Electric Delivery Points under its new FERC Rate Schedule No. 133. Dominion seeks a waiver of the sixty day notice period and request an effective date concurrent with Dominion's integration into PJM.

Dominion Virginia Power states that copies of the filing were served upon all parties on the attachment to its filing.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

15. Brascan Power St. Lawrence River LLC

[Docket No. ER05–98–000]

Take notice that on October 28, 2004, Brascan Power St. Lawrence River LLC (BPSLR) submitted for filing a notice of succession informing the Commission that, as a result of an immediate upstream change in ownership and a name change, BPSLR has succeeded to Orion Power New York GP II's FERC Electric Rate Schedule No. 1 (Rate Schedule), and has proposed revisions to its market-based rate schedule to reflect the same and to modernize the rate schedule's language so as to give BPSLR all the authorizations available to other similar entities with market-based rate authorization.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

16. PJM Interconnection, L.L.C.

[Docket Nos. ER05–114–000, ER04–367–004, ER04–1068–004]

Take notice that on October 26, 2004, PJM Interconnection, L.L.C. (PJM) filed revised sheets to the PJM Open Access Transmission Tariff (PJM Tariff) solely to reflect the combined effect of two recent orders of the Commission affecting certain PJM transmission service rates. PJM states that its filing will conform the filed and posted PJM Tariff rates with the rates PJM currently is authorized to charge, as the combined result of recent Commission orders (1) allowing the rates in a proposed settlement to be charged on an interim basis, pending approval of the settlement; and (2) incorporating the rates and revenue requirements of two new PJM transmission owners in the PJM Tariff. PJM requests an effective date of October 1, 2004.

PJM states that copies of the filing were served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the service lists for Docket Nos. ER04–367 and ER04–1068.

Comment Date: 5 p.m. Eastern Time on November 16, 2004.

17. Carr Street Generating Station, L.P.

[Docket Nos. ER05–118–000, ER98–4095–004]

Take notice that on October 28, 2004, Carr Street Generating Station, L.P. (Carr Street) submitted for filing revisions to its FERC Electric Tariff, First Revised Volume No. 1 (Tariff). Carr Street states that it has amended its Tariff in order to modernize the Tariff's language so as to give Carr Street all the authorizations available to other similar entities with market-based rate authorization. Carr Street requests an effective date of October 29, 2004.

18. Erie Boulevard Hydropower, L.P.

[Docket Nos. ER05–131–000, ER99–1764–005]

Take notice that on October 28, 2004, Erie Boulevard Hydropower, L.P. (Erie) submitted for filing revisions to its FERC Electric Tariff, First Revised Volume No. 1 (Tariff). Erie states that it has amended its Tariff in order to modernize the Tariff's language so as to give Erie all the authorizations available to other similar entities with market-based rate authorization. Erie requests an effective date of October 29, 2004.

Comment Date: 5 p.m. Eastern Time on November 18, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3106 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 2, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 2364–016.

c. *Date Filed:* August 31, 2004, supplemented October 20, 2004.

d. *Applicant:* Madison Paper Industries, Inc.

e. *Name and Location of Project:* The Abenaki Hydroelectric Project is located on the Kennebec River in Somerset County, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791a–825r.

g. *Applicant Contact:* Mr. Christopher C. Bean, Madison Paper Industries, Main Street, PO Box 129, Madison, ME 04950–0129, (207) 696–1195.

h. *FERC Contact:* James Hunter at (202) 502–6086.

i. *Deadline for filing comments, protests, or motions to intervene:* December 3, 2004.

j. *Description of Request:* Madison Paper Industries, as licensee, has filed a license amendment application proposing to exclude the 3,400-foot-long, 13.8-kilovolt (kV) transmission line connecting the licensee's ground wood mill, adjacent to the Abenaki powerhouse, to the licensee's paper mill. The licensee states that the 13.8-kV line is no longer used for transporting power to the utility, consequently the point of interconnection with the utility's distribution system is at circuit breakers B3 and B4 at the ground wood mill. The supplement includes a one-line diagram supporting the written discussion.

k. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–2364) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (g) above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

p. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3092 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

November 2, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial Transfer of License.

b. *Project No:* 4784–070.

c. *Date Filed:* September 22, 2004.

d. *Applicants:* Teton Power Funding, LLC (Teton)(as successor in interest to UtilCo SaleCo, LLC), DaimlerChrysler Services North America LLC (DaimlerChrysler), and Topsham Hydro Partners Limited Partnership (Topsham).

e. *Name and Location of Project:* The Pejepscot Hydroelectric Project is located on the Androscoggin River in the town of Topsham, in Sagadahoc, Cumberland and Androscoggin Counties, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Teton: Daniel R. Revers c/o ArcLight Capitol Partners, LLC, 200 Claredon Street, Boston, MA 02117, (617) 531–6300. Margaret A. Moore, Van Ness Feldman, PC, 1050 Thomas Jefferson Street, NW, Washington, DC 20007, (202) 298–1800, For DaimlerChrysler: Richard Cozart, 501 Merritt 7, 5th Floor, Norwalk, CT 06851, (203) 845–7300. William D. DeGrandis, William P. Scharfenberg, Paul, Hastings, Janofsky & Walker LLP, 1299 Pennsylvania Ave., 10th Floor, Washington, DC 20004–2400, (202) 508–9500. For Topsham: Charles N. Lucas, 7301 East Sundance, Suite D102, P.O. Box 2244, Carefree, AZ 85377, (952) 545–0975. Patrick J. Scully, Bernstein, Shur, Sawyer & Nelson, 100 Middle Street, PO Box 9729, Portland, ME 04104, (207) 774–1200.

h. *FERC Contact:* Lynn R. Miles (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* December 3, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–4784–070) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Teton, DaimlerChrysler, and Topsham (collectively, the Applicants) jointly submitted an application pursuant to Section 8 of the Federal Power Act seeking authorization for the partial transfer of the license for the Pejepscot Project, No. 4784 to reflect the reorganization in which UtilCo SaleCo, LLC was absorbed by Teton, its owner.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the project number excluding the last three digits (P–4784) in the docket number field to access the document. For online assistance, contact *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3093 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000]

Electric Quarterly Reports; Notice of Electric Quarterly Reports Regional Outreach Meeting

November 2, 2004.

The FERC Electric Quarterly Reports (EQR) staff has scheduled a regional outreach meeting to be held in conjunction with a PJM EQR data mapping session. On Monday, November 15, 2004, FERC EQR staff will hold an EQR Outreach Session for PJM filers in conjunction with a meeting hosted by the PJM ISO the next day. Both meetings will be held at the Wyndham Wilmington Hotel in Wilmington, DE. The FERC EQR Outreach Session will run from 1 p.m. to 5 p.m. (EST) on Monday. FERC EQR staff will discuss general ISO data mapping issues and address any other EQR questions or problems that filers have. Tuesday's PJM EQR Data Mapping meeting will address the details of mapping PJM settlement items to EQR product names. Interested individuals should bring someone from their company who is familiar with the PJM operations and settlement statements.

Participants should register for each meeting separately. Those who would like to participate in the November 15th FERC EQR Outreach Session are asked to register online at FERC by Thursday, November 11, 2004, at *http://www.ferc.gov/whats-new/registration/eqr-1115-form.asp.* Registration information for the November 16th PJM EQR Data Mapping meeting can be found at *http://www.pjm.com/committees/form-eqrom-attend.html.*

Persons wishing to file comments may do so under the above-captioned Docket Number. Those filings will be available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or via phone at (866) 208–3676 (toll-free). For TTY, contact (202) 502–8659.

For additional information, please contact Mark Blazejowski of FERC's Office of Market Oversight and Investigations at (202) 502–6055 or by e-mail, *mark.blazejowski@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–3091 Filed 11–9–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0280; FRL–7675–1]

Pesticide Safety Program for Agricultural Workers, Pesticide Handlers and Health Providers; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is soliciting proposals for financial assistance to support a continuing national and international pesticide safety program to analyze occupational safety programs and information for agricultural workers, pesticide providers, and health professionals to reduce exposure to pesticides. As part of this program, the grantee will analyze the current status of private and public programs on pesticide safety, conduct outreach meetings with experts from the agricultural community to assess needs and develop education and training programs, outreach materials and improved hazard communications for pesticide applicators, agricultural workers, health providers, growers and local, state, national and international organizations, and government agencies. The total funding available for award in FY 2005, which represents funding set aside in FY 2004, is expected to be approximately $600,000. At the conclusion of the first 1 year period of performance and, based on the availability of future funding, incremental funding of up to $600,000 may be made available for each year allowing the project to continue for a total of five periods of performance (approximately 5 years) and with a total potential funding of up to $3,000,000 for the 5–year period, depending on need and the Agency budget in outlying years.

DATES: Applications must be received by EPA on or before December 27, 2004.

ADDRESSES: Applications may be submitted by mail, fax, or electronically.

Please follow the detailed instructions provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Carol Parker, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6458; fax number: (703) 308–2962; e-mail address: *parker.carol@epa.gov.*

SUPPLEMENTARY INFORMATION: The following listing provides certain key information concerning the funding opportunity.

- *Federal agency name*: Environmental Protection Agency (EPA).
- *Funding opportunity title*: Pesticide Safety Program for Agricultural Workers, Pesticide Handlers and Health Providers.
- *Funding opportunity number*: OPP–002.
- *Announcement type*: The initial announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFCA) number*: This program is included in the Catalog of Federal Domestic Assistance under number 66.716 at *http://www.cfda.gov.*
- *Dates*: Applications must be received by EPA on or before December 27, 2004.

I. Funding Opportunity Description

A. Authority

EPA expects to enter into cooperative agreements under the authority provided in FIFRA section 20 which authorizes the Agency to issue grants or cooperative agreements for research, public education, training, monitoring, demonstration and studies. Regulations governing these cooperative agreements are found at 40 CFR part 30 for institutions of higher education, colleges and universities, and non-profit organizations, and 40 CFR part 31 for states and local governments. In addition, the provisions in 40 CFR part 32, governing government wide debarment and suspension; and the provisions in 40 CFR part 34, regarding restrictions on lobbying apply. All costs incurred under this program must be allowable under the applicable OMB Cost Circulars: A-87 (states and local governments), A-122 (nonprofit organizations), or A-21 (universities). Copies of these circulars can be found at*http://www.whitehouse.gov/omb/circulars/.* In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (e.g., lobbying members of Congress or lobbying for other Federal grants, cooperative agreements, or contracts). See 40 CFR part 34.

B. Program Description

1. *Purpose and scope.* The cooperative agreement awarded under this program is intended to provide financial assistance to support a continuing project to work with a wide spectrum of agricultural stakeholders and pesticide safety education and training experts to continue research, assessment and development of improved pesticide safety programs for agricultural workers, pesticide handlers and health providers to reduce exposures to the hazards of pesticides.

Under this new cooperative agreement, experience and expertise in bringing together a broad external network of key agricultural experts and interests is critical to developing more effective pesticide safety programs on local, state, national and international levels. Working with a wide spectrum of environmental and agricultural representatives will also help address the General Accounting Office reports urging EPA to improve its outreach and involvement with stakeholder organizations. Experience and expertise in working with state agencies, farmworker, grower, commodity and health organizations, the Cooperative Extension Service, the agricultural chemical industry, and other members of the agricultural community to assess key components in the area of worker and handler training, hazardous communication, and health is critical to the success of this project. The cooperative agreement will also work with the stakeholders and experts in creating effective model pesticide safety programs and materials for farmworkers, their families, pesticide handlers, and health care providers.

Activities to be funded: In working with a wide spectrum of agricultural experts and stakeholders, the cooperative agreement will fund the continued development of improved national and international pesticide safety training and education programs to reduce exposure to the hazards of pesticides. Key activities to be funded under this cooperative agreement are:

a. Assessment and development of model state and national training programs and materials on agricultural worker safety, working with growers, farmworker organizations, and state agencies, that would serve as a national model for states across the country.

b. Work with experts on pesticide applicator safety to develop model pesticide safety and training programs, materials and core examinations for mixers, loaders, and applicators of agricultural pesticides.

c. Work with Canadian and Mexican environmental and agricultural agencies and organizations, pesticide producers, and other members of the international agricultural pesticide safety community to analyze existing safety training and educational programs for pesticide handlers and agricultural workers and develop standard models that would provide improved training across borders.

d. Work cooperatively with a broad range of agricultural interests at the state, national, and international level to assess hazard communications programs and develop a model program which would provide additional information on specific pesticide hazards.

e. Working with key members of the health care provider network of medical providers, including experts and representatives from migrant and rural health care clinics, hospitals, medical colleges and universities, state and national medical educators, and others to transform recommendations for prevention and improved identification and treatment of pesticide illnesses into model education and training programs and materials.

f. Based on recommendations from new analysis of worker and applicator safety training programs, hazardous communication efforts, health provider needs, grower and commodity interests, and state and local programs, develop additional pesticide safety materials and projects to reduce risks from pesticide hazards.

This program will further Agency efforts under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. 136w) to reduce the risk of pesticide poisonings and injuries among agricultural workers, handlers of agricultural pesticides, and the public by providing essential training about the potential hazards associated with pesticide chemicals and how to reduce those risks.

2. *Goal and objectives.* Through the cooperative agreement sought under this solicitation for the Pesticide Safety Program for Agricultural Workers, Pesticide Handlers and Health Providers, EPA intends to work with an organization that has experience and expertise in bringing together diverse members of the agricultural pesticide safety community to develop and improve pesticide safety programs for protecting farmworkers and pesticide applicators from the hazards of pesticides, and to support the Health Care Provider's Initiative.

The objective of this program is to bring together experts and representatives from a wide spectrum of the agricultural community on local, state, national, and international levels through conferences, meetings, and continuing workgroups to develop model pesticide safety programs and materials for farmworkers, pesticide handlers, and health professionals to reduce risks from exposure to the hazards of pesticides. Meeting and coordinating with pesticide safety education and training leaders and agricultural stakeholders will help to develop effective programs and materials through identifying technical experts, providing review and oversight of materials and pilot programs as they are developed and pilot tested.

3. *History.* In August of 1992, EPA's Worker Protection Standard (WPS) (40 CFR part 170) was published to require actions to reduce the risk of pesticide poisonings and injuries among agricultural workers and pesticide handlers. The WPS offers protections to more than3½ million agricultural workers who work with pesticides at more than 560,000 workplaces on farms, forests, nurseries, and greenhouses. The WPS contains requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment, restricted entry intervals following pesticide application, decontamination supplies, and emergency medical assistance. Also, in August of 1992, EPA proposed a Notice of Proposed Rulemaking to develop requirements for communicating hazard information about pesticides to workers. EPA has never published that final rule. A national assessment to evaluate the WPS is complete and the results have contributed to developing pilot programs aimed at reducing some of the obstacles to effective pesticide safety training, education, and hazard communications.

In addition to the WPS, EPA's Certification of Pesticide Applicators (40 CFR part 171) has been in effect since 1974. EPA's Pesticide Applicator Certification and Training Program provides pesticide applicators with the knowledge and ability to use pesticides safely and effectively. Pesticide applicators are trained by state Cooperative Extension Service pesticide applicator training programs and are certified by pesticide State Lead Agencies.

EPA regulations require that applicators be certified as competent to applyrestricted use pesticides in accordance with national standards. Certification programs are conducted by states, territories, and tribes in accordance with these national standards. Training of certified applicators covers safe pesticides use as well as environmental issues such as endangered species and water quality protection. More than one million applicators are currently certified nationwide, including more than 900,000 private applicators and about 350,000 commercial applicators. Recommendations from meetings and ongoing workgroups of national and international pesticide safety education and training experts have resulted in recommendations to improve the education and training programs. Programs are underway to continue the development of improved and model programs and materials for pesticide handlers and their trainers, including certified applicators.

In addition to assessments of the Worker Protection and Certification and Training Programs, a new initiative created by the EPA and the National Environmental Education & Training Foundation (NEETF) in collaboration with other Federal agencies and professional associations of health care providers was launched in 1999. The Health Care Providers Initiative is aimed at incorporating pesticide information into the education and practice of health care providers. The goal is to improve the recognition, diagnosis, management, and prevention of adverse health effects from pesticide exposures in agricultural areas.

In 2001, OPP funded a cooperative agreement with the Agricultural Research Institute now the Council for Agricultural Science and Technology in response to a growing concern among members of the agricultural community that there was a need to research, assess, and develop improved programs and materials for farmworkers, pesticide handlers, and health care providers, both nationally and internationally. A key component to the success of the program was bringing together a wide spectrum of agricultural stakeholders and pesticide safety educators and training experts to ensure that the programs were workable for all aspects of the affected agricultural community.

To continue a comprehensive national and international pesticide safety project to research, analyze, and develop improved pesticides safety programs and information for agricultural workers, pesticide handlers, and health providers, EPA is soliciting applications from non-profit organizations, institutions, or agencies with expertise in bringing together a wide spectrum of agricultural technical and scientific experts in pesticide safety education and training of farmworkers, pesticide handlers, and rural health care providers. Applicants should be non-profit organizations, institutions or agencies with abilities in agricultural pesticide safety education and training programs, have experience and expertise in bringing together diverse agricultural stakeholders, and have background in agricultural pesticide safety education, science, research, and technology.

This document outlines the application requirements and procedures for the Pesticide Safety Program for Agricultural Workers, Pesticide Handlers and Health Providers.

II. Award Information

The funding for the selected award project is in the form of a cooperative agreement awarded under FIFRA section 20.

The total funding available for award in FY 2005 represents funding set aside in FY 2004 and is expected to be approximately $600,000. At the conclusion of the first 1 year period of performance, incremental funding of up to $600,000 may be made available for each subsequent year, depending on need and the Agency budget in outlying years, which would allow the project to continue for a total of 5 periods of performance (approximately 5 years) and totaling up to $3,000,000 for the5–year period.

Should additional funding become available for award based on the Agency budget in those outlying years, the Agency may make available additional funds under the cooperative agreement granted based on the solicitation and in accordance with the final selection process, without further notice of competition during the first year after the competition award.

III. Eligibility Information

1. *Threshold eligibility factors.* To be eligible for consideration, applicants must meet all of the following criteria. Failure to meet the following criteria will result in the automatic disqualification for consideration of the proposal for funding:

- Be an applicant who is eligible to receive funding under this announcement, including states, U.S. territories or possessions, federally recognized Tribal governments and organizations, public and private universities and colleges, hospitals, laboratories, other public or private nonprofit institutions, and individuals. Non-profit organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities

as defined in section 3 of the Lobbying Disclosure Action of 1995 are not eligible to apply. Eligible applicants may include: Agricultural, environmental, health, and educational organizations and agencies, colleges or universities, the Cooperative Extension Service and other public or non-profit agencies, authorities, institutions, organizations, individuals, or other qualified entities working in agricultural science, technology, research, training, safety, education, and communications. Applicants with broad reaches into the diverse interests of the agricultural community, including farmworkers, farmworker families, pesticide handlers, health providers, growers, the Cooperative Extension Service, state, national and international agriculture, environment, labor and occupational health, rural and migrant health, education agencies are eligible.

- The proposal must address-all of the qualifications in the high priority areas for consideration under Unit III.2.a-f.
- The proposal must address all of the activities to be funded, under Unit I.B.1.a-f.
- The proposal must meet all format and content requirements contained under Unit IV.

The proposal must comply with the directions for submittal contained in Unit IV.

2. *Eligibility criteria.* Applicants must demonstrate ability, experience and/or expertise in the following high priority areas for consideration. Applicants will be evaluated on the following criteria:

a. *Expertise and experience in bringing together o broad spectrum of agricultural experts to work together to onolyze ond develop improved pesticide sofety education and troining moteriols for ogriculturol workers, pesticide hondlers, and heolth providers.* Applicants must demonstrate experience and ability in working with a broad spectrum of agricultural interests to analyze and develop improved pesticide safety training, education and communications programs and materials for farmworkers and their families, pesticide handlers and health providers.

b. *Ability and experience in working with widely diverse ogriculturol experts and representotives.* Applicant must demonstrate the ability to work with the full range of agricultural, environmental, labor, health and education agencies and organizations, including those representing farmworkers, growers, commodity groups, migrant health clinics, migrant education, cooperative extension service, pesticide producers, and agricultural labor.

c. *Expertise and experience in formuloting pesticide sofety progroms and moteriols from the stote to international levels.* Applicant must demonstrate ability in working with agricultural interests and representatives at multiple levels, including state, national and international, to develop improved pesticide safety education and training programs.

d. *Ability to identify and employ experts to develop improved progroms and materials.* Applicant must demonstrate ability to identify and employ experts to develop education and training pesticide safety programs for trainers, farmworkers and their families, pesticide applicators, and others. This would include development of materials, pilot testing of programs and materials.

e. *Expertise in organizing conferences and work groups.* Applicant must demonstrate ability to organize working conferences with continuing workgroups with goals of turning assessments and recommendations into programs and materials to improve pesticide safety education and training for agricultural workers, their families, pesticide handlers, and other members of the agricultural community.

f. *Ability to pilot test new progroms ond moteriols to finalize model progroms.* Applicant must demonstrate experience or expertise in pilot testing model programs for effectiveness in reaching agricultural workers, pesticide handlers, and/or their trainers.

3. *Cost shoring or motching.* There are no cost share requirements for this project. However, matching funds are encouraged.

IV. Application and Submission Information

1. *Address to request proposol pockage.* Carol Parker, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

2. *Content ond form of opplicotion submission.* Proposals must be typewritten, double spaced in 12 point or larger print using 8.5 x 11 inch paper with minimum 1 inch horizontal and vertical margins. Pages must be numbered in order starting with the cover page and continuing through the appendices. One original and one electronic copy (e-mail or disk) is required.

All proposals must include:

- Completed Standard Form SF 424*, Application for Federal Assistance. Please include organization fax number and e-mail address. The application forms are available on line at *http://www.epa.gov/ogd/grants/how_to_apply.htm.*
- Completed Section B--Budget Categories, on page 1 of Standard Form SF 424A* (see allowable costs discussion below). Blank forms may be located at*http://www.epa.gov/ogd/grants/how_to_apply.htm.*
- Detailed itemization of the amounts budgeted by individual Object Class Categories (see allowable costs discussion below).
- Statement regarding whether this proposal is a continuation of a previously funded project. If so, please provide the assistance number and status of the current grant/cooperative agreement.
- *Executive Summary.* The Executive Summary shall be a stand alone document, not to exceed one page, containing the specifics of what is proposed and what you expect to accomplish regarding measuring or movement toward achieving project goals. This summary should identify the measurable environmental results you expect including potential human health benefits.
- *Toble of contents.* A one page table listing the different parts of your proposal and the page number on which each part begins.
- *Proposol norrotive.* Includes Parts I-V as identified below (not to exceed 10 pages).
- *Part I--Project title.* Self explanatory.
- *Port II--Objectives.* A numbered list (1, 2, etc.) of concisely written project objectives, in most cases, each objective can be stated in a single sentence.
- *Port III--Justificotion.* For each objective listed in Part II, discuss the potential outcome in terms of human health, environmental and/or pesticide risk reduction.
- *Port IV--Approoch ond methods.* Describe in detail how the program will be carried out. Describe how the system or approach will support the program goals.
- *Part V--Impoct ossessment.* Please state how you will evaluate the success of the program in terms of measurable results. How and with what measures will humans be better protected as a result of the program. Quantifiable risk reduction measures should be described.
- *Appendices.* These appendices must be included in the cooperative agreement proposal. Additional appendices are not permitted.

• *Timetable.* A timetable that includes what will be accomplished under each of the objectives during the project and when completion of each objective is anticipated.

• *Major participants.* List all affiliates or other organizations, educators, trainers and others having a major role in the proposal. Provide name, organizational affiliation, or occupation and a description of the role each will play in the project. A brief resume (not to exceed two pages) should be submitted for each major project manager, educator, support staff, or other major participant.

3. *Submission dates and times.* You may submit an application through the mail, by fax or electronically. Regardless of submission method, all applications must be received by EPA on or before December 27, 2004.

4. Intergovernmental Review. All applicants should be aware that formal requests for assistance (i.e., SF 424 and associated documentation) may be subject to intergovernmental review under Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants should contact their state's single point of contact (SPOC) for further information. There is a list of these contacts at the following web site:*http:/whitehouse.gov/omb/grants/spoc.html.*

5. *Funding restrictions.* EPA grant funds may only be used for the purposes set forth in the cooperative agreement, and must be consistent with the statutory authority for the award. Cooperative agreement funds may not be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other governmental entity. All costs identified in the budget must conform to applicable Federal Cost Principles contained in OMB Circular A-87; A-122; and A-21, as appropriate.

6. *Other submission requirements.* As indicated above, each application must include the original paper copy of the submission, along with one electronic copy. The electronic copy of your application package, whether submitted separately by e-mail or on a disk, please ensure that the electronic copy is consolidated into a single file, and that you use Word Perfect WP8/9 for Windows, or Adobe PDF 4/5. If mailing a disk, please use a 3.5 disk that is labeled as a proposal for the Pesticide Safety Program for Agricultural Workers, Pesticide Handlers and Health Care Providers, and include your pertinent information. Please check your electronic submissions to ensure that it does not contain any computer viruses.

Submit your application using one of the following methods:

By mail to: Carol Parker, Office of Pesticide Programs, Mail code: 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

By fax to: Carol Parker at fax number: (703) 308–2962.

By e-mail to: *parker.carol@epa.gov.*

Confidential business information. Applicants should clearly mark information contained in their proposal which they consider confidential business information. EPA reserves the right to make final confidential decisions in accordance with Agency regulations at 40 CFR part 2, subpart B. If no such claim accompanies the proposal when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

V. Application Review Information

Review and Selection Process

Applicants will be screened to ensure that they meet all eligibility criteria and will be disqualified if they do not meet all eligibility criteria. All proposals will be reviewed, evaluated, and ranked by a selected panel of EPA reviewers based on the following evaluation criteria and weights (Total: 100 points):

1. Project proposal must provide information on the education, skills, training of the project leader and/or other key managers. As appropriate, cite technical qualifications and specific examples of prior, relevant experience. Demonstrate ability of organization to identify and employ state, national or international experts in developing education and training pesticide safety programs for both trainers and farmworkers, pesticide applicators and others, as outlined in Unit III.2.a-f. This would include assessment of worker protection needs for farmworkers and pesticide applicators, development of recommendations from expert workgroups, and development and pilot testing of pesticide safety programs and materials. (Weight: 30 points)

2. Demonstrate experience and/or ability in carrying out activities to be funded for the assessment and development of state, national, and international pesticide safety education, training, and hazard communications programs for agricultural workers, pesticide handlers, and health providers, as outlined in Unit I.B.1.a-f. Outline how work in this area will help reduce exposures to pesticide hazards and demonstrate how you will evaluate the success of the project in terms of measurable environmental results. (Weight: 30 points)

3. Project proposal must demonstrate experience and ability in bringing together broad spectrum of diverse agricultural interests and pesticide safety experts to work together to analyze and develop improved pesticide safety education and training materials for agricultural workers, pesticide handlers, and health providers at multi-levels, including local, state, national, and international, as outlined in Unit III.2.a-f. (Weight: 20 points)

4. Expertise in organizing conferences and work groups. Applicant must demonstrate ability to organize working conferences with continuing work groups with goals of turning assessments and recommendations into programs and materials to improve pesticide safety education and training for agricultural workers, their families, pesticide handlers, and other members of the agricultural community, as outlined in Unit III.2.a-f. (Weight: 10 points)

5. Provide a detailed budget narrative demonstrating a clear link between resources and project objectives. If EPA funding for this project will be supplemented by other sources, please identify them. (Weight: 10 points)

The proposals will be reviewed and evaluated by a team of internal EPA Worker Protection and Pesticide Handler Certification and Training experts. The final funding decision will be made from a group of top rated proposals by the Chief of the Certification and Worker Protection Branch, Field and External Affairs Division, Office of Pesticide Programs. The Agency reserves the right to reject all proposals and make no awards. The procedures for dispute resolution at 40 CFR 30.63 and 40 CFR 31.70 apply.

VI. Award Administration Information

1. *Award Notices.* The Certification and Worker Protection Branch in OPP will mail an acknowledgment to applicants upon receipt of the application. Once all of the applications have been reviewed, evaluated, and ranked, applicants will be notified of the outcome of the competition. A listing of the successful proposal will be posted on the Certification and Worker Protection website address at the conclusion of the competition (go to: *http://www.epa.gov/pesticides/health/worker.htm*). The website may also contain additional information about this announcement including information concerning deadline extensions or other modifications.

2. *Administrative and national policy requirements.* An applicant whose

proposal is selected for Federal funding must complete additional forms prior to award (see 40 CFR 30.12 and 31.10), and will be required to certify that they have not been debarred or suspended from participation in Federal assistance awards in accordance with 40 CFR part 32. In addition, Applicants must comply with the Intergovernmental Review Process. Further information regarding this requirement will be provided if your proposal is selected for funding.

3. *Reporting.* The successful recipient will be required to submit quarterly and annual reports, and to submit annual financial reports. The specific information contained within the report will include at a minimum, a comparison of actual accomplishments to the objectives established for the period. The Certification and Worker Protection Branch may request additional information relative to the scope of work in the cooperative agreement and which may be useful for Agency reporting under the Government Performance and Results Act.

VII. Agency Contact

Carol Parker, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6458; fax number: (703) 308–2962;e-mail address: *parker.carol@epa.gov.*

VIII. Other Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Assistance is generally available to states, U.S. territories or possessions, federally recognized Tribal governments and organizations, public and private universities and colleges, hospitals, laboratories, other public or private nonprofit institutions and individuals. Non-profit organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in section 3 of the Lobbying Disclosure Action of 1995 are not eligible to apply. This program may, however, be of particular interest to agricultural, environmental, health, and educational organizations and agencies, colleges or universities, the Cooperative Extension Service and other public or non-profit agencies, authorities, institutions, organizations, individuals or other qualified entities working in agricultural science, technology, research, training, safety, education and communications. Those entities with broad reaches into the diverse interests of the agricultural community, including farmworkers, farmworker families, pesticide handlers, health providers, growers, the Cooperative Extension Service, state, national and international agriculture, environment, labor and occupational health, rural and migrant health, education agencies may be interested in applying. Because others may also be interested, the Agency has not attempted to describe all the specific entities that may be interested by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access 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–2004–0280. 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 access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the Unit VIII.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

IX. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The CRA generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this grant solicitation and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to its publication in the **Federal Register.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants, Pesticides, Training.

Dated: October 28, 2004.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–24929 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7836–8]

Integrated Risk Information System (IRIS); Addition of New Tracking Feature to the Public Web Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Addition of Chemical Assessment Tracking System to the Integrated Risk Information System (IRIS) Public Web site.

SUMMARY: EPA's Office of Research and Development (ORD) National Center for Environmental Assessment (NCEA) is releasing a new on-line resource, "IRIS Track", which will provide information on the progress of chemical assessments underway in the IRIS program. The IRIS Track system is designed to provide greater transparency to the public regarding the status of IRIS assessments in progress. The IRIS Track is set to go live on November 10, 2004. IRIS Track will display major milestone dates for IRIS assessment development and review. It will enable IRIS users to monitor current milestone status and view projected dates for future milestones for each chemical assessment in progress. The system will be kept continually up to date. IRIS Track will be accessible by anyone with access to the Internet from the IRIS home page at *http://www.epa.gov/iris.*

ADDRESSES: The address for the IRIS Hotline is 1301 Constitution Avenue, NW., Washington, DC 20005 (Mail Code 28221T) EPA–West Building.

FOR FURTHER INFORMATION CONTACT: For information on IRIS Track, contact Rick Johnson, IRIS Staff, National Center for Environmental Assessment (mail code

8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3291, or send electronic mail inquiries to *johnson.rickc@epa.gov*.

SUPPLEMENTARY INFORMATION: IRIS is an on-line database of EPA's consensus positions on the potential health effects that may result from human exposure to various chemicals found in the environment. EPA adds new chemical assessments to IRIS and updates existing assessments on an on-going basis. EPA publishes an annual agenda of chemical assessments underway in the IRIS program in the **Federal Register**. (*See*, for example, 69 FR 5971, February 9, 2004.) Assessments generally require two or more years to complete. During this period, IRIS users often request status information from the Agency. The IRIS Track system was developed to inform the public of the status of each assessment from start to completion.

Dated: November 4, 2004.

George W. Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 04–25096 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0376; FRL–7687–2]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation; Notice of Public Meeting

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on December 6, 2004, and ending December 7, 2004. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 6, 2004, from 8:30 a.m. to 5 p.m., and on Tuesday, December 7, 2004, from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at Doubletree Hotel, 300 Army/Navy Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov* or Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249. Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in the SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decisionmaking process. Potentially affected entities may include, but are not limited to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0376. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Tentative Agenda

1. Update from the Counselor to the Administrator for Agricultural Policy
2. Update on EPA's Role in Homeland Security
3. Implementation of EPA-SFIREG Registration Process (Review of the SOP)
4. CBI: Possible model for state statute
5. Disposal: Next Steps
6. Atrazine Relabeling Update
7. Performance Measures
8. Endangered Species: Next Steps
9. Container Management Update
10. Report on Agronomic Stewardship Alliance
11. Inspector Credentials Update
12. California Senate Bill 391 Update
13. Plant-Pesticide Incorporated Protectants Update
14. Issue Paper Review Process
15. Office of Pesticide Program and Office Enforcement and Compliance Assurance updates
16. Pesticide & Operations Management and Water Quality & Pesticide Disposal Committees Reports
17. Region Reports

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 1, 2004.

William R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 04–25097 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7836–7]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meetings.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB), as previously announced, will have teleconference meetings on November 17, 2004, at 1 p.m. e.t.; December 15, 2004, at 1 p.m. e.t.; January 19, 2005, at 1 p.m. e.t.; February 15, 2005, at 1 p.m. e.t.; and March 16, 2005, at 1 p.m. e.t. to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by ELAB over these coming meetings include: What actions can be taken to expand the number of laboratories seeking accreditation under the National Environmental Laboratory Accreditation Conference (NELAC) program; homeland security issues affecting the laboratory community; ELAB support to the Agency's Forum on Environmental Measurements (FEM); what needs to be done to facilitate the implementation of the use of a performance approach in environmental monitoring; increasing state participation in NELAC; and follow-up on some of ELAB's past recommendations and issues. In addition to these teleconferences, ELAB will be hosting their next, public face-to-face meeting on February 2, 2005, at the Sheraton Society Hill in Philadelphia, Pennsylvania from 8:30–11:30 a.m. e.t.

Written comments on laboratory accreditation issues and/or environmental monitoring issues are encouraged and should be sent to the ELAB Designated Federal Official, Ms. Lara P. Autry, U.S. EPA (E243–05), 109 T. W. Alexander Drive, Research Triangle Park, NC 27709, faxed to (919) 541–4261, or e-mailed to *autry.lara@epa.gov*. Members of the public are invited to listen to the teleconference calls and attend the face-to-face meetings. Time permitting, the public will be allowed to comment on issues discussed during current and previous ELAB meetings. Those persons interested in attending should call Lara P. Autry at (919) 541–5544 to obtain teleconference information. The number of lines available for the teleconferences, however, are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Paul Gilman,

Assistant Administrator, Office of Research and Development.

[FR Doc. 04–25068 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7836–9]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The meeting will be held on Thursday, December 2, 2004, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Wyndham New Orleans at Canal Place, 100 Rue Iberville, New Orleans, LA 70130 (504) 566–7006.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda topics include: FY 2004 Program Accomplishments; Executive Order Status/Next Steps; Key Ocean Commission Activities Relevant to the Gulf of Mexico; Overview and Status Report on June 2004 Report on Methylmercury in the Gulf of Mexico; Review of Industry-Led Solutions Proposal for Collaborative Gulf Hypoxia Support; Update on GMP Efforts to Help Strengthen Coastal America; Review of FY 2005 GMP Workplan.

The meeting is open to the public.

Dated: November 2, 2004.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 04–25067 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[OPP–2004–0295; FRL–7684–6]

Cyhexatin; Risk Assessments and Preliminary Risk Reduction Options (Phase 3 of 4-Phase Process); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, preliminary risk reduction options, and related documents for the pesticide cyhexatin, and opens a public comment period on these documents. The public also is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a tolerance reassessment decision (TRED) for cyhexatin through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0295, must be received on or before January 10, 2005.

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: Katie Hall, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; fax number: (703) 308–8041; e-mail address:*hall.katie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions

regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0295. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0295. 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–2004–0295. 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–2004–0295.

3. *By hand delivery or courier.* Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0295. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health risk assessments, preliminary risk reduction options, and related documents for cyhexatin and encouraging the public to suggest risk management ideas or proposals. EPA developed the risk assessments and preliminary risk reduction options for cyhexatin through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Cyhexatin is an organotin insecticide used on a variety of crops. There are no active U.S. product registrations containing cyhexatin. Tolerances are being supported for import purposes only. The acute and chronic dietary exposure assessment was conducted on all cyhexatin food uses at tolerance levels, and default processing factors were used. The assessments were refined using percent import information. Based on this preliminary analysis, dietary risk possibly of concern for cyhexatin.

The registrants have proposed to only support the tolerances for oranges (juice) and apples (fresh and juice) for import purposes. The registrants have submitted a dietary exposure assessment for these two uses. Anticipated residues were used instead of tolerances, and residue levels were adjusted by actual processing factors and the percent of orange juice, fresh apples, and apple juice available to U.S. consumers that could have been treated with cyhexatin. This exposure analysis appears to indicate that the potential acute and chronic dietary risk may not be of concern. This analysis, available in the docket, is in review and will be discussed in the final TRED document.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for cyhexatin. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to cyhexatin, compared to the general population.

As a preliminary risk reduction option the registrants have proposed to only support the tolerances for oranges (juice) and apples (fresh and juice) for import purposes. EPA is releasing for public comment the dietary exposure assessment conducted by the registrants for these two uses. EPA is also providing an opportunity for all interested parties to provide risk management proposals or otherwise comment on risk management.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For cyhexatin, a modified, 4–Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its limited use. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for cyhexatin. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 18, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–24927 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0353; FRL–7685–4]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0353, must be received on or before December 10, 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: Jim Tompkins, Registration Division (7505C), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address:*tompkins.jim@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), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 identification (ID) number OPP–2004–0353. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the

copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment. and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0353. 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–2004–0353. 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), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0353.

3. *By hand delivery or courier.* Deliver your comments to:Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0353. 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. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. 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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 71512–RR. *Applicant*: ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Product Name*: Technical Flazasulfuron Herbicide. *Active ingredient*: Flazasulfuron at 96.9%.

Proposed classification/Use: None. For manufacturing use only.

2. *File Symbol*: 71512–RE. *Applicant*: ISK Biosciences Corp. *Product Name*: Flazasulfuron 25 WG. *Active ingredient*: Flazasulfuron at 25%. *Proposed classification/Use*: None. For use as a selective herbicide on professionally managed turf.

3. *File Symbol*: 100–RROI. *Applicant*: Sygenta Crop Protection, Inc., Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300. *Product Name*: Technical Pinoxaden Herbicide. *Active ingredient*: Pinoxaden at 98%. *Proposed classification/Use*: None. For manufacturing use only.

4. *File Symbol*: 100–RROO. *Applicant*: Sygenta Crop Protection. *Product Name*: NOA 407855 100 EC Herbicide. *Active ingredient*: Pinoxaden at 9.71%. *Proposed classification/Use*: None. For use as a postemergence herbicide for control of grass weeds in wheat (including durum) and barley.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 27, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 04–25100 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0232; FRL–7371–1]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period April 1, 2004 to June 30, 2004 to control unforseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION: EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you 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 identification (ID) number OPP–2004–0232. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A "specific exemption" authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. "Quarantine" and "public health" exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A "crisis exemption" is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in "a reasonable certainty of no harm" to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the "reasonable certainty of no harm standard" of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if

applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

Arkansas

State Plant Board
Crisis: On May 11, 2004, for the use of diuron on catfish to control blue green algae. This program is expected to end on December 31, 2004. Contact: (Libby Pemberton)
On June 3, 2004, for the use of sodium chlorate on wheat as a harvest aid. This program ended on June 17, 2004. Contact: (Libby Pemberton)
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of fomesafen on snap beans to control pigweed and morningglory; April 13, 2004 to September 15, 2004. Contact: (Andrew Ertman)
EPA authorized the use of bifenthrin on sweet potatoes to control beetle complex; April 29, 2004 to November 30, 2004. Contact: (Stacey Groce)
EPA authorized the use of spinosad on pastureland and rangeland to control armyworms and grasshoppers; August 15, 2004 to December 31, 2004. Contact: (Andrew Ertman)
EPA authorized the use of diuron on catfish to control blue green algae; June 28, 2004 to November 30, 2004. Contact: (Libby Pemberton)

California

Environmental Protection Agency, Department of Pesticide Regulation
Specific: EPA authorized the use of abamectin on basil to control leafminers; May 27, 2004 to October 30, 2004. Contact: (Libby Pemberton)
EPA authorized the use of myclobutanil on peppers to control powdery mildew; June 10, 2004 to May 31, 2005. Contact: (Stacey Groce)
EPA authorized the use of myclobutanil on artichokes to control powdery mildew; June 23, 2004 to August 18, 2005. Contact: (Stacey Groce)
EPA authorized the use of fludioxonil on pomegranates to control gray mold; August 1, 2004 to December 15, 2004. Contact: (Andrew Ertman)

Colorado

Department of Agriculture
Crisis: On June 21, 2004, for the use of fluroxypyr on onions to control volunteer potatoes. This program ended on July 21, 2004. Contact: (Stacey Groce)
Specific: EPA authorized the use of fomesafen on dry beans to control kochia and waterhemp; May 30, 2004 to July 15, 2004. Contact: (Andrew Ertman)

Connecticut

Department of Environmental Protection
Specific: EPA authorized the use of azoxystrobin on tobacco to control metalaxyl-resistant blue mold; May 20, 2004 to December 31, 2004. Contact: (Libby Pemberton)

Delaware

Department of Agriculture
Denial: On April 28, 2004, EPA denied the use of fipronil on potatoes to control wireworms. This request was denied based on the determination that the situation as described in the application does not meet the criteria for an emergency since growers are not likely to experience significant economic losses from wireworm infestations. Further, the Agency also believes that the use of fipronil will not improve the economic conditions facing potato growers because fipronil's performance against wireworms is just as erratic as the registered alternatives and its use will not result in any improvement in yield or quality. Contact: (Barbara Madden).
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of fomesafen on snap beans to control weeds; May 1, 2004 to October 1, 2004. Contact: (Andrew Ertman)

Florida

Department of Agriculture and Consumer Services
Specific: EPA authorized the use of carfentrazone-ethyl on fruiting vegetables (except cucurbits) to control paraquat resistant nightshade, purslane, and morningglory; June 16, 2004 to May 31, 2005. Contact: (Andrew Ertman)

Georgia

Department of Agriculture
Specific: EPA authorized the use of thymol on beehives to control varroa mite; April 13, 2004 to November 8, 2004. Contact: (Stacey Groce)

Idaho

Department of Agriculture
Crisis: On May 3, 2004, for the use of diflubenzuron on alfalfa to control Mormon cricket and grasshoppers. This program is expected to end on October 31, 2004. Contact: (Libby Pemberton)
On June 8, 2004, for the use of diflubenzuron on barley and wheat to control Mormon cricket and grasshoppers. This program ended on July 14, 2004. Contact: (Libby Pemberton)
EPA authorized the use of spinosad on onions to control thrips; June 29, 2004 to August 31, 2004. Contact: (Andrew Ertman)
Specific: EPA authorized the use of dimethenamid-p on sugar beets to control hairy nightshade, redroot pigweed and yellow nutsedge; April 28, 2004 to July 15, 2004. Contact: (Barbara Madden)
EPA authorized the use of fenpyroximate on hops to control mites; June 9, 2004 to September 15, 2004. Contact: (Libby Pemberton)

Illinois

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of tebuconazole on wheat to control *Fusarium* head blight; April 15, 2004 to May 31, 2004. Contact: (Libby Pemberton)
EPA authorized the use of fomesafen on snap beans to control weeds; May 5, 2004 to August 31, 2004. Contact: (Andrew Ertman)

Indiana

Office of Indiana State Chemist
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)

Specific: EPA authorized the use of tebuconazole on wheat to control *Fusarium* head blight; April 15, 2004 to June 30, 2004. Contact: (Libby Pemberton)
EPA authorized the use of fomesafen on snap beans to control broadleaf weeds; June 21, 2004 to September 1, 2004. Contact: (Andrew Ertman)
EPA authorized the use of fenbuconazole on blueberries to control mummyberry disease; April 28, 2004 to July 31, 2004. Contact: (Barbara Madden)
EPA authorized the use of thiophanate-methyl on blueberries to control fungal disease; May 4, 2004 to September 30, 2004. Contact: (Andrew Ertman)

Iowa

Department of Agriculture and Land Stewardship
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of fomesafen on dry beans to control broadleaf weeds; June 1, 2004 to July 15, 2004. Contact: (Andrew Ertman)

Kansas

Department of Agriculture
Specific: EPA authorized the use of tebuconazole on sunflowers to control rust; May 3, 2004 to September 15, 2004. Contact: (Stacey Groce)
EPA authorized the use of propiconazole on sorghum to control sorghum ergot; June 28, 2004 to June 28, 2005. Contact: (Libby Pemberton)
EPA authorized the use of thymol in beehives to control varroa mites; June 21, 2004 to November 8, 2004. Contact: (Stacey Groce)

Kentucky

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of tebuconazole on wheat to control *Fusarium* head blight; April 15, 2004 to May 20, 2004. Contact: (Libby Pemberton)

Louisiana

Department of Agriculture and Forestry
Crisis: On May 7, 2004, for the use of flumioxazin on sweet potatoes to control annual broadleaf weeds. This program ended on July 15, 2004. Contact: (Libby Pemberton)
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of flumioxazin on sweet potatoes to control annual broadleaf weeds; May 13, 2004 to July 31, 2004. Contact: (Libby Pemberton)
EPA authorized the use of bifenthrin on sweet potatoes to control beetle complex; May 20, 2004 to November 30, 2004. Contact: (Stacey Groce)

Maine

Department of Agriculture, Food, and Rural Resources
Specific: EPA authorized the use of thymol in beehives to control varroa mite; April 13, 2004 to November 8, 2004. Contact: (Stacey Groce)
EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; April 14, 2004 to February 1, 2005. Contact: (Barbara Madden)
EPA authorized the use of fomesafen on dry beans to control broadleaf weeds; May 15, 2004 to July 15, 2004. Contact: (Andrew Ertman)

Maryland

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of fomesafen on snap beans to control broadleaf weeds; June 1, 2004 to September 15, 2004. Contact: (Andrew Ertman)

Massachusetts

Massachusetts Department of Food and Agriculture
Specific: EPA authorized the use of indoxacarb on cranberries to control cranberry weevil; April 6, 2004 to August 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of azoxystrobin on tobacco to control metalaxyl-resistant blue mold; May 20, 2004 to December 31, 2004. Contact: (Libby Pemberton)

Michigan

Michigan Department of Agriculture
Crisis: On May 14, 2004, for the use of chlorothalonil on ginseng to control botrytis blight and alternaria leaf and stem blight. This program is expected to end on September 30, 2004. Contact: (Stacey Groce)
Specific: EPA authorized the use of tebuconazole on wheat to control *Fusarium* head blight; April 15, 2004 to June 25, 2004. Contact: (Libby Pemberton)
EPA authorized the use of mancozeb on ginseng to control alternaria stem and leaf blight and phytophthora leaf blight; April 30, 2004 to October 15, 2004. Contact: (Stacey Groce)
EPA authorized the use of tebuconazole on asparagus to control rust; May 1, 2004 to November 1, 2004. Contact: (Barbara Madden)
EPA authorized the use of tetraconazole on sugar beets to control *Cercospora* leafspot; May 4, 2004 to September 30, 2004. Contact: (Stacey Groce)
EPA authorized the use of zoxamide on ginseng to control phytophthora leaf blight; May 12, 2004 to October 31, 2004. Contact: (Stacey Groce)
EPA authorized the use of fomesafen on snap beans to control black nightshade and common ragweed; May 15, 2004 to August 30, 2004. Contact: (Andrew Ertman)
EPA authorized the use of fomesafen on dry beans to control black nightshade and common ragweed; June 1, 2004 to August 15, 2004. Contact: (Andrew Ertman)
EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 25, 2004 to December 15, 2004. Contact: (Andrew Ertman)
EPA authorized the use of dimethenamid-p on dry bulb onions to control yellow nutsedge; May 3, 2004 to July 30, 2004. Contact: (Barbara Madden)

Minnesota

Department of Agriculture
Quarantine: EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United

States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of fomesafen on dry beans to control common ragweed, waterhemp, ALS-resistant eastern black nightshade;May 1, 2004 to August 15, 2004. Contact: (Andrew Ertman)
EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; April 15, 2004 to September 1, 2004. Contact: (Libby Pemberton)

Mississippi

Department of Agriculture and Commerce
Crisis: On June 8, 2004, for the use of halosulfuron-methyl on sweet potatoes to control nutsedge and various pigweeds. This program is expected to end on August 15, 2004. Contact: (Stacey Groce)
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummyberry disease; April 13, 2004 to August 31, 2004. Contact: (Barbara Madden)
EPA authorized the use of flumioxazin on sweet potatoes to control annual broadleaf weeds; May 13, 2004 to July 31, 2004. Contact: (Libby Pemberton)
EPA authorized the use of bifenthrin on sweet potatoes to control beetle complex; April 29, 2004 to September 30, 2004. Contact: (Stacey Groce)
EPA authorized the use of methoxyfenozide on soybeans to control saltmarsh caterpillar, soybean loopers, and armyworms; May 24, 2004 to September 30, 2004. Contact: (Andrew Ertman)

Missouri

Department of Agriculture
Crisis: On June 3, 2004, for the use of sodium chlorate on wheat as a harvest aid. This program ended on June 17, 2004. Contact: (Libby Pemberton)
Specific: EPA authorized the use of fomesafen on snap beans to control broadleaf weeds; May 24, 2004 to September 10, 2004. Contact: (Andrew Ertman)

Montana

Department of Agriculture
Crisis: On May 20, 2004, for the use of diflubenzuron on alfalfa to control grasshoppers. This program is expected to end on September 30, 2004. Contact: (Libby Pemberton)
On May 10, 2004, for the use of sulfentrazone on flax to control kochia. This program ended on June 30, 2004. Contact: (Andrew Ertman)
Specific: EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; April 15, 2004 to July 20, 2004. Contact: (Libby Pemberton)
EPA authorized the use of diflubenzuorn on wheat and barley to control grasshoppers and Morom crickets; April 16, 2004 to July 15, 2004. Contact: (Barbara Madden)
EPA authorized the use of azoxystrobin on safflower to control Alternaria leaf spot; July 1, 2004 to August 15, 2004. Contact: (Libby Pemberton)

Nebraska

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of fomesafen on dry beans to control weeds; June 1, 2004 to July 15, 2004. Contact: (Andrew Ertman)

Nevada

Department of Agriculture
Crisis: On April 22, 2004, for the use of bifenazate on timothy to control banks grass mites. This program is expected to end on September 1, 2004. Contact: (Barbara Madden)
Specific: EPA authorized the use of diflubenzuron on alfalfa to control grasshoppers and Mormon crickets; April 16, 2004 to October 31, 2004. Contact: (Barbara Madden)

New Hampshire

Department of Agriculture
Specific: EPA authorized the use of fenbuconazole on blueberries to control mummyberry disease; April 28, 2004 to August 31, 2004. Contact: (Barbara Madden)

New Jersey

Department of Environmental Protection
Crisis: On April 15, 2004, for the use of fenbuconazole on blueberries to control mummyberry disease. This program ended on June 30, 2004. Contact: (Barbara Madden)
Denial: On April 28, 2004, EPA denied the use of fipronil on potatoes to control wireworms. This request was denied based on the determination that the situation as described in the application does not meet the criteria for an emergency since growers are not likely to experience significant economic losses from wireworm infestations. Further, the Agency also believes that the use of fipronil will not improve the economic conditions facing potato growers because fipronil's performance against wireworms is just as erratic as the registered alternatives and its use will not result in any improvement in yield or quality. Contact: (Barbara Madden).
Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; April 6, 2004 to February 1, 2005. Contact: (Barbara Madden)
EPA authorized the use of thymol on beehives to control varroa mite; April 13, 2004 to November 8, 2004. Contact: (Stacey Groce)
EPA authorized the use of fenbuconazole on blueberries to control mummyberry disease; April 28, 2004 to June 30, 2004. Contact: (Barbara Madden)

New Mexico

Department of Agriculture
Specific: EPA authorized the use of propiconazole on grain sorghum to control sorghum ergot; April 27, 2004 to September 30, 2004. Contact: (Libby Pemberton)
EPA authorized the use of spinosad on onions to control thrips; June 4, 2004 to November 1, 2004. Contact: (Andrew Ertman)

New York

Department of Environmental Conservation
Specific: EPA authorized the use of fomesafen on snap beans to control broadleaf weeds; May 5, 2004 to August 31, 2004. Contact: (Andrew Ertman)
EPA authorized the use of desmedipham on red (table) beets to control several broadleaf weeds; May 15, 2004 to August 15, 2004. Contact: (Libby Pemberton)
EPA authorized the use of fomesafen on dry beans to control broadleaf weeds; June 1, 2004 to August 30, 2004. Contact: (Andrew Ertman)
EPA authorized the use of dimethenamid-p on dry bulb onions to control yellow nutsedge and other broadleaf weeds; May 3, 2004 to July 30, 2004. Contact: (Barbara Madden)

North Carolina

Department of Agriculture
Crisis: On May 17, 2004, for the use of s-metolachlor on sweet potatoes to control pigweed. This program ended on July 15, 2004. Contact: (Andrew Ertman)
On June 2, 2004, for the use of bifenthrin on sweet potatoes to control wireworm. This program is expected to end on September 30, 2004. Contact: (Libby Pemberton)

Specific: EPA authorized the use of s-metolachlor on sweet potatoes to control pigweed; June 4, 2004 to July 15, 2004. Contact: (Andrew Ertman)

North Dakota

Department of Agriculture
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; effective from the time when soybean rust is introduced to the U.S., to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; April 6, 2004 to February 1, 2005. Contact: (Barbara Madden)
EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; April 15, 2004 to September 1, 2004. Contact: (Libby Pemberton)
EPA authorized the use of tebuconazole on sunflowers to control rust; May 3, 2004 to September 5, 2004. Contact: (Stacey Groce)
EPA authorized the use of fomesafen on dry beans to control ragweed and waterhemp; June 1, 2004 to August 15, 2004. Contact: (Andrew Ertman)
EPA authorized the use of azoxystrobin on safflower to control Alternaria leaf spot; July 1, 2004 to August 15, 2004. Contact: (Libby Pemberton)
EPA authorized the use of diflubenzuron on wheat and barley to control various grasshopper species; June 30, 2004 to July 15, 2004. Contact: (Libby Pemberton)

Ohio

Department of Agriculture
Specific: EPA authorized the use of dimethenamid-p on dry bulb onions to control yellow nutsedge; May 3, 2004 to July 30, 2004. Contact: (Barbara Madden)
EPA authorized the use of sulfentrazone on strawberries to control groundsel; June 3, 2004 to December 15, 2004. Contact: (Andrew Ertman)

Oklahoma

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control annual weeds; April 15, 2004 to September 10, 2004. Contact: (Andrew Ertman)

Oregon

Department of Agriculture
Specific: EPA authorized the use of triazamate on true fir Christmas trees to control root aphids; April 13, 2004 to October 31, 2004. Contact: (Barbara Madden)
EPA authorized the use of dimethenamid-p on sugar beets to control hairy nightshade, redroot pigweed, and yellow nutsedge; April 28, 2004 to July 15, 2004. Contact: (Barbara Madden)
EPA authorized the use of mancozeb on ginseng to control alternaria stem and leaf blight and phytophthora leaf blight; May 7, 2004 to August 10, 2004. Contact: (Stacey Groce)
EPA authorized the use of spinosad on onions to control thrips; June 29, 2004 to August 31, 2004. Contact: (Andrew Ertman)

Pennsylvania

Department of Agriculture
Specific: EPA authorized the use of fomesafen on snap beans to control weeds; May 1, 2004 to August 30, 2004. Contact: (Andrew Ertman)

South Dakota

Department of Agriculture
Quarantine: EPA authorized the use of propiconazole on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of tebuconazole on barley and wheat to control *Fusarium* head blight; April 15, 2004 to August 31, 2004. Contact: (Libby Pemberton)

Tennessee

Department of Agriculture
Crisis: On May 14, 2004, for the use of sulfentrazone on cowpeas to control Hophornbeam Copperleaf. This program is expected to end on September 30, 2004. Contact: (Andrew Ertman)
Quarantine: EPA authorized the use of myclobutanil on soybeans to control soybean rust; from the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
EPA authorized the use of propiconazole on soybeans to control soybean rust; From the detection of soybean rust in the continental United States, to March 1, 2007. Contact: (Andrew Ertman)
Specific: EPA authorized the use of sulfentrazone on cowpeas to control Hophornbeam Copperleaf; May 14, 2004 to September 30, 2004. Contact: (Andrew Ertman)

Texas

Department of Agriculture
Crisis: On May 21, 2004, for the use of diuron on bass to control blue green algae. This program is expected to end on November 1, 2004. Contact: (Libby Pemberton)
Specific: EPA authorized the use of propiconazole on grain sorghum to control sorghum ergot; April 27, 2004 to December 31, 2004. Contact: (Libby Pemberton)

Vermont

Department of Agriculture
Specific: EPA authorized the use of fenbuconazole on blueberry to control mummyberry disease; May 12, 2004 to September 1, 2004. Contact: (Stacey Groce)

Virginia

Department of Agriculture and Consumer Services
Denial: On April 28, 2004, EPA denied the use of fipronil on potatoes to control wireworms. This request was denied based on the determination that the situation as described in the application does not meet the criteria for an emergency since growers are not likely to experience significant economic losses from wireworm infestations. Further, the Agency also believes that the use of fipronil will not improve the economic conditions facing potato growers because fipronil's performance against wireworms is just as erratic as the registered alternatives and its use will not result in any improvement in yield or quality. Contact: (Barbara Madden)
Specific: EPA authorized the use of fomesafen on snap beans to control weeds; April 20, 2004 to September 19, 2004. Contact: (Andrew Ertman)
EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; April 14, 2004 to February 1, 2005. Contact: (Barbara Madden)

Washington

Department of Agriculture
Crisis: On June 3, 2004, for the use of diflubenzuron on barley and wheat to control Mormon cricket and grasshoppers. This program ended on July 14, 2004. Contact: (Libby Pemberton)
Specific: EPA authorized the use of triazamate on true fir Christmas trees to control root aphids; April 13, 2004 to October 31, 2004. Contact: (Barbara Madden)
EPA authorized the use of mancozeb on ginseng to control alternaria stem and leaf blight and phytophthora leaf blight; May 7, 2004 to August 10, 2004. Contact: (Stacey Groce)
EPA authorized the use of fenpyroximate on hops to control mites;

June 9, 2004 to September 15, 2004. Contact: (Libby Pemberton)
EPA authorized the use of spinosad on onions to control thrips; June 29, 2004 to August 31, 2004. Contact: (Andrew Ertman)

West Virginia

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; April 21, 2004 to February 1, 2005. Contact: (Barbara Madden)

Wisconsin

Department of Agriculture, Trade, and Consumer Protection
Crisis: On May 14, 2004, for the use of chlorothalonil on ginseng to control botrytis blight and alternaria leaf and stem blight. This program is expected to end on September 30, 2004. Contact: (Stacey Groce)
On June 30, 2004, for the use of desmedipham on red beets to control various weeds. This program is expected to end on December 31, 2004. Contact: (Libby Pemberton)
Specific: EPA authorized the use of mancozeb on ginseng to control alternaria stem and leaf blight and phytophthora leaf blight; April 30, 2004 to October 15, 2004. Contact: (Stacey Groce)
EPA authorized the use of dimethenamid-p on dry bulb onions to control yellow nutsedge and other broadleaf weeds; May 3, 2004 to July 31, 2004. Contact: (Barbara Madden)
EPA authorized the use of zoxamide on ginseng to control phytophthora leaf blight; May 12, 2004 to October 31, 2004. Contact: (Stacey Groce)

Wyoming

Department of Agriculture
Specific: EPA authorized the use of coumaphos in beehives to control varroa mites and small hive beetles; April 14, 2004 to February 1, 2005. Contact: (Barbara Madden)
EPA authorized the use of lambda-cyhalothrin on barley to control the Russian wheat aphid; April 23, 2004 to July 31, 2004. Contact: (Andrew Ertman)
EPA authorized the use of tetraconazole on sugar beets to control *Cercospora* leafspot; May 4, 2004 to September 30, 2004. Contact: (Stacey Groce)

B. Federal Departments and Agencies

Interior Department

Fish and Wildlife Service
Quarantine: EPA authorized the use of brodifacoum on the Alaska Maritime National Wildlife Refuge and lands adjacent to the refuge with seabird populations that do not have existing invasive rodent populations to control Norway rats, roof rats and house mice; April 16, 2004, to April 16, 2007. Contact: (Barbara Madden)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 27, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0092; FRL–7686–7]

Draft Federal Guide for Green Construction Specs; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In the **Federal Register** of July 28, 2004, EPA published a notice of availability of a draft *Federal Guide for Green Construction Specifications* for public comment. The notice stated that comments on the draft Guide would be accepted until September 27, 2004. EPA has received several requests for an extension of time to comment on the draft Guide on the grounds that several issues that the Guide covers, require additional time for analysis. The Agency has determined that reopening the comment period is in the public interest. Consequently, the period for receipt of comments on the draft Guide is extended until January 14, 2005. It should be noted that the reopening of the comment period does not represent any modification of the draft Guide. The reopening of the comment period simply provides those interested parties additional time to provide comments to the Agency on the draft Guide. All other requirements stipulated in the initial notice for receipt of comments still apply. The draft Guide is available on the whole Building Design Guide at *http://fedgreenspecs.wbdg.org*.

DATES: Comments must be received by January 14, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the July 28, 2004, **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: *For general information*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *lintner.colby@epa.gov*.

For technical information contact: Alison Kinn Bennett, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8859; e-mail address: *kinn.alison@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons that design, build, or acquire buildings or building products for the Federal government. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical 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 OPPT–2004–0092. 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 EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access the draft *Federal Guide for Green Construction Specifications* at the

Whole Building Design Guide Internet site at: *http://fedgreenspecs.wbdg.org.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search" then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the July 28, 2004 **Federal Regsiter** document (69 FR 45053) (FRL–7686–7). If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is the Agency Taking?

EPA's Office of Prevention, Pesticides and Toxic Substances is reopening the comment period for the draft *Federal Guide for Green Construction Specifications* from September 27, 2004 to January 14, 2005.

List of Subjects

Environmental protection, Green building, Federal construction and renovation.

Dated: October 28, 2004.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–24928 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0124; FRL–7687–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 4, 2004 to October 15, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0124 and the specific PMN number or TME number, must be received on or before December 10, 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: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0124. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME 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 OPPT–2004–0124. 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 *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0124 and PMN Number or TME Number. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004-0124 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

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 technical 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. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 4, 2004 to October 15, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 26 PREMANUFACTURE NOTICES RECEIVED FROM: 10/04/04 TO 10/15/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0012	10/04/04	01/01/05	CBI	(G) Intermediate raw material, diluent in radiation cured coatings and adhesives	(G) Acrylate ester
P–05–0013	10/05/04	01/02/05	Marubeni Specialty Chemicals, Inc.	(S) Solvent in ink	(S) Ethane, 1-ethoxy-2-(2-methoxyethoxy)-
P–05–0014	10/05/04	01/02/05	Cytec Industries Inc.	(G) Antiscalant	(G) Polymer of maleic anhydride and substituted alkenes, potassium salt, persulfate-initiated.
P–05–0018	10/06/04	01/03/05	CBI	(G) Developer	(G) Diphenyl sulfone
P–05–0019	10/07/04	01/04/05	Ashland Inc., Environmental Health and Safety	(G) Adhesives, coatings, inks	(G) Norrish type I acetophenone acetoacetic ester
P–05–0020	10/07/04	01/04/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0021	10/07/04	01/04/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0022	10/07/04	01/04/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0023	10/07/04	01/04/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin

I. 26 PREMANUFACTURE NOTICES RECEIVED FROM: 10/04/04 TO 10/15/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0024	10/07/04	01/04/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0025	10/07/04	01/04/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0026	10/08/04	01/05/05	H.B. Fuller	(G) Industrial adhesive	(G) Polyester isocyanate polymer
P–05–0027	10/08/04	01/05/05	H.B. Fuller	(G) Industrial adhesive	(G) Polyester isocyanate polymer
P–05–0028	10/08/04	01/05/05	CBI	(G) Open, non-dispersive; reactant for manufacture of specialized coating	(G) Substituted pyrimidinetrione
P–05–0029	10/12/04	01/09/05	Syngenta Crop Protection, Inc.	(G) Raw material used in a closed reaction process to produce a chemical intermediate.	(G) Substituted aniline
P–05–0030	10/12/04	01/09/05	CBI	(G) Coating material	(G) Acryrol derivatives
P–05–0031	10/12/04	01/09/05	Reichhold, Inc.	(G) Resin intermediate	(S) Soybean oil, mixed esters with pentaerythritol and tung oil
P–05–0032	10/12/04	01/09/05	Aldrich Chemical Company, Inc.	(G) Semiconductor manufacturing	(S) Silicic acid (h4sio4), tris(1,1-dimethylpropyl) ester
P–05–0033	10/12/04	01/09/05	Syngenta Crop Protection, Inc.	(S) Chemical intermediate used to produce a pesticide	(G) Substituted benzene
P–05–0034	10/13/04	01/10/05	CBI	(G) Closed, non-dispersive use.	(G) Esterified functionalized alkyl methacrlate, polymer with butyl methacrylate, methoxy polyethylene glycol methacrylate and methyl acrylate.
P–05–0035	10/13/04	01/10/05	Syngenta Crop Protection, Inc.	(G) Intermediate used in producing a final product that is 100% exported.	(G) Substituted aryl acetonitrile
P–05–0036	10/14/04	01/11/05	CBI	(G) Additive for lubricating oil	(G) Alkyl methacrylate copolymer
P–05–0037	10/15/04	01/12/05	The Sherwin-Williams Company	(G) Paint	(G) Water-dispersed polyurethane latex
P–05–0038	10/15/04	01/12/05	CBI	(G) Metal working fluid	(G) Polyalkylenepolyamine, alkyloxirane polymer
P–05–0040	10/15/04	01/12/05	CBI	(G) Additive for manufacture of articles	(G) Modified starch-acrylate polymer
P–05–0041	10/15/04	01/12/05	CBI	(G) Additive for manufacture of articles	(G) Ammonium-functional polyethylene glycol acrylate polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 11 NOTICES OF COMMENCEMENT FROM: 10/04/04 TO 10/15/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–02–0272	03/18/03	11/26/02	(G)D-glucopyranose, oligomeric, bu glycosides
P–03–0728	10/06/04	09/14/04	(G) Polyester polyol
P–04–0488	10/08/04	10/05/04	(G) Acrylic polymer
P–04–0539	10/13/04	09/01/04	(G) Urethaneacrylate
P–04–0545	10/06/04	09/30/04	(G) Substituted naphthalenesulfonic acid azo substituted phenyl amino substituted triazine compound
P–04–0557	10/07/04	09/20/04	(G) 1,3-heteropolycycledione, 4,5,6,7-tetrafluoro-
P–04–0588	10/05/04	09/14/04	(G) Modified polyacrylate
P–04–0643	10/08/04	10/04/04	(G) 9-octadecenoic acid (z)-, butyl ester, polymer with propanediol, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-oxepanone,and 1,3,5-tris(6-isocyanatohexyl)-1,3,5-triazine-2,4,6(1h,3h,5h)-trione.
P–04–0657	10/13/04	09/29/04	(G) Trimethylolpropane dialkyl diester
P–98–0996	10/06/04	07/27/04	(S) Rutile, tin zinc
P–98–0997	10/06/04	07/27/04	(G) Rutile, tin zinc

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: November 1, 2004.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–25101 Filed 11–9–04; 8:45 am]

BILLING CODE 6560–50–S

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice of Release of Appendix 3 To Draft Strategic Plan for U.S. Integrated Earth Observation System and Extension of Public Comment Period

ACTION: Notice of release and extension of public comment period.

SUMMARY: This notice announces the release of the Appendix 3 to the Draft Strategic Plan for the U.S. Integrated Earth Observation System and extension of the public comment period by the National Science and Technology Council's (NSTC) Committee on Environment and Natural Resources (CENR) Interagency Working Group on Earth Observations (IWGEO). This draft plan was prepared to address the effective use of Earth observation systems to benefit humankind, and Appendix 3 provides a summary of the state of the current observation systems addressed in the plan.

DATES AND ADDRESSES: The Draft Strategic Plan was made available for public review on Wednesday, September 8, 2004, and can be accessed electronically at *http://iwgeo.ssc.nasa.gov/draftstrategicplan*. Appendix 3 to this document, along with the associated Technical Reference Documents will be available at *http://iwgeo.ssc.nasa.gov* on Wednesday, November 10, 2004. In order to provide time to review Appendix 3, the comment period has been extended to no later that the close of business on Tuesday, November 30, 2004. Comments on the Technical Reference Documents do not have a close date, as they are continually being updated. Only electronic (e-mail) comments will be accepted, and should be sent to: *IWGEOcomments@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Carla Sullivan, National Oceanic and Atmospheric Administration. Telephone: (202) 482–5921. E-mail: *carla.sullivan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Interagency Working Group on Earth Observations (IWGEO) of the NSTC Committee on Environment and Natural Resources was established after the Earth Observation Summit for a two-fold purpose:

(1) To develop and begin implementation of the U.S. framework and ten-year plan for an integrated, comprehensive Earth observation system to answer environmental and societal needs, including a U.S. assessment of current observational capabilities, evaluation of requirements to sustain and evolve these capabilities considering both remote and in situ instruments, assessment of how to integrate current observational capabilities across scales, and evaluation and addressing of data gaps; and

(2) To formulate the U.S. position and input to the international ad hoc Group on Earth Observations (GEO) as formed at the Earth Observation Summit on July 31, 2003.

In response the first goal, the IWGEO has prepared a Draft Strategic Plan for the U.S. Integrated Earth Observation System. The draft was prepared after a year of coordination among the appropriate Federal agencies. In addition, a public workshop was held on June 16–17, 2004, for the purpose of allowing representatives of the communities-of-practice to contribute information and facts on the nine societal benefits areas, which provide the focus of the plan. These strategic social/economic areas include:

1. Improve weather forecasting.
2. Reducing loss of life and property from disasters.
3. Protecting and monitoring ocean resources.
4. Understanding climate, and assessing, mitigating, and adapting to climate change impacts.
5. Supporting sustainable agriculture and forestry, and combating land degradation.
6. Understanding the effect of environmental factors on human health and well being.
7. Developing the capacity to make ecological forecasts.
8. Protecting and monitoring water resources.
9. Monitoring and managing energy resources.

Public Participation. Appendix 3 of the Draft Strategic Plan for the U.S. Integrated Earth Observation System provide a summary of the Technical Reference Documents on each of the nine societal benefits areas. These documents have been updated based on comments received at the June IWGEO public meeting and may be found on the IWGEO Web site at *http://iwgeo.ssc.nasa.gov*, or by contacting the IWGEO Secretariat office: Carla Sullivan, Interagency Working Group on Earth Observations (IWGEO), National Oceanic and Atmospheric Administration (NOAA), 1401 Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–5921, telefax: (202) 408–9674. E-mail: *Carla.Sullivan@noaa.gov*. Subject: Draft Strategic Plan for U.S. Integrated Earth Observation System.

The National Science and Technology Council (NSTC) was established by Executive Order 12881. The Committee on Environment and Natural Resources (CENR) was chartered as one of four standing committees of the NSTC for the purpose of advising and assisting the Council on those federally supported efforts that develop new knowledge related to improving our understanding of the environment and natural resources.

Ann F. Mazur,

Assistant Director for Budget and Administration.

[FR Doc. 04–25148 Filed 11–9–04; 8:45 am]

BILLING CODE 3170–W5–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 4, 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 of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by January 10, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1042.

Title: Request for Technical Support—Help Request Form.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 36,300.

Estimated Time Per Response: 8 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 4,840 hours.

Annual Cost Burden: $387,200.

Privacy Act Impact Assessment: Yes.

Needs and Uses: This information collection will be used by the public for submitting electronic support requests in using Wireless Telecommunications Bureau (WTB) processes and computer applications. This includes issues, problems, and questions about using software used for licensing, applying for licenses, participating in auctions for spectrum, and maintaining license information. This form will be submitted in lieu of free form email requests for support and will facilitate expedited processing of these requests by staff, resulting in a faster turn around time for responses and correct answers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–25062 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 3, 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, Public Law 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 January 10, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0667.

Title: Section 76.630, Compatibility with Consumer Electronic Equipment; section 76.1621, Equipment Compatibility Offer; section 76.1622, Consumer Education of Equipment Compatibility.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8,250.

Estimated Time per Response: 1–3 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 8,285 hours.

Total Annual Cost: $5,800.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 14, 2002, the Commission released an *Order*, DA 02–577, In the Matter of Establishment of the Media Bureau and Other Organizational Changes, which amended 47 CFR 76.630 to reflect the reorganization of the existing Cable Services and Mass Media Bureaus into a new Media Bureau. 47 CFR 76.1621 of the Commission's rules prohibits cable system operators from scrambling or otherwise encrypting signals carried on the basic service tier. However, cable system operators may file a waiver of this prohibition with the Commission. In addition, § 76.1621 requires cable system operators that use scrambling or encryption equipment to provide subscribers special equipment that will enable the reception of multiple signals. 47 CFR 76.1622 requires cable system operators to provide in writing a consumer education program concerning equipment compatibility. The Commission has set forth these disclosure requirements for consumer protection purposes to inform subscribers of compatibility matters, and notify subscribers of cable operator' requests to waive the prohibition on signal encryption.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–25063 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 26, 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, Public Law 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 January 10, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: 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–XXXX.

Title: Section 73.1201, Station Identification.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,700.

Estimated Time per Response: 2 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 3,400 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 4, 2004, the Commission adopted a *Report and Order (R&O)*, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03–15. With this *R&O*, the Commission requires digital television stations to follow the same rules for station identification as analog television stations. 47 CFR 73.1201(a) requires licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally. 47 CFR 73.1201(b) requires the licensees' station identification to consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–25065 Filed 11–9–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

L.C.L. Ocean Services, Inc., 1534e N.W. 33rd Place, Opa-Locka, FL 33054. Officer: Ingimar O. Petursson, President (Qualifying Individual).

Global Partner Logistics, Inc., 31 7th Street, Cresskill, NJ 07626. Officers: Kwang Y. Ahn, Secretary (Qualifying Individual), Jong S. Park, President.

N.C. Shipping, Inc., 2661 Pine Street, Rosemead, CA 91776. Officer: Nick Vuong, President (Qualifying Individual).

Windsur Int'l Inc., 2399 Tifal Avenue, Irwindale, CA 91010. Officers: Mei Ying Li, CEO (Qualifying Individual), Ling Ji, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

American Cruise-Aid Logistics, Inc., 405 Atlantis Road, Suite A, Cape Canaveral, FL 32920. Officer: Janne Meinertz, President (Qualifying Individual).

Go Events Management, Inc., 36 Seabring Street, Brooklyn, NY 11231. Officers: Albert Gonzalez, Vice President (Qualifying Individual), Vincent Malerba, President.

LE International Inc., 1928 Tyler Avenue, Unit #K, S. El Monte, CA 91733. Officers: Emmy Ching, President (Qualifying Individual), Linda T. Nguyen, Secretary.

North American International N.A., Inc., 700 Oakmont Lane, Westmont, IL 60559. Officers: Donald J. Krengiel, Asst. Secretary (Qualifying Individual), Michael B. McMahon, President.

TranLogistics, LLC, 2801 NW 74th Avenue, Suite 100, Miami, FL 33122. Officers: Lily Tran, President (Qualifying Individual), Jeff Nouhan, Exec. Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

AGLO Inc., 4709 N.W. 72nd Avenue, Miami, FL 33166. Officers: Daisy Montesano, Vice President (Qualifying Individual), Jorge L. Montesano, President.

APL Logistics Hong Kong, Limited, 1111 Broadway, Oakland, CA 94607. Officers: Paul J. Gibbs, Dir. of Operations (Qualifying Individual), Hans M. Hickler, Director.

Dated: November 5, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–25114 Filed 11–9–04; 8:45 am]

BILLING CODE 6730–01–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 November 24, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Charles Keith Akin; Anita Akin; Burkley Investments, Inc.; Parkway Manor – KY; and Parkway Manor – TN all of Clinton, Kentucky (aka the Akin Control Group); to acquire additional voting shares of Purchase Area Bancorp, Bardwell, Kentucky, and thereby indirectly acquire voting shares of Bardwell Deposit Bank, Bardwell, Kentucky.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Craig K. Potts, Henderson, Nevada; to acquire voting shares of Security State Agency of Aitkin, Inc., Aitkin, Minnesota, and thereby indirectly acquire voting shares of Security State Bank of Aitkin, Aitkin, Minnesota.

2. Lyndon L. Krause and David D. Krause, both of Winnebago, Minnesota; to acquire voting shares of Krause Financial, Inc., Winnebago, Minnesota, and thereby indirectly acquire voting shares of First National Bank in Winnebago, Winnebago, Minnesota.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Ken Chee–Kin Mok and Li Chu Chang–Mok, Plano, Texas, acting in concert; to acquire additional voting shares of First International Bancorp Texas, Inc., Plano, Texas, and thereby indirectly acquire additional voting shares of First International Bank, Plano, Texas.

Board of Governors of the Federal Reserve System, November 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24999 Filed 11–9–04; 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 December 6, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Logan Investment Corp., Keokuk, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of State Central Bank, Keokuk, Iowa.

Board of Governors of the Federal Reserve System, November 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25000 Filed 11–9–04; 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 December 5, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Banco Bilbao Vizcaya Argentaria, S.A., Bilbao, Spain; to acquire 100 percent of the voting shares of Laredo National Bancshares, Inc., Laredo, Texas, and thereby indirectly acquire voting shares of Laredo National Bank, and South Texas National Bank, both of Laredo, Texas.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire 100 percent of the voting shares of Union Bank of Alabama, Lauderhill, Florida.

C. **Federal Reserve Bank of Chicago** (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Peotone Bancorp, Inc., Peotone, Illinois; to acquire 74.19 percent of the voting shares of Legacy Integrity Group, Inc., Scottsdale, Arizona, and thereby indirectly acquire voting shares of Legacy Bank, Scottsdale, Arizona (in organization).

2. Founders Group, Inc., Worth, Illinois; to acquire 12.90 percent of the voting shares of Legacy Integrity Group, Inc., Scottsdale, Arizona, and thereby indirectly acquire voting shares of

Legacy Bank, Scottsdale, Arizona (in organization).

3. Terrapin Bancorp, Inc., Elizabeth, Illinois; to acquire 25.81 percent of the voting shares of Legacy Integrity Group, Inc., Scottsdale, Arizona, and thereby indirectly acquire voting shares of Legacy Bank, Scottsdale, Arizona (in organization).

4. Rock River Bancorporation, Inc., Oregon, Illinois; to acquire 12.9 percent of the voting shares of Legacy Integrity Group, Inc., Scottsdale, Arizona, and thereby indirectly acquire voting shares of Legacy Bank, Scottsdale, Arizona (in organization).

5. Legacy Integrity Group, Inc., Scottsdale, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Legacy Bank, Scottsdale, Arizona, (in organization).

Board of Governors of the Federal Reserve System, November 5, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25119 Filed 11–9–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Parkway Bancorp, Inc., Harwood Heights, Illinois; to acquire Parkway Mortgage & Financial Center, LLC, Des Moines, Iowa, and thereby engage in residential real estate mortgage lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–25001 Filed 11–9–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Senior Executive Service Performance Review Board Membership

The Agency for Healthcare Research and Quality (AHRQ) announces the appointment of members of the AHRQ Senior Executive Service (SES) Performance Review Board (PRB). This action is being taken in accordance with Title 5, U.S.C., 4314(c)(4) of the Civil Service Reform Act of 1978, which requires members of the performance review boards to be published in the **Federal Register**.

The function of the PRB is to ensure consistency, stability and objectivity in SES performance appraisals, and to make recommendations to the Director, AHRQ, relating to the performance of senior executives in the Agency.

The following persons will serve on the AHRQ SES Performance Review Board:

Bill Beldon
Helen Burstin
Francis Chesley
Steven Cohen
J. Michael Fitzmaurice
Irene Fraser
Robert Graham
Kathleen Kendrick
Anna Marsh
Robert McSwain
Jean Slutsky
Christine Williams
Phyllis Zucker

For further information about the AHRQ Performance Review Board, contact Jeffrey Toven, Office of Performance, Accountability, Resources, and Technology, Agency for Healthcare Research and Quality, 540 Gaither Road, Suite 4329, Rockville, Maryland 20850.

Dated: November 4, 2004.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 04–24998 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by November 24, 2004. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (240) 276–1243.

Title: SAMHSA Suicide Prevention Hotline Networking Form.

OMB Number: 0930–New.

Frequency: One-time-only.

Affected public: Non-Profit Institutions.

Section 520A of the Public Health Service (PHS) Act [42 U.S.C. 290bb–32] authorizes the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish the Suicide Prevention Hotline program as part of its mandate to address priority mental health needs of regional and national significance. Each year, beginning with the 2001 appropriations bill, Congress has directed that funding be provided for the Suicide Prevention Hotline program, through which SAMHSA has established the National Suicide Prevention Hotline Network.

The National Suicide Prevention Hotline Network consists of a single toll-free telephone number that routes calls from anywhere in the United States to a network of local crisis centers that can link callers to local emergency, mental health, and social service resources. Behind the scenes is a computerized "routing system," which matches each incoming call to a complex array of crisis center characteristics, and rapidly links the caller to the nearest available, appropriate crisis center.

Technological and administrative changes necessitate that a new toll-free telephone number and a new, more sophisticated routing system be operational by January 1, 2005. This entails collecting administrative information from each of the 144 crisis centers currently participating in the network (*e.g.*, location, hours of operation, call capacity, non-English language capability) and programming the data into a new routing system to ensure that each caller is linked to the nearest and most appropriate crisis center. The form developed to secure this information requests only factual information that is essential to the design of the routing system.

The following table is the estimated hour burden:

Number of respondents	Responses/ respondent	Burden/ response (hrs.)	Total burden hours
144	1	.17	24.50

Emergency approval is being requested because SAMHSA does not want to risk the possibility of disrupting the functioning of the national suicide prevention hotline network, and the subsequent possibility that even one individual who tries calling a non-working hotline might ultimately take his/her own life.

Written comments and recommendations concerning the proposed information collection should be sent within two weeks of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: November 4, 2004.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–25028 Filed 11–9–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application 05017]

Intervention and Evaluation Trials To Prevent Intimate Partner Violence; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for a research cooperative agreement program to conduct efficacy and effectiveness trials of intervention strategies to prevent intimate partner violence and/or its negative consequences, particularly studies of strategies that have not been well studied, for at-risk or underserved populations was published in the **Federal Register** on October 27, 2004, Vol. 69, No. 207, pages 62694–62701. The notice is amended as follows: On page 62696, Column 3, Line 2, delete $1,800,000 and replace with the new amount of $2,250,000.

Dated: November 3, 2004.

William Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–25027 Filed 11–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Service Act; Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention (CDC), the authority vested in the Secretary of Health and Human Services under Section 319F–2 of Title III of the Public Health Service Act, as amended, to enter into agreements with recipients of the Stockpile material will be deployed. The authority to deploy the Stockpile referred to herein is limited to the CHEMPACK Program.

This authority cannot be redelegated. Further, CDC must notify the Office of Public Health Emergency Preparedness before entering into an agreement.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, CDC, or his/her subordinates which involved the exercise of the authorities delegated therein prior to the effective date of the delegation.

Dated: October 27, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–25002 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0470]

Agency Information Collection Activities: Proposed Collection; Comment-Request; New Animal Drugs For Investigational Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements for "New Animal Drugs for Investigational Use."

DATES: Submit written or electronic comments on the collection of information by January 10, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal

agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Animal Drugs for Investigational Use—21 CFR Part 511 (OMB Control Number 0910–0117)—Extension

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act), for approval of new animal drugs. Section 512(j) of the act (21 U.S.C. 360b(j)), authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at part 511 (21 CFR part 511). A sponsor must submit to FDA a Notice of Claimed Investigational Exemption (INAD), before shipping the new animal drug for clinical tests in animals. The INAD must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any nonclinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals. Part 511 also requires that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, and that distribution is controlled to prevent potential abuse. The agency utilizes these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are the persons who use new animal drugs investigationally.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
511.1(b)(4)	190	4.09	778	8	6,224
511.1(b)(5)	190	0.58	110	140	15,400
511.1(b)(6)	190	.01	20	1	20
511.1(b)(8)(ii)	190	.005	1	20	20
511.1(b)(9)	190	.10	20	8	160
Total Burden Hours					21,824

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
511.1(a)(3)	190	2.11	400	9	3,600
511.1(b)(3)	190	4.20	798	1	798
511.1(b)(7)(ii)	400	3.00	1,200	3.5	4,200
511.1(b)(8)(i)	190	6.38	1,200	3.5	4,200
Total Burden Hours					12,798

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation and maintenance for this collection of information is based on agency communication with industry. Additional information needed to make a final calculation of the total burden hours (i.e. the number of respondents, the number of recordkeepers, the number of INAD applications received, etc.) is derived from agency records.

Dated: November 3, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24991 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0481]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Additive Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Additive Petitions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 2004 (69 FR 31617), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0546. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 3, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24992 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0244]

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request, Current Good Manufacturing Practice Regulations for Type A Medicated Articles

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by December 10, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B–41, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Type A Medicated Articles—21 CFR 226 (OMB Control No. 0910–0154) Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351) (the act), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including type A medicated articles. A type A medicated article is a feed product containing a concentrated drug diluted with a feed carrier substance. A type A medicated article is intended solely for use in the manufacture of another type A medicated article or a type B or type C medicated feed. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease or for growth promotion and feed efficiency. Statutory requirements for cGMP's for type A medicated articles have been codified in part 226 (21 CFR part 226). Type A medicated articles which are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under 21 CFR part 226, a manufacturer is required to establish, maintain, and retain records for Type A medicated articles, including records to document procedures required under the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e. batch and stability testing) and product distribution. This information is needed so that FDA can monitor drug usage and possible misformulation of type A medicated articles. The information could also prove useful to FDA in investigating product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 226 to determine whether or not the systems used by manufacturers of Type A medicated articles are adequate to assure that their medicated articles meet the requirements of the act as to safety and also meet the articles, claimed identity, strength, quality and purity, as required by section 501(a)(2)(B) of the act as to safety and also meet the articles claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the act.

In the **Federal Register** of June 4, 2004 (69 FR 31615), the FDA published a 60-day notice, soliciting comment on the collection of information requirements. In response to that notice, no comments were received. The respondents for type A medicated articles are pharmaceutical firms that manufacture both human and veterinary drugs, those firms that produce only veterinary drugs and commercial feed mills.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
226.42	115	260	29,000	0.75	22,425
226.58	115	260	29,000	1.75	52,325
226.80	115	260	29,000	0.75	22,425
226.102	115	260	24,000	1.75	52,325
226.110	115	260	29,000	0.25	7,475
226.115	115	10	1,150	0.5	575
Total					157,550

[1] There are no capital costs or operating and maintenance costs associated with this collection.

The estimate of the time required for record preparation and maintenance is based on agency communications with industry. Other information needed to calculate the total burden hours (i.e., manufacturing sites, number of type A medicated articles being manufactured, etc.) are derived from agency records and experience.

Dated: November 3, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24993 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0332]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 10, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act—(OMB Control Number 0910–0375)—Extension

Section 210 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) established section 523 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket applications and notifications. Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation to FDA. Third-party reviews should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years. This information collection will allow FDA to continue to implement the accredited person review program established by FDAMA and improve the efficiency of 510(k) review for low to moderate risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

In the **Federal Register** of August 10, 2004 (69 FR 48508), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
Requests for accreditation	15	1	15	24	360
510(k) reviews conducted by accredited third parties	15	14	210	40	8,400
Totals					8,760

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
510(k) reviews	15	14	210	10	2,100
Totals					2,100

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The burdens are explained as follows:

I. Reporting

A. Requests for Accreditation

Under the agency's third-party review pilot program, the agency received 37 applications for recognition as third-party reviewers, of which the agency recognized 7. In the past 3 years, the agency has averaged receipt of 15 applications for recognition of third-party review accredited persons. The agency has accredited 15 of the applicants to conduct third-party reviews.

B. 510(k) Reviews Conducted by Accredited Third Parties

In the 18 months under the third-party review pilot program, FDA received 22 submissions of 510(k)s that requested and were eligible for review by third parties. The agency has experienced that the number of 510(k)s submitted annually for third-party review since the last OMB approval in 2001 is approximately 210 annually, which is 14 annual reviews per each of the estimated 15 accredited reviewers.

II. Recordkeeping

Third-party reviewers are required to keep records of their review of each submission. The agency anticipates approximately 140 annual submissions of 510(k)s for third-party review.

Dated: November 3, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24994 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing, as required by the Federal Advisory Committee Act, that the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2004.

ADDRESSES: Copies are available from the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Committee Management Officer, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees through September 30, 2004:

Center for Biologics Evaluation and Research

Biological Response Modifiers Advisory Committee

Blood Products Advisory Committee

Vaccines and Related Biological Products Advisory Committee

Center for Drug Evaluation and Research

Anti-Infective Drugs Advisory Committee

Anesthetic and Life Support Drugs Advisory Committee

Dermatologic and Ophthalmic Drugs Advisory Committee

Nonprescription Drugs Advisory Committee

Center for Devices and Radiological Health

Medical Devices Advisory Committee (consisting of reports for the Dental Products Panel; Orthopaedic and Rehabilitation Devices Panel; Ophthalmic Devices Panel; Radiological Devices Panel)

Annual reports are available for public inspections between 9 a.m. and 4 p.m., Monday through Friday at the following locations:

1. The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., rm. 133, Washington, DC; and

2. The Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Dated: November 3, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–24996 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0468]

Draft Guidance for Industry on Development of Target Animal Safety and Effectiveness Data to Support Approval of Non-Steroidal Anti-Inflammatory Drugs for Use in Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry (#123) entitled "Development of Target Animal Safety and Effectiveness Data to Support Approval of Non-Steroidal Anti-Inflammatory Drugs (NSAIDS) for Use in Animals." This draft guidance is intended to provide specific advice regarding the development of target animal safety and effectiveness data to support approval of veterinary NSAIDs, specifically cyclooxygenase (COX) inhibitors.

DATES: Submit written or electronic comments on agency guidances by January 24, 2005 to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http:///www.fda.gov/dockets/ecomments.* Comments should be identified with the full title of the draft guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Linda Wilmot, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0135, e-mail: *lwilmot@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document provides information on approaches to the development of target animal safety and effectiveness data to support approval of veterinary NSAIDs—specifically, NSAIDs that reduce the production of prostaglandins by inhibiting the COX pathway. NSAIDs that inhibit lipooxygenase, or both lipooxygenase and COX, or act as cytokine antagonists. The Center for Veterinary Medicine (CVM) may recommend alternative product development strategies to complete its evaluation.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on the development of target animal safety and effectiveness data to support approval of non-steroidal anti-inflammatory drugs for use in animals. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

The collection of information requirements are approved by the Office of Management and Budget (OMB) under OMB control number 0910–0032.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this draft guidance document. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments.* Once on this site, select [Docket No. 2004D–0468] "Guidance for Industry on Development of Target Animal Safety and Effectiveness Data to Support Approval of Non-Steroidal Anti-Inflammatory Drugs (NSAIDS) for use in Animals" and follow the directions. Copies of this draft guidance may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm.*

Dated: November 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24995 Filed 11–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, EDRN: Biomarkers Reference Laboratories (EDRN:BRL).

Date: December 9, 2004.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852 (301) 594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25016 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Scientific and Technical Review Board.

Date: November 10, 2004.

Time: 10 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Nelson, PhD, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd., Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, General Clinic Research Center.

Date: November 30–December 1, 2004.

Time: November 30, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1881 Curtis Street, Denver, CO 80202.

Contact Person: Eva Petrakova, PhD, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1066, MSC 4874, Bethesda, MD 20817–4874, (301) 435–0965, *petrakoe@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25021 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conduct by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: December 9–10, 2004.

Time: 8:15 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elizabeth G. Nabel, MD, Scientific Director for Clinical Research, National Heart, Lung, and Blood Institute, Division of Intramural Research, Building 10, Room 8C103, MSC 1754, Bethesda, MD 20892 (301) 496–1518.

Information is also available on the Institute's/Center Home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.389, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25011 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: December 2, 2004.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892 (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.383, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25012 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Pathology Support for NIEHS.

Date: January 20, 2005.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus 79 T.W. Alexander Drive, EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 3, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25003 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Support Services for Epidemiology.

Date: January 11, 2005.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institute of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 3162, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD ED–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 3, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25004 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Studies to Evaluate Toxicologic and Carcinogenic Potential of Test Articles in Laboratory Animals for NTP.

Date: December 9, 2004.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 3, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25005 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: December 1, 2004.

Time: 9 a.m. to 3:30 p.m.

Agenda: The Muscular Dystrophy Coordinating Committee (MDCC) will hold a meeting to learn about activities and recent initiatives at various federal agencies and within the muscular dystrophy scientific community. The Committee will also discuss strategies to begin to implement the "Muscular Dystrophy Research and Education Plan for the National Institutes of Health," which the Committee developed in accordance with the MD–CARE Act. Future directions for the MDCC will also be discussed. An agenda will be posted prior to the meeting on the MDCC Web site: *http://www.ninds.nih.gov/research/muscular_dystrophy/coordinating_committee*

The "Muscular Dystrophy Research and Education Plan for the National Institutes of Health" may be accessed at: *http://www.ninds.nih.gov/research/muscular_dystrophy/coordinating_committee/MD_Plan_submitted.pdf*

Place: Holiday Inn, Silver Spring, MD, 8777 Georgia Avenue, Silver Spring, MD 20910, 301–589–0800.

Contact Person: Heather Rieff, PhD, Executive Secretary, Muscular Dystrophy Coordinating Committee, Office of Science Policy and Planning, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Room 8A03, MSC 2540, Bethesda, MD 20892, E-mail: *rieffh@ninds.nih.gov*, Phone: (301) 496–9271.

Any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include

the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 3, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25006 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Cooperative Drug Development Group (CDDG)—Serious Mental Illness.

Date: November 23, 2004.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Yong Yao, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, (301) 443–6102, *yyao@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25008 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Biology of Neuroendocrine Peptides.

Date: November 30, 2004.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 777, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38oz@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Research Training in Digestive Disease and Nutrition.

Date: December 17, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 04–25009 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pilot and Feasibility Program in Islet Cell Biology.

Date: December 1–2, 2004.

Time: 7:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pathogenesis of Calcium Nephrolithiasis.

Date: December 10, 2004.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA,

NIDDK, National Institutes of Health, Room 778, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8890, *federn@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Reserach; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Reserach, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25010 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Fellowship Review.

Date: November 8, 2004.

Time: 9 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Chief, Scientific Review Branch, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, (301) 496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25013 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, RAPID Research Panel.

Date: November 22, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health. NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1959, *csarampo@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25014 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID, Division of Intramural Research, Board of Scientific Counselors.

Date: December 6–8, 2004.

Time: December 6, 2004, 8 a.m. to 4:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Wolff Memorial Conference Room, Bethesda, MD 20892.

Time: December 7, 2004, 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Wolff Memorial Conference Room, Bethesda, MD 20892.

Time: December 8, 2004, 8 a.m. to 11 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Wolff Memorial Conference Room, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, (301) 496–3006, *tk9c@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25016 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Review of HIV Supplement.

Date: November 30, 2004.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activites, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training; National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25017 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Statistical Techniques for Clinical Studies.

Date: November 29, 2004.

Time: 2:30 p.m. to 4:20 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, Neuroscience Center, 6001 Executive Blvd., Room 8122, MSC 9667, Bethesda, MD 20892–9667, (301) 435–4582, *mczarnol@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Programs Nos. 93.242, Mental Health Research Grants; 93.281, Scientific Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25018 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (01) Training Grant Applications.

Date: November 17, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037.

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institutes on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians, 93.272, Alcohol National Research Service Awards for Research Training; 93.275, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25019 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Protein Kinase G Regulation of Granulosa Cell Viability.

Date: November 29, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25020 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research Review of Gene Therapy & Therapeutics Branch and Molecular Structural Biology Unit.

Date: December 1–3, 2004.

Closed: December 1, 2004, 7 p.m. to 8:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: December 2, 2004, 8:30 a.m. to 11:30 a.m.

Agenda: Laboratory Presentations.

Place: National Institutes of Health, Building 30, Conference Room 117, 30 Convent Drive, Bethesda, MD 20892.

Closed: December 2, 2004, 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, Conference Room 117, 30 Convent Drive, Bethesda, MD 20892.

Open: December 2, 2004, 1:30 p.m. to 4:10 p.m.

Agenda: Laboratory Presentations.

Place: National Institutes of Health, Building 30, Conference Room 117, 30 Convent Drive, Bethesda, MD 20892.

Closed: December 2, 2004, 4:10 p.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, Conference Room 117, 30 Convent Drive, Bethesda, MD 20892.

Open: December 3, 2004, 8:15 a.m. to 10:45 a.m.

Agenda: Laboratory Tours, Poster Presentations.

Place: National Institutes of Health, Building 30, Conference Room 117, 30 Convent Drive, Bethesda, MD 20892.

Closed: December 3, 2004, 10:45 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, Conference Room 117, 30 Convent Drive, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, Assistant to the Director, NIH–NIDCR, 31 Center Drive, Bldg. 31, Room 5B55, Bethesda, MD 20892, 301 594–2089, *norman.braveman@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/CouncilCommittees.asp,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 1, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25022 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–12, Review FRA DE05–002, AIDS Mucosal Infections.

Date: November 29, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–4861.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–20, Review of R13s.

Date: December 2, 2004.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review

Administrator, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–22, Review of R13s.

Date: December 8, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Administrator, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 1, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25023 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Research Partnerships—Biomechanics and Brain Machine Interfaces.

Date: November 10, 2004.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@crs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Fatigue/Fibromyalgia/Temporomandibular Dysfunction Syndromes.

Date: December 1, 2004.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *hoffeldt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Tumor Immunology.

Date: December 1, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel: Gene Therapy for Liver Diseases.

Date: December 1, 2004.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, (301) 435–1159, *ameros@crs.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel: ZRGI MOSS G 02M: Member Conflict: Musculoskeletal Rehabilitation Sciences.

Date: December 1, 2004.

Time: 3:15 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@crs.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular, Cellular, Neuro Tech SBIR.

Date: December 2, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@crs.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chlamydia and Alzheimer's.

Date: December 2, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rossana Berti, PhD, Scientific Review Administrator-Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–C, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardioprotection in Ischemic Injury.

Date: December 2, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Yellow-fever.

Date: December 2, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts.

Date: December 2, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean Dow Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biobehavioral Processes.

Date: December 3, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biophysics of Synapses, Channels and Transporters.

Date: December 3, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Orthopedics and Skeletal Biology Small Business.

Date: December 6, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *bartletr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Melanoma.

Date: December 6, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; G Protein Signaling in Yeast.

Date: December 6, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Autoimmune Diabetes.

Date: December 8, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Applications Responding to PA–04–115 "Religious Organizations & HIV".

Date: December 10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Jose H. Guerrier, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of SBIR and R03 Applications.

Date: December 10, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 BDA–E 50R: PAR–03–118; Global Health Research Initiative Program for New Foreign Investigators.

Date: December 15, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Sandy Warren, MPH, DMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7843, Bethesda, MD 20892, (301) 435–1019, *warrens@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 2, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25007 Filed 11–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Franklin County for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25036 Filed 11–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1551–DR]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1551–DR), dated September 16, 2004, and related determinations.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 16, 2004:

Citrus County for emergency protective measures (Category B) under the Public Assistance Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25037 Filed 11–9–04; 8:25 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1554–DR]

Georgia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1554–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: October 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 30, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25038 Filed 11–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1560–DR]

Georgia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1560–DR), dated September 24, 2004, and related determinations.

EFFECTIVE DATE: October 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 30, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25040 Filed 11–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1569–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–1569–DR), dated October 7, 2004, and related determinations.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely

affected by the catastrophe declared a major disaster by the President in his declaration of October 7, 2004:

Olmsted County for Individual Assistance.
Martin County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25041 Filed 11–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1556–DR]

Ohio; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1556–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: November 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Vinton County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25039 Filed 11–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Truckee River Operating Agreement, California and Nevada

AGENCY: Department of the Interior.

ACTION: Extension of comment period for review of revised draft environmental impact statement/environmental impact report (revised draft EIS/EIR).

SUMMARY: The U.S. Department of the Interior and California Department of Water Resources (DWR) as co-lead agencies are extending the review period for the revised draft EIS/EIR to December 30, 2004. The notice of availability of the revised draft EIS/EIR and notice of open house meetings (six meetings held on September 21 to 23 and October 1) and notice of public hearings (six hearings held October 18 to 21) were published in the **Federal Register** on August 25, 2004 (69 FR 52303). The public review period was originally scheduled to end on October 29, 2004.

DATES: Submit comments on the revised draft EIS/EIR on or before December 30, 2004.

ADDRESSES: Written comments on the revised draft EIS/EIR should be mailed to Kenneth Parr, Bureau of Reclamation (Reclamation), 705 North Plaza St., Rm. 320, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Kenneth Parr, Reclamation, telephone 775–882–3436, TDD 775–882–3436, fax 775–882–7592, e-mail: *kparr@mp.usbr.gov;* or Michael Cooney, DWR, telephone 916–227–7606, fax 916–227–7600, e-mail; *mikec@water.ca.gov.* A copy of the revised draft EIS/EIR may be obtained by writing to the above address or calling Reclamation at 800–742–9474 and then dial code 26 or 775–882–3436 or DWR at 916–227–7606. Information is also available at the Reclamation Web site at: *http://www.usbr.gov/mp/troa/.*

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety. We will not accept any comments submitted anonymously.

Dated: October 26, 2004.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 04–25120 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–MN–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.

DATES: Written data, comments or requests must be received by December 10, 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 applications 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: Caroline Stahala, Raleigh, NC, PRT–094867.

The applicant requests a permit to import biological samples from wild Bahama parrots (*Amazona leucocephala bahamensis*) for the purpose of scientific research into population genetics. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, OH, PRT–093860.

The applicant requests a permit to import one captive born male western lowland gorilla (*Gorilla gorilla gorilla*) from the Toronto Zoo, Toronto, Ontario, Canada, for the purpose of propagation and enhancement of the survival of the species.

Applicant: Scott L. Sutherland, Kalispell, MT, PRT–093991.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gordon L. Blaser, Columbus, NE, PRT–094213.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: October 22, 2004.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–25116 Filed 11–9–04; 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.

DATES: Written data, comments or requests must be received by December 10, 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 applications 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: Gino A. Harrison, Newberg, OR, PRT–093623.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus pygargus)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing 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: Guy P. Ferraro, Union Beach, NJ, PRT–092340.

The applicant requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal use. On September 7, 2004, (69 FR 54149) the Service published a notice that the polar bear was sport hunted from the Viscount Melville Sound polar bear population. Subsequently, the Service determined that the polar bear was actually sport hunted from the Northern Beaufort Sea polar bear population. Therefore, we are republishing the request for the correct population.

Dated: October 15, 2004.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–25118 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: 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: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein.

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
090017	Antonio Iaquinta	69 FR 51703; August 20, 2004	October 13, 2004.
090230	Arthur R. Schisler	69 FR 51703; August 20, 2004	October 19, 2004.
091335	Jeffrey E. Fuhse	69 FR 54149; September 7, 2004	October 19, 2004.

Dated: October 22, 2004.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–25117 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Desert Rock Energy Project, San Juan County, NM

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Navajo Nation, intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the proposed approval of a lease to Sithe Global Power, LLC, to construct, operate and maintain a coal-fired, electric power-generating plant on approximately 600 acres of land held in trust by the United States for the benefit of the Navajo Nation in San Juan County, New Mexico. The purpose of the proposed action is to help meet the economic development needs of the Navajo Nation and the growing energy needs of the western United States. This notice also announces public scoping meetings to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by December 17, 2004. The public scoping meetings will be held Monday, Tuesday, Wednesday, and Thursday, December 6, 7, 8, and 9, 2004, starting at 6:30 p.m.

ADDRESSES: You may mail or hand carry written comments to Eloise Chicharello, Director, Navajo Regional Office, Bureau of Indian Affairs, PO Box 1060, Gallup, New Mexico 87305.

The addresses for the public scoping meetings are as follows:

December 6, 2004—Central High School Cafeteria, 4525 North Central Avenue, Phoenix, Arizona.

December 7, 2004—Farmington Civic Center, Exhibit Hall One, 20 West Arrington, Farmington, New Mexico.

December 8, 2004—Western New Mexico University, 2055 State Road 602, Gallup, New Mexico.

December 9, 2004—Flagstaff High School, 400 West Elm Street, Flagstaff, Arizona.

FOR FURTHER INFORMATION CONTACT: Loretta A.W. Tsosie, (505) 863–8296.

SUPPLEMENTARY INFORMATION: Sithe Global Power, LLC, a privately held, independent power company, and Diné Power Authority, an enterprise of the Navajo Nation established by the Navajo Nation Council to promote the development of energy resources, have entered into a joint agreement to support the development of a coal-fired electric power-generating plant capable of producing as much as 1,500-megawatt (MW), and associated facilities, to be operated by Sithe Global.

The proposed 600-acre site for the project is located approximately 30 miles southwest of Farmington, New Mexico, adjacent to the Navajo Mine, which would provide the low-sulfur coal to generate the power. The primary components of the proposed project include two 750-MW coal-fired units that, together, would generate as much as 1,500 MW; and associated facilities and operations, including a plant cooling system, a fuel supply system, waste management operations, safety systems (*e.g.*, lighting, fire protection), water system infrastructure, transportation access roads, power transmission interconnection facilities, and construction staging areas.

The proposed project would interconnect with the existing 500-kV transmission system operated by Arizona Public Service through the construction of approximately 25 miles of new transmission line to either the existing Four Corners Substation or a new substation that would be constructed just west of the Four Corners Power Plant. The project proposes to use existing utility corridors and roads for the majority of the interconnect system, but some new utility corridors and roads may need to be built. The project design incorporates appropriate measures to minimize the effects of the proposed project on the quality of the environment.

The purpose of and need for the proposed project is to generate and distribute electricity in western United States markets using capacity on existing and proposed transmission lines to:

(1) Improve and enhance the existing electrical power system in the West and deliver competitively priced power to these markets;

(2) Generate electricity from a low-sulfur coal source that would reduce electrical output demands on natural gas and older coal-fired units; and

(3) Support the Navajo Nation's objective for economic development in the region by providing employment and revenue generated by the proposed project.

The scoping process for the EIS will include: (1) Identification of issues; (2) identification of sensitive or critical environmental effects; (3) identification of reasonable alternatives; and (4) coordinating with the Navajo Nation Council, governmental and non-governmental agencies and the public. Written comments should address: (1) Issues to be considered; (2) reasonable and feasible alternatives; or (3) information bearing on the EIS.

Resources so far identified for analysis in the EIS include air, geology, soils, water, vegetation, wildlife, special status species, land use, access, visual resources, noise, social and economic conditions, environmental justice, hazardous materials, and cultural and paleontological resources. Analyses will address requirements of the Clean Water Act, Clean Air Act, Endangered Species Act, National Historic Preservation Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response Compensation and Liability Act and others, as needed. Alternatives to be analyzed include, at a minimum, the proposed action and no action. The range of issues and alternatives to be addressed may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act,

you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. 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 inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: May 3, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–24988 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of Assiniboine and Sioux Tribes of the Fort Peck Reservation Judgment Funds in Docket No. 773–87L

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the Tribe's portion of the judgment funds awarded in *Assiniboine and Sioux Tribes of the Fort Peck Reservation, et al.* v. *U.S.*, Docket No. 773–87L is effective as of May 29, 2004. On March 18, 1999, $4,522,551.84 was appropriated to satisfy an award that was made by the United States Court of Federal Claims to the Tribe and individual Indian plaintiffs in Docket No. 773–87L. A percentage of the Tribe's portion of the aggregate award was transferred to a separate tribal trust fund account on February 14, 2001. The Tribe will most likely receive additional payments from the aggregate award once the identification of all individuals eligible to share in the aggregate award is complete and the pro rata shares are calculated. This plan pertains to the Tribe's portion ($643,186.73) of the aggregate award and any additional funds the Tribe may receive from the aggregate award fund.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 320–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: On March 23, 2004, the plan for the use and distribution of the funds was submitted to Congress pursuant to section 137 of the Act of November 10, 2003, Pub. L. 108–108, 117 Stat. 1241, and the Indian Tribal Judgment Fund Act, 25 U.S.C. 1401 *et seq.* Receipt of the plan by the House of Representatives and the Senate was recorded in the Congressional Record on March 29, 2004. The plan became effective on May 29, 2004, because a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of Assiniboine and Sioux Tribes of the Fort Peck Reservation Judgment Funds Docket No. 773–87–L

This plan governs the use and distribution of the Tribe's share of the judgment funds awarded by the United States Court of Federal Claims (Court) to the Assiniboine and Sioux Tribes of the Fort Peck Reservation (Tribe), *et al.*, in Docket No. 773–87–L. It also governs any additional funds the Court may award to the Tribe in Docket No. 773–87–L, including interest and investment income accrued on the award, less attorney fees and litigation expenses.

Tribal Programming

One hundred percent (100%) of the funds shall be made available for tribal health, education, housing and social services programs of the Tribe. Accounts shall be established for the following programs and funds shall be transferred to those accounts in the specified amounts—

1. Educational and Youth Programs	$86,500
2. Facilities and Housing Improvement	150,000
3. Equipment for Public Utilities	136,168
4. Medical Assistance/Dental/Eyeglasses/Convalescent Equipment	126,000
5. Senior Citizens/Community Services	160,000
Total	658,668

All funds in excess of $658,668, and any funds added to the trust fund account as the result of further court proceedings in Docket No. 773–87–L, shall be utilized for the Senior Citizens/Community Services programs. None of these funds shall be available for per capita distribution to any member of the Tribe.

General Provisions

None of the funds distributed under this plan shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or any Federal or federally assisted programs.

Dated: October 21, 2004.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–25047 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of Mescalero Apache Judgment Funds in Docket No. 92–403L

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the judgment funds awarded to the Mescalero Apache Tribe in Docket No. 92–403L is effective as of March 20, 2004. The judgment fund was awarded by the United States Court of Federal Claims on January 31, 2002, and appropriated on February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 320–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: On December 17, 2003, the plan for the use and distribution of the funds was submitted to Congress pursuant to section 137 of the Act of November 10, 2003, Pub. L. 108–108, 117 Stat. 1241, and the Indian Tribal Judgment Fund Act, 25 U.S.C. 1401 *et seq.* Receipt of the plan by the House of Representatives and the Senate was recorded in the Congressional Record on January 20, 2004. On March 20, 2004, the plan became effective because a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of Mescalero Apache Tribe Judgment Funds in Docket 92–403L

The funds appropriated on February 25, 2002, in satisfaction of an award granted to the Mescalero Apache Tribe in Docket 92–403L before the United States Court of Federal Claims (Court), including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

A. Per Capita Distribution

Fifty (50%) percent of the funds, including interest and investment income, shall be distributed in the form of per capita payments, as approved by the Tribal Council, in equal amounts to all persons who are enrolled members of the Mescalero Apache Tribe.

1. The per capita shares of living competent adults shall be paid directly to them.

2. The per capita shares of deceased individual beneficiaries shall be determined in accordance with 25 CFR part 15.

3. Per capita shares of legal incompetents and minors shall be handled as provided in 25 U.S.C. 1403(b)(3). The funds will be placed in IIM accounts and may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the Tribal Council.

B. Programming

The remaining funds, including interest and investment income, shall be used for the following purposes. The Tribe may reallocate the funding amounts if the Tribe determines it necessary.

	(percent)
(A) Tribal Store Business Operations Improvement (est. $1,022,000)	34.07
(B) Tribal Operational Activities (est. $1,978,000)	
The Tribal Operational Activities programming funds shall be allocated by the Tribe for the following Tribal operational activities with amounts to be determined on a priority as-needed basis:	
(1) Debt Service for principal and interest payments on loans related to capital projects for the new Mescalero Apache Tribe school, Nursing Home/Dialysis Center and other capital projects which require financing	15.93
(2) Funding amounts for the Mescalero Apache Tribe Defined Benefit Pension Plan	33.33
(3) Self-Funded Health Plan Benefit Payments	16.67

C. General Provisions

Funds distributed under this plan shall not be liable for the payment of previously contracted obligations of any recipient as provided in 25 U.S.C. 117b(a). None of the funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or except for per capita shares in excess of $2,000 any Federal or federally assisted programs.

Michael D. Olsen,

Acting Principal Deputy, Assistant Secretary—Indian Affairs.

[FR Doc. 04–25046 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of Pueblo of Isleta Judgment Funds in Docket No. 98–166L

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the judgment funds awarded to the Pueblo of Isleta (Pueblo) in Docket No. 98–166L is effective as of March 20, 2004. The judgment fund was awarded by the United States Court of Federal Claims on January 7, 2002, and appropriated on March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 320–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: On December 5, 2003, the plan for the use and distribution of the funds was submitted to Congress pursuant to Section 137 of the Act of November 10, 2003, Pub. L. 108–108, 117 Stat. 1241, and the Indian Tribal Judgment Fund Act, 25 U.S.C. 1401 *et seq.* Receipt of the plan by the House of Representatives and the Senate was recorded in the Congressional Record on December 8, 2003, and January 20, 2004, respectively. The plan became effective on March 20, 2004, because a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of Pueblo of Isleta Judgment Funds in Docket No. 98–166L

The funds appropriated on March 19, 2002, in satisfaction of an award granted to the Pueblo of Isleta (Pueblo) in Docket 98–166L before the United States Court of Federal Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued on the award net of fees and expenses fees and expenses (the "available funds"), shall be distributed as herein provided.

A. Per Capita Distribution.

One hundred (100%) percent of the available funds shall be distributed in the form of per capita payments in amounts as equal as practicable to all enrolled members of the Pueblo who are living on the date this plan becomes effective.

1. The Tribal Council shall prepare and certify to the Bureau of Indian Affairs a list of such persons eligible to participate in said per capita payments.

2. The per capita shares of living competent adults shall be paid directly to them.

3. The per capita shares of incarcerated members who are eligible for the per capita payment shall be either—

(a) Delivered to the incarcerated member or a designated representative at an address directed and authorized by the incarcerated member in writing; or

(b) Placed in Individual Indian Money (IIM) accounts, provided that the Pueblo provides a certified list of those individuals to the Bureau of Indian Affairs along with the written requests from those individuals requesting that

their per capita funds be placed in a non-supervised IIM account.

4. The per capita shares of deceased individual beneficiaries shall be determined in accordance with 25 CFR part 15.

5. Per capita shares of legal incompetents and minors shall be handled as provided in 25 U.S.C. 1403(b)(3). The funds will be placed in IIM accounts and may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the Tribal Council.

B. General Provisions.

Funds distributed under this plan shall not be liable for the payment of previously contracted obligations of any recipient as provided in 25 U.S.C. 117b(a). None of the funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

Dated: October 21, 2004.

Michael D. Olsen,

Acting Principal Deputy, Assistant Secretary—Indian Affairs.

[FR Doc. 04–25045 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW151643]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the West Antelope Tract described below in Converse County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Wednesday, December 15, 2004. Sealed bids must be submitted on or before 4 p.m., on Tuesday, December 14, 2004.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Antelope Coal Company of Gillette, WY. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following-described lands located just south of the Campbell/Converse County line south southeast of Wright, Wyoming, in northern Converse County approximately 2 miles east of State Highway 59 and crossed by Antelope Creek:

T. 40 N., R. 71 W., 6th PM, Wyoming
Sec. 3: Lots 15–18;
Sec. 4: Lots 5–20;
Sec. 5: Lots 5–7, 10–15, 19, 20;
Sec. 9: Lot 1;
Sec. 10: Lots 3, 4;
T. 41 N., R. 71 W., 6th PM, Wyoming
Sec. 28: Lots 9–16;
Sec. 29: Lots 9–11, 14–16;
Sec. 32: Lots 1–3, 6–11, 14–16;
Sec. 33: Lots 1–16.

Containing 2,809.13 acres, more or less.

The tract is adjacent to Federal coal leases held by the Antelope Mine to the east. It is also adjacent to additional unleased Federal coal to the north, south and west.

All of the acreage offered has been determined to be suitable for mining. However, Antelope Creek and an adjacent buffer zone are not expected to be mined. Other features such as pipelines can be moved to permit coal recovery. No producing oil and/or gas wells have been drilled on the tract. All of the surface estate is controlled by the Antelope Mine.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mine. In this area, the Wyodak seam is generally split into the Anderson and Canyon seams. The shallower Anderson seam ranges from about 26–34 feet thick and occurs over most of the LBA. It is the only mineable seam south of Antelope Creek. The deeper Canyon seam is mineable only north of Antelope Creek on the LBA. It is split on the LBA tract and ranges from about 12–35 feet thick for the upper split and from about 11–19 feet thick for the lower split. The overburden depths range from about 93–195 feet thick north of Antelope Creek and from about 54–127 feet thick south of Antelope Creek on the LBA. The interburden between the Anderson and Canyon seams ranges from about 46–69 feet thick on the LBA. The interburden between the Canyon splits ranges from about 3–7 feet thick.

The tract contains an estimated 194,961,000 tons of mineable coal. This estimate of mineable reserves includes the two main seams and split mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. The total mineable stripping ratio (BCY/Ton) of the coal is about 3.0:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining.

The West Antelope LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8858 BTU/lb with about 0.23% sulfur and 1.86% sodium in the ash. These quality averages place the coal reserves near the high end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, December 14, 2004, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of

the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW151643, are available for inspection at the BLM Wyoming State Office.

Melvin Schlagel,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. 04–24635 Filed 11–9–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information: 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., Chapter 3507) and 5 CFR part 1320, Reporting and Record keeping Requirements, the National Park Service invites public comments on an extension of a currently approved collection (OMB#1024–018). NPS specifically requests comments on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The primary purpose if the ICR is to nominate properties for listing in the National Register of Historic Places, the official list of the Nation's cultural resources worthy of preservation, which public law requires that the Secretary of the Interior maintain and expand. Properties are listed in the National Register upon nomination by State Historic Preservation Officers and Federal Preservation Officers. Law also requires Federal agencies to request determinations of eligibility for property under their jurisdiction of affected by their programs and projects. The forms provide the historic documentation on which decisions for listing and eligibility are based.

DATES: Public comments will be accepted on or before sixty days from the date of publication in the **Federal Register.**

ADDRESSES: Send comments to Carol Shull, Keeper of the National Register, National Park Service, 1849 "C" Street, NW., #2280, Washington, DC 20240. E-mail: *carol_shull@nps.gov.* Phone: 202–354–2234, Fax 202–371–2229.

To Request Copies of the Documents Contact: Carol Shull, Keeper of the National Register, National Park Service, 1849 "C" Street, NW., #2280, Washington, DC 20240. E-mail *carol_shull@nps.gov.* Phone: 202–354–2234, Fax 202–371–2229. For further information, Contact Carol Shull, (202) 354–2234.

SUPPLEMENTARY INFORMATION:

Title: National Register of Historic Places Registration Form, National Register of Historic Places Continuation Sheet, and National Register of Historic Places Multiple property Documentation Form.

Form: NPS 10–900, 10–900–A, 10–900–B.

OMB Number: 1024–0018.

Expiration Date: 01/31/05.

Type of Request: Extension of a currently approved collection.

Description of need: The National Historic Preservation Act requires the Secretary of the Interior to maintain and expand the National Register of Historic Places, and to establish criteria and guidelines for including properties in the National Register. The National Register of Historic Places Registration Form documents properties nominated for listing in the National Register and demonstrates that they meet the criteria established for inclusion. The documentation is used to assist in preserving and protecting the properties and for heritage education and interpretation. National Register properties must be considered in the planning for Federal or federally assisted projects. National Register listing is required for eligibility for the federal rehabilitation tax incentives.

Description of respondents: The affected public are State, tribal, and local governments, federal agencies, business, non-profit organizations, and individuals. Nominations to the National Register of Historic Places are voluntary.

Estimated annual reporting burden: 56,700 hours.

Estimated average burden hours per response: 18 hours.

Estimated average number of respondents: 1,575.

Estimated frequency of response: 1,575 annually.

Dated: October 21, 2004.

Leonard E. Stowe,

Acting, National Park Service Information and Collection Clearance Officer.

[FR Doc. 04–24980 Filed 11–9–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed Revision of Park Boundary, Boston National Historical Park

AGENCY: National Park Service.

ACTION: Announcement of park boundary revision.

SUMMARY: Notice is hereby given to include within the boundary of Boston National Historical Park a parcel of land to provide for management and interpretation of the Bunker Hill Site, located in Charlestown.

SUPPLEMENTARY INFORMATION: The Land and Water Conservation Fund Act of 1965, 78 Stat. 897, as amended, 16 U.S.C. 460*l*–9(c), *et seq.* authorizes the Secretary of the Interior to make minor boundary changes when necessary for the proper interpretation or management of an area of the National Park System and, additionally, provides that the Secretary may make minor revisions to the boundaries of areas within the National Park System. Therefore, pursuant to The Land and Water Conservation Fund Act of 1965, as amended, notice is given that the boundary of Boston National Historical Park will be revised to include the 0.10 of an acre parcel of land depicted on map number 457/80,004 prepared by the National Park Service. Said map is on file and available for inspection in the office of the National Park Service, Northeast Region, New England Land Resources Program Center, Old City Hall, 222 Merrimack Street, Suite 400E, Lowell, MA 01852.

Dated: October 7, 2004.

William Shaddox,

Regional Director, Northeast Region.

[FR Doc. 04–24979 Filed 11–9–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Draft Environmental Impact Statement, Chiricahua National Monument, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the draft environmental impact statement for the

Fire Management Plan, Chiricahua National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of draft Environmental Impact Statement for the Fire Management Plan, Chiricahua National Monument, Arizona.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for January 10, 2005. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Alan Whalon, Chiricahua National Monument, at 13063 E. Bonita Canyon Road, Willcox, AZ 85643.

FOR FURTHER INFORMATION CONTACT: Ecologist, Carrie Dennett, Chiricahua National Monument, (520) 824–3560 ext. 308. Additional information may be requested by phone at (520) 824–3560 or through e-mail at *CHIR_resource_management@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Chiricahua National Monument, 13063 E. Bonita Canyon Road, Willcox, AZ 85643. You may also comment via the Internet to *CHIR_resource_management@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Ecologist" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Ecologist, (520) 824–3560 ext. 308. Finally, you may hand-deliver comments to 13063 E. Bonita Canyon Road, Willcox, AZ, 85643. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 25, 2004.

Steve Martin,

Director, Intermountain Region, National Park Service.

[FR Doc. 04–24985 Filed 11–9–04; 8:45 am]

BILLING CODE 4312–07–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement Availability

AGENCY: National Park Service, Interior.

ACTION: The National Park Service announces the availability of the Record of Decision for the Final Environmental Impact Statement for Saratoga National Historical Park General Management Plan.

SUMMARY: In September 2004, the Regional Director, Northeast Region, National Park Service approved the Record of Decision (ROD) of the Final Environmental Impact Statement for Saratoga National Historical Park General Management Plan. The ROD is a statement of the background of the project, the decision made, synopsis of the other alternatives considered, the basis for the decision, the environmentally preferable alternative, a summary of measures to minimize environmental harm, and an overview of the public involvement in the decisiomaking process. The ROD is now available from the National Park Service.

Decision (Selected Action)

After thorough analysis and extensive public involvement, the National Park Service will implement Alternative D (the Preferred Alternative identified in the Draft and abbreviated Final Environmental Impact Statements) to help guide management of Saratoga National Historical Park. Alternative D was selected because it supports the purpose and significance of the park, and minimizes impacts on the park's resources while providing for public use and enjoyment of those resources.

Alternative D: Focus on the Burgoyne Campaign seeks to improve visitor understanding of the events that led to the 1777 British surrender by providing a more complete and logical depiction of these events. This approach also includes—secondary to the strategic factors—interpretation of the efforts to commemorate the military events and opportunities to reflect on their meaning. Additionally, Alternative D enables the park to expand its partnerships with other Burgoyne Campaign—related sites and regional entities in the Champlain-Hudson and Mohawk valleys.

Other Alternatives Considered

Three additional alternatives were considered analyzed for impacts on the environment. They are summarized below. Alternative D was formed by combining elements of alternatives B and C.

Alternative A: Focus on Current Management Objectives allowed for incremental action toward existing objectives with minimum change to the park's current management philosophy and physical conditions. This concept would have entailed no significant expansion of the park's participation in regional initiatives over the current situation. Alternative A served as the "no-action" alternative required by the National Environmental Policy Act.

Alternative B: Focus on the Battles, Siege, and Surrender concentrated on improving visitor understanding of the events that led to the 1777 British surrender at Saratoga by providing a more complete and logical depiction of these events. It rehabilitated key landscape features to help the visitor understand conditions faced by the armed forces and how landscape conditions were used and manipulated to serve tactical needs. This concept also enabled park staff to work with regional partners in developing outreach initiatives.

Alternative C: Focus on the Park as Memorial Grounds presented the park as a memorial landscape that had been commemorated in numerous ways over generations, from the erection of monuments, to the establishment of State and Federal parkland, to contemporary efforts to link important sites through regional heritage initiatives. This approach preserved and enhanced interpretation of key landscape features to help the visitor understand the military events of 1777 and the efforts to commemorate those events. Moreover, this alternative envisioned the park as an important gateway to the regional initiatives of the Champlain-Hudson and Mchawk valleys.

Decision Rationale

The major Federal laws and policies that apply to Federal agency actions in the General Management Plan are the National Park Service Organic Act and General Authorities Act, the public laws creating and augmenting Saratoga

National Historical Park, the National Parks and Recreation Act of 1978, the National Environmental Policy Act, and related provisions of the National Park Service Management Policies 2001. The management action selected complies with the requirements of Federal law, including those statutes listed above.

The potential impacts of the alternatives were identified and evaluated. An analysis of impacts was included in the Draft Environmental Impact Statement. The planning team based the impact analysis and conclusions largely on the review of existing research and studies, information provided by experts in the National Park Service and other agencies and organizations, and the professional judgment of the staff of Saratoga National Historical Park. Where possible, locations of sensitive resources were compared with the locations of proposed developments and modifications. The analysis was qualitative in nature. Where necessary and appropriate in all the alternatives, the planning team proposed mitigating measures to minimize or avoid impacts. Impacts were categorized as direct, indirect, or cumulative and were characterized by type, duration, and intensity.

After a review of potential impacts, the team concluded that Alternative D best protects contributing resources, while enhancing public access to those resources. Overall, Alternative D provides the greatest number of beneficial impacts in comparison to the other alternatives. Alternative D was also selected as the environmentally preferred alternative as it causes the least damage to the biological and physical environment, while best protecting, preserving, and enhancing historic, cultural, and natural resources.

Consultation

Consultation and coordination with appropriate federal and state agencies were conducted throughout the preparation of the General Management Plan. Regarding historic properties of significance to Indian tribes, consultation with the Stockbridge Munsee Band of Mohican Indians was initiated in February 2001 and continued throughout the planning process via mailings of newsletters, the draft plan, and the Final Environmental Impact Statement. Regarding cultural resources, consultation with the New York State Historic Preservation Officer was initiated in January 2001 and continued throughout the process via mailings of newsletters, an advance copy of the draft plan, the actual draft plan, and the Final Environmental Impact Statement. The State Historic Preservation Officer responded with formal comments on the draft plan and concluded that the National Park Service made a convincing case for the selection of Alternative D as the Preferred Alternative. The National Park Service will continue 106 consultation with the New York State Historic Preservation Officer on specific actions, as outlined on page 210 of the Draft Environmental Impact Statement.

Description of Public Involvement in the Decisionmaking Process

Public scoping for the plan was initiated in March 2000 when the planning team held two public sessions. At these meetings, team members discussed the purpose and significance statements and the park's goals with the participants. Also in March 2000, the team invited over 30 scholars and resource specialists to define the park's interpretive themes.

The team followed the scoping sessions with a newsletter in August 2000, which highlighted comments received from the public and reported on the status of planning. The newsletter was distributed to over 700 people and was also made available on the park's Web site.

The team then developed three alternatives, which, along with the interpretive themes, were presented in the second newsletter, published in the autumn of 2001. This newsletter was distributed to over 1,000 people and was posted on the park's Web site.

In addition to publishing the newsletter, the planning team sought public input at three meetings with various stakeholder groups. In July 2001, the team presented the preliminary alternatives to area planners and to local and county officials. In October 2001, stakeholders provided input at a meeting that focused on treatment of the Schuyler Estate. A meeting in April 2002 addressed the feasibility of developing a regional visitor center in Old Saratoga. Throughout the process, the superintendent kept local, county, and State officials informed on the progress of the plan, and consulted with them on specific issues.

Input from these sources made it apparent that a new alternative, combining favored elements of the initial concepts, was desirable. In response, the planning team developed "Alternative D," as the Preferred Alternative.

Alternative D was highlighted in the Draft General Management Plan/Draft Environmental Impact Statement, made available for a 60-day public review period starting in January 2004. Some 2000 draft plan summary newsletters were distributed. The full draft plan was distributed to a list of nearly 60 recipients, which included the U.S. Environmental Protection Agency, the New York State Historic Preservation Officer, the Stockbridge Munsee Band of Mohican Indians, and other agencies and organizations. Both the summary newsletter and the full draft plan were made available on the Internet and at area libraries. On January 22, 2004, the team held a public open house at the park visitor center, which was attended by some 45 people. Over the course of the public comment period, a total of 32 written comments were received. The team carefully reviewed all responses and incorporated substantive comments in the Final Environmental Impact Statement for the General Management Plan.

The consensus of the public comment period was that National Park Service was pursuing the correct path for the park in Alternative D, the Preferred Alternative. Comments from individuals and public agencies did not require the National Park Service to add other alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative. Thus, an abbreviated format was used for the responses to comments in the final Environmental Impact Statement, in compliance with the 1978 implementing regulations (40 CFR 1503.4[c]) for the National Environmental Policy Act.

In August 2004, the abbreviated Final Environmental Impact Statement was made available to the public for a 30-day "no-action period," which concluded on September 2, 2004. The Final Environmental Impact Statement was distributed to a list of nearly 100 recipients, which included the U.S. Environmental Protection Agency, the New York State Historic Preservation Officer, the Stockbridge Munsee Band of Mohican Indians, and other agencies, organizations, officials, and individuals.

Conclusion

Alternative D, the selected action, provides the most comprehensive and proactive strategy among the alternatives considered for meeting the National Park Service's purposes, goals, and objectives for managing Saratoga National Historical Park in accordance with Congressional direction, Federal laws, and National Park Service Management Policies. The selection of Alternative D, as reflected by the analysis contained in the Final Environmental Impact Statement would not result in the impairment of park

resources or values and would allow the National Park Service to conserve park resources and provide for their enjoyment by these and future generations.

FOR FURTHER INFORMATION CONTACT: Superintendent, Saratoga National Historical Park, 648 Route 32, Stillwater, New York 12170–1604, telephone (518) 664–9821.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the Superintendent listed above.

Dated: September 23, 2004.

Robert W. McIntosh,

Associate Regional Director, Planning & Partnerships, Northeast Region.

[FR Doc. 04–24984 Filed 11–9–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will meet on Wednesday, December 1, 2004. The meeting will convene at 4 p.m. at the New England Aquarium Conference Center, Central Wharf, Boston, MA.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands national park area.

The Agenda for this meeting is as follows:

1. Call to Order, Introductions of Advisory Council members present
2. Review and approval of minutes of the September meeting
3. Planning for the outreach program, reports from interest groups
4. Prepare for the March elections
5. Report from the NPS
6. Public Comment
7. Next Meetings
8. Adjourn

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Avenue, Boston, MA 02110, telephone (617) 223–8667.

Dated: October 6, 2004.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 04–24981 Filed 11–9–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA, Advisory Commission Two Hundred Fiftieth; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on December 6, 2004.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (September 27, 2004)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report: Update on ORV Permit Distribution Process; Update on Salt Pond Visitor Center Project; Update on Highlands Center Project; Update on Hunting EIS; Update on Treatment of Phragmites at Pamet Bog; Proposed Herring River Restoration Project; News from Washington
6. Old Business: Role of Dune Shack Sub-Committee in Reviewing Ethnography Report
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 13, 2004.

Michael B. Murray,

Acting Superintendent.

[FR Doc. 04–24982 Filed 11–9–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Juan Bautista de Anza National Historic Trail Advisory Commission; Notice of Meeting

SUMMARY: Notice is given in accordance with the Federal Advisory Committee Act that the third meeting of the Juan Bautista de Anza National Historic Trail Advisory Commission will be held as follows:

DATES/TIMES: Saturday, November 13, from 8 a.m. to 4:30 p.m. and Sunday, November 14, 2004, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at Santa Clara University, 500 El Camino Real, Santa Clara, California. The meeting on November 13 will be in the Seminar Room of Casa Italiana and on November 14 in the Weigand Room, Arts and Sciences Building. For a map of the campus go to *http://www.scu.edu/map/*. Saturday afternoon there will be a tour of Mission Santa Clara Asís. The public is welcome.

FOR FURTHER INFORMATION AND COPIES OF MEETING MINUTES CONTACT: Meredith Kaplan, Juan Bautista de Anza National Historic Trail, 1111 Jackson Street, Suite 700, Oakland, California 94607, at (510) 817–1438, or *meredith_kaplan@nps.gov*.

SUPPLEMENTARY INFORMATION:

The Advisory Commission was established in accordance with the National Trails System Act (915 U.S.C. 1241 *et seq*), as amended by Public Law 191–365 to consult with the Secretary of Interior on planning and other matters relating to the trail.

Agenda

1. Welcome
2. Review trail status
3. Web de Anza update

4. Subcommittee report on forming a foundation or friends group
5. Approve or reject forming non-profit friends group or foundation
6. Discuss promotion and implementation strategies

This meeting is open to the public and opportunity will be provided for public comments at specific times during the meeting and prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission.

Dated: October 4, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–24983 Filed 11–9–04; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–860 (Final) (Third Remand)]

Tin- and Chromium-Coated Steel Sheet From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The United States International Trade Commission (Commission) hereby gives notice of the court-ordered remand of its second remand determination in the antidumping Investigation No. 731-TA–860 concerning tin- and chromium-coated steel sheet from Japan.

EFFECTIVE DATE: November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran, Office of Investigations, telephone (202) 205–3057, or Neal J. Reynolds, Office of General Counsel, telephone (202) 205–3093, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

In August 2000, the Commission made an affirmative determination in its antidumping duty investigation concerning tin- and chromium-coated steel sheet from Japan. Tin- and Chromium-coated Steel Sheet from Japan, Inv. No. 731–TA–860 (Final), USITC Pub. 3337 (Aug. 2000). The Commission's determination was appealed to the U.S. Court of International Trade (CIT). On December 31, 2001, the CIT remanded the matter to the Commission for further proceedings. *Nippon Steel Corp.* v. *United States*, 182 F.Supp.2d 1330 (Ct. Int'l Trade 2001).

On remand, the Commission conducted further proceedings and, in March 2002, reached an affirmative determination on remand. Tin- and Chromium-coated Steel Sheet from Japan, Inv. No. 731–TA–860, Pub No. 3493 (Final) (Remand) (March 2002). On August 9, 2002, the CIT issued an opinion vacating the Commission's affirmative remand determination and directing the Commission to enter a negative determination. *Nippon Steel Corp.* v. *United States*, 223 F. Supp.2d 1349 (Ct. Int'l Trade 2002) ("Nippon II"). The Commission appealed the CIT's decision in Nippon II to the Federal Circuit on October 11, 2002.

On October 3, 2003, the Federal Circuit vacated the CIT's decision in Nippon II and directed the CIT to remand the Commission's determination for further explanation and analysis.[1] *Nippon Steel Corp.* v. *United States*, 345 F.3d 1379 (Fed. Cir. 2003) (Nippon III). In Nippon III, The Federal Circuit held that the Court went "beyond its statutorily assigned role to 'review' " to the extent that it engaged in finding facts, determined witness credibility, and interposed its own determinations on causation and material injury itself. The Federal Circuit directed the CIT to remand the determination to the Commission so that the Commission could "attend to all the points made by the Court of International Trade, especially those of [Nippon II] which the Commission has not yet had the opportunity to address."

On February 23, 2004, the Commission issued its second remand determination on February 23, 2004. Tin- and Chromium-coated Steel Sheet from Japan, Inv. No. 731-TA–860, Pub No. 3674 (Final) (Second Remand) (Feb. 2004). The Commission again issued an affirmative injury determination. On October 14, 2004, the CIT issued an opinion discussing the Commission's second remand determination and directing the Commission to enter a negative current injury determination and to issue a remand determination on the issue of threat. *Nippon Steel Corp.* v. *United States*, Slip op. 04–131 (Oct. 14, 2004).

[1] Nippon III at 5.

Written Submissions

The Commission is not reopening the record in this third remand proceeding for submission of new factual information. The Commission will, however, permit the parties to file written submissions limited to the issue of whether the domestic industry is threatened with material injury by reason of the subject imports of tin- and chromium-coated steel sheet from Japan. This submission must be filed with the Commission by November 15, 2004, shall not contain any new factual information, and shall not exceed 15 pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of §§201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by §201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the remand proceeding must be served on all other parties to the remand proceeding and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Participation in the Proceedings

Only those persons who were interested parties in the prior remand proceedings and are parties in the appeal may participate as parties in the third remand proceedings.

Authority: This action is taken under the authority of title VII of the Tariff Act of 1930 as amended.

Issued: November 5, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25195 Filed 11–9–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 015–2004]

Privacy Act of 1974; System of Records

The Department of Justice (DOJ) proposes to modify the Privacy Act notice on "Personnel Investigation and Security Clearance Records for the Department of Justice, DOJ–006, "last published on September 24, 2002 (67 FR 59864). The modified notice reflects the addition of the Bureau of Alcohol, Tobacco, Firearms and Explosives to the DOJ and deletes references to the Immigration and Naturalization Service which was placed in the new Department of Homeland Security. In addition, several minor changes are made to update and correct the notice. These minor changes do not require a comment period or notification to the Office of Management and Budget and the Congress. The modifications will be effective November 10, 2004. Questions regarding the modifications may be directed to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Room 1400 National Place Building, Department of Justice, Washington, DC 20530.

The modifications to the notice are set forth below.

Dated: November 3, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/DOJ–006

SYSTEM NAME:

Personnel Investigation and Security Clearance Records for the Department of Justice

[Insert after System Name the following heading.]

SYSTEM CLASSIFICATION: NOT CLASSIFIED.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

[On line 15 of the last **Federal Register** publication, insert (OPM) so that the line reads as follows:]

* * * the Office of Personnel Management (OPM), the * * *

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

[On line 3 of the last **Federal Register** publication, delete Federal Bureau of Investigation and insert instead the following:]

* * * or FBI * * *

* * * * *

[Delete current routine use (l) and insert the following instead:]

(l) The National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

* * * * *

[Insert after Routine Uses the following heading:]

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

As stated in the "Categories of Records in the System," Item (4).

* * * * *

SYSTEM MANAGER(S) AND ADDRESSES:

[Delete the current text of this section and replace it with the following:]

For records regarding former and current personnel and contractors employed by the Offices, Boards, or Divisions (OBDs) as well as records regarding all Department attorneys, interns, honor program applicants, Schedule C personnel, non-career SES appointments, Presidential appointees, non-Departmental Federal Government personnel and ARC appeals for OBDs, contact: Director, Security and Emergency Planning Staff, Attention: Assistant Director Personnel Security Group, Justice Management Division, U.S. Department of Justice, 20 Massachusetts Avenue, NW., Washington, DC 20530.

For records regarding former and current Bureau non-attorney personnel not specifically listed above and contractors, contact the individual Bureaus:

Security Programs Manager, Drug Enforcement Administration, 700 Army Navy Drive, Arlington, VA 22202.

Security Programs Manager, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20543.

Security Programs Manager, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Ave., NW., Room 2240, Washington, DC 20226.

Security Programs Manager, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

Security Programs Manager, United States Marshals Service, United States Marshals Service Headquarters, Washington, DC 20530–1000.

Security Programs Manager, Executive Office for U.S. Trustees, 20 Massachusetts Avenue, NW., Room 8202, Washington, DC 20530.

Security Programs Manager, National Drug Intelligence Center, 319 Washington Street, Johnstown, PA 15901.

* * * * *

RECORD ACCESS PROCEDURES:

[Delete first paragraph and insert the following:]

A request for access to a record from this system shall be made in writing to the System Manager, or in the case of the Federal Bureau of Prisons records, to the FOIA/PA Section, with the envelope and the letter clearly marked "Privacy Act Request." The request should include a general description of the records sought and must include the requester's full name, current address, social security number, and date and place of birth. The request must be signed, dated, and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "System Exempted from Certain Provisions of the Act." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received. * * *

* * * * *

[FR Doc. 04–25055 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Acoustical Society of America

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Acoustical Society of America ("ASA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Acoustical Society of America, Melville, NY. The nature and scope of ASA's standards development activities are: To develop standards, specifications, methods of measurement and test, and terminology in the fields

of physical acoustics; mechanical vibration and shock; psychological and physiological acoustics; and noise.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25075 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Air Movement and Control Association International, Inc.

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Air Movement and Control Association International, Inc. ("AMCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Air Movement and Control Association International, Inc., Arlington Heights, IL. The nature and scope of AMCA's standards development activities are: Methods of testing for fans, air louvers, dampers and airflow measurement stations for various aspects of performance. These are: Fans for airflow, pressure, power and sound; louvers for pressure drop and water penetration; dampers for pressure drop and air leakage; and airflow measurement stations for accuracy of measurement.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25072 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Concrete Institute

Notice is hereby given that, on September 13, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the American Concrete Association ("ACI"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Concrete Institute, Farmington Hills, MI. The nature and scope of ACI's standards development activities are: ACI provides contributions to the body of consensus knowledge for concrete materials and the resulting applications in the built environment. Each ACI technical committee explores and reports on areas of knowledge within the scope of its specific missions. This reporting can be done by the creation or revision of an ACI Code, Specification or Guide (collectively referred to as "Standards").

ACI maintains Standards on a wide variety of subjects related to concrete, concrete related items, such as steel reinforcement, properties relating to concrete design and construction, such as fire resistance, and how best to design and construct concrete in its many applications.

Related to the material of concrete, ACI issues Standards on mixture ingredients and proportions, time-dependent chemical and physical characteristics, and hardened properties of different types of concretes, such as: Normalweight; lightweight; heavyweight; soil cement; shrinkage compensating; no slump; pervious; self-consolidating; high strength; shotcrete; plaster; polymer modified; fiber reinforced; roller compacted; and sulfur concrete.

Related to the design, construction and repair of various applications for concrete, ACI issues Standards on commercial buildings, industrial floors, architectural, pavements, parking lots, residential, shells, piers, foundations, bridge structures and systems, pipe, nuclear containment, sanitary structures, barges, offshore structures, silos, guideways, parking structures, dams and water tanks.

Related to items important to the construction of concrete, ACI issues Standards on formwork; batching, mixing; placing; consolidation; finishing; curing; inspection; testing; jointing; reinforcement; fire resistance; anchorage to concrete, durability; field tolerances; quality assurance systems; and cracking.

Related to design of concrete elements and systems, ACI issues Standards on structural strength of elements such as slabs, beams, columns, walls, foundations, shells, and diaphragms; elastic and inelastic characteristics; thermal properties; volumetric changes; design, detailing, and protection of reinforcing bars, welded wire reinforcement, and prestress steel; behavior under seismic conditions; behavior of monolithic and discrete joints, and behavior under dynamic loads.

Related to techniques of construction, ACI issues Standards on cast-in-place, factory precast, tilt-up, concrete block, shotcrete, underwater concreting, ferrocement, overlays, mass concrete, cellular concrete, fiber reinforced polymer (FRP) reinforced, prestressed, post-tensioned, and slip formed.

All of the current ACI Standards are published as the *ACI Manual of Concrete Practice,* which is printed in six parts and is available from ACI.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25078 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Petroleum Institute

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1893, 15 U.S.C. 4301 *et seq.* ("the Act") American Petroleum Institute ("API") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and

principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Petroleum Institute, Washington, DC. The nature and scope of API's standards development activities are: Development and maintenance of voluntary standards for the petroleum industry through committees charged with developing standards for (1) oilfield equipment and materials, (2) petroleum measurement, (3) refinery equipment, (4) marketing operations, (5) pipeline transportation, (6) fire and safety, (7) lubricants, and (8) business and information technology. More information regarding API standards development activities may be obtained from the API Web site at *http://www.api.org,* which includes contact information for API standards activities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25074 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Sanitary Engineering

Notice is hereby given that, on September 15, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the American Society of Sanitary Engineering ("ASSE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The name and principal place of business of the standards development organization and (2) The nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Society of Sanitary Engineering, Westlake, OH. The nature and scope of ASSE's standards development activities are: the creation, promotion and issuance of standards and seals of approval with respect to plumbing, water supply, sewage disposal, water purification, drainage, fire protection and medical gasses.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25079 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Standards

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International—Standards ("ASTM") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ASTM International, West Conshohocken, PA. The nature and scope of ASTM's standards development activities are: To develop standards in over 130 areas covering subjects including consumer products, medical services and devices, electronics, metals, paints, plastics, textiles, petroleum, construction, energy and the environment.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25083 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ENrG/Corning Fuel Cell Research

Notice is hereby given that, on October 8, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ENrG/Corning Fuel Cell Research ("ENrG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Corning Incorporated, Corning, NY; and ENrG Incorporated, Buffalo, NY. The general areas of ENrG's planned activities are to develop and demonstrate scalable thin, large area planar solid oxide fuel cell (SOFC) and stack technology for enterprise-level primary and cogeneration distributed power that can cycle repeatedly and be more easily fabricated into 200kW power units.

Additional information concerning the venture can be obtained by contacting Joan Kane at Corning Incorporated, One Science Center Drive, Corning, NY 18431.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25069 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Reserach and Production Act of 1993—International Air Transport Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International Air Transport Association ("IATA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and

principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Air Transport Association, Montreal, Quebec, CANADA. The nature and scope of IATA's standards development activities are: To develop, promulgate and publish voluntary consensus standards for international air transportation services provided by airlines and their agents and representatives to passengers, shippers and postal authorities. The IATA standards establish common practices and procedures, documentation and communication formats for the processing and handling of passengers, cargo and mail in the complex international air transportation environment. IATA's voluntary consensus standards are developed by IATA member airlines in consultation with other interested parties, including governments and intergovernmental organizations, whose expertise is sought as part of the standards development process.

Additional information concerning IATA can be obtained from Constance O'Keefe, Acting General Counsel of IATA, at (514) 874–0202.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25080 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Institute of Ammonia Refrigeration

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International Institute of Ammonia Refrigeration ("IIAR") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standard development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Institute of Ammonia Refrigeration, Arlington, VA. The nature and scope of IIAR's standards development activities are: To develop, plan, establish, coordinate and publish voluntary consensus standards applicable to the field of the design, construction, installation and use of ammonia mechanical refrigeration systems. Specifically, IIAR develops, plans, establishes, coordinates and publishes voluntary consensus standards in the form of industry standards, technical bulletins, and regulatory guidelines covering topics including equipment, design and installation of ammonia mechanical refrigeration systems; product integrity of ammonia refrigeration valves and strainers; training guidelines for operators of ammonia refrigerating systems; technical guidance addressing topics such as good practices, safety procedures and information, operating procedures, water contamination, and machinery room ventilation; and guidelines for compliance with regulatory requirements governing Process Safety Management and Risk Management.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25070 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Staple, Nail, and Tool Association

Notice is hereby given that, on September 8, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the International Staple, Nail, and Tool Association ("ISANTA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Staple, Nail, and Tool Association, La Grange, IL. The nature and scope of ISANTA's standards development activities are: To develop, plan, establish and coordinate voluntary consensus standards applicable to safety requirements for portable hand-held compressed air powered tools which drive fasteners such as nails and staples on a national level (American National Standards). Through its standards development activities, ISANTA seeks to establish safety requirements for the design, construction, use and maintenance of portable hand-held compressed air-powered tools to guard against the injury of tool users and bystanders in the workplace. ISANTA also provides guidelines to manufacturers, owners, employers (including self-employed contractors), supervisors, purchasers, operators and other persons concerned with or responsible for safety in the workplace and assists in the promulgation of appropriate safety directives and safety training programs.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25071 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—North American Electric Reliability Council

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), North American Electric Reliability Council, a New Jersey nonprofit corporation ("NERC"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting

the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: North American Electric Reliability Council, Princeton, NJ. The nature and scope of NERC's standards development activities are: NERC's standards development activities encompass the full range of matters affecting the planning and reliable operation of the bulk electric system in North America, including matters relating to cyber and physical security. NERC's standards development activities include all aspects of standards development, including compliance assessment activities. NERC's standards development process is accredited by the American National Standards Institute.

Additional information with respect to NERC's standards development activities, including the full text of NERC's current standards and the standards under development, may be obtained from NERC's Web site: *http://www.nerc.com.*

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25081 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Society of Automotive Engineers, Inc.

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* ("the Act"), Society of Automotive Engineers, Inc., ("SAE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Society of Automotive Engineers, Inc., Warrendale, PA. The nature and scope of SAE's standards development activities are: The development of consensus standards for self-propelled vehicles including aerospace vehicles, aircraft, automobiles, trucks and buses, off-highway equipment vehicles, marine, rail and transit systems.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25077 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Clean Diesel IV

Notice is hereby given that, on October 6, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: Clean Diesel IV ("SWRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission Disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ArvinMeritor, Inc., Troy, MI; Dayco Fluid Technologies SPA, Torino, Italy; Denso Corporation, Kariya City, Japan; Nippon Soken, Nishio City, Japan; Renault Car, Cedex, France; and Total France, Cedex, France have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SWRI intends to file additional written notification disclosing all changes in membership.

On April 6, 2004, SWRI: Clean Diesel IV filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 10, 2004 (69 FR 25923).

The last notification was filed with the Department on May 18, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 15, 2004 (69 FR 33417).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25082 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sporting Arms and Ammunition Manufacturers' Institute, Inc.

Notice is hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Sporting Arms and Ammunition Manufacturers' Institute, Inc. ("SAAMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Sporting Arms and Ammunition Manufacturers' Institute, Inc., Newtown, CT. The nature and scope of SAAMI's standards development activities are: To encourage and promote the standardization and simplification of sporting arms and ammunition in the interests of safety and interchangeability within the firearm industry.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25073 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Title Council of America

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative

Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Title Council of America ("TCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Title Council of America, Anderson, SC. The nature and scope of TCA's standards development activities are: Standard specifications for the installation of ceramic tile, for ceramic title installation materials, and for ceramic tile including tile, porcelain tile, glass tile, and special purpose tile.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25076 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wild Bird Feeding Industry

Notice is hereby given that, on September 23, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Wild Bird Feeding Industry ("WBFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Wild Bird Feeding Industry, Sioux Falls, SD. The nature and scope of WBFI's standards development activities are: Investigating and developing standards of identity and quality for products sold for wild birds. These products include feeders, houses, baths and accessories, and seed and other food.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–25084 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 21, 2004, and published in the **Federal Register** on June 3, 2004, (69 FR 31411), American Radiolabeled Chemicals, Inc., 101 Arc Drive, St. Louis, Missouri 63146, 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
Gamma hydroxybutyric acid (2010).	I
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Meperidine (9230)	II
Metazocine (9240)	II
Morphine (9300)	II
Oxymorphone (9652)	II

The company plans to manufacture in bulk, small quantities of the listed controlled substances as radiolabeled compounds.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of American Radiolabeled Chemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated American Radiolabeled Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The 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 in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 1, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–25103 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 28, 2004, Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance in Schedule II.

The company plans to manufacture a cocaine derivative to be used as an intermediate for the production of Dopascan Injection. Cocaine derivatives are a Schedule II controlled substance in the cocaine basic class.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

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: DEA **Federal Register** Representative Office of Liaison and Policy (ODLR) and must be filed no later than January 10, 2005.

Dated: November 1, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–25104 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–09–P

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 August 16,

2004, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Codeine (9050), a basic class of controlled substance in Schedule II.

The company plans to utilize codeine to produce small quantities of naturally occurring codeine impurities for use in quality assurance and internal testing of the finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

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 Liaison and Policy (ODLR) and must be filed no later than January 10, 2005.

Dated: November 1, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–25102 Filed 11–9–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Currently, Departmental Management is soliciting comments concerning the proposed Information Collection Request (ICR) for the Assessment of Compliance Assistance Activities Generic Clearance.

A copy of the ICR can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 10, 2005.

ADDRESSES: Send comments to Barbara Bingham, Office of the Assistant Secretary for Policy, 200 Constitution Avenue, NW., Room S–2312, Washington, DC 20210. Ms. Bingham can be reached on 202–693–5080 (this is not a toll-free number) or by e-mail at *bingham-barbara@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) proposes to assess and measure self-reported changes in behavior through surveys of workers, employers and other stakeholders. These surveys will provide feedback on compliance assistance documents and materials, onsite consultation visits, telephone and technical assistance, Web sites, partnerships and alliances, and compliance assistance seminars and workshops delivered by DOL across the country to the regulated community. This feedback will help DOL agencies improve the future quality and delivery of compliance assistance tools and services. This generic clearance allows agencies to gather information from both Federal and non-Federal users.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitted electronic submissions of response.

III. Current Actions

DOL agencies have conducted few surveys designed to assess changes in worker, employer and stakeholder behavior as a result-of the compliance assistance received. DOL proposes to seek approval of this collection of information for a three year period.

Type of Review: New collection of information.

Agency: Office of the Assistant Secretary for Policy, Office of Compliance Assistance.

Title: Information Collection Request for the Assessment of Compliance Assistance Activities Generic Clearance.

OMB Number: 1225–0NEW.

Affected Public: Individuals and households; business or other for-profit; not-for-profit institutions; farms; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 29,995.

Annual Responses: 9,998.

Average Time Per Response: Varies by survey/evaluation with an average of 13 minutes per survey.

Total Annual Burden Hours: 2,202.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance: $0.

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

Signed at Washington, DC this 4th day of November, 2004.

David Gray,

Acting Assistant Secretary, Office of the Assistant Secretary for Policy.

[FR Doc. 04–25048 Filed 11–9–04; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2004–17; (Exemption Application No. D–11223) et al.]

Grant of Individual Exemptions; Linda Ann Smith, M.D. Profit Sharing Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Linda Ann Smith, M.D. Profit Sharing Plan and Trust (the Plan) Located in Albuquerque, NM

[Prohibited Transaction Exemption 2004–17; (Exemption Application No. D–11223)]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed exchange of an unimproved tract of land located in Nathrop, Colorado (Lot 154), which is owned by the Plan and allocated to the individually-directed account (the Account) in the Plan of Linda Ann Smith, M.D., for one unimproved tract of land (Lot 85) located in San Pedro Creek Estates, New Mexico, which is owned jointly by Dr. Smith, and her spouse, Mr. Harold G. Field (the Applicants).

This exemption is subject to the following conditions:

(a) The exchange of Lot 154 by the Account for Lot 85 owned by the Applicants is a one-time transaction.

(b) The fair market value of Lot 154 and Lot 85 is determined by qualified, independent appraisers, who will update their appraisal reports at the time the exchange is consummated.

(c) For purposes of the exchange, Lot 85 has a fair market value that is more than the fair market value of Lot 154.

(d) The terms and conditions of the exchange are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(e) The exchange does not involve more than 25 percent of the Account's assets.

(f) Dr. Smith is the only participant in the Plan whose Account is affected by the exchange and she desires that the transaction be consummated.

(g) The Account does not pay any real estate fees or commissions in conjunction with the exchange.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 10, 2004 at 69 FR 54810.

FOR FURTHER INFORMATION CONTACT: Mr. Arjumand A. Ansari of the Department at (202) 693–8566. (This is not a toll-free number.)

Carpenters' Joint Training Fund of St. Louis (the Plan), Located in St. Louis, Missouri

[Prohibited Transaction Exemption No. 2004–18; (Application No. L–11181)]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to: (1) The purchase of a parcel of improved real property located at 8300 Valcour Avenue, St. Louis County, Missouri, (the Property) by the Plan from the Carpenters District Council of Greater St. Louis (the CDC), a party in interest to the Plan; (2) The guarantee (the Guarantee) by the CDC of a $6 million loan from an unrelated bank (the Bank Loan) for the benefit of the Plan; and (3) An unsecured loan for up to $1 million from the CDC to the Plan (the CDC Loan). This exemption is subject to the following conditions:

(a) The Plan pays the lesser of (1) $7,985,000 or (2) the fair market value of the Property at the time of the purchase of the Property;

(b) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the CDC or any other party in interest with respect to the Plan;

(c) The Plan will not pay any commissions or other expenses with respect to the transactions.

(d) An independent, qualified fiduciary (the I/F), after analyzing the relevant terms of the transactions, determines that the transactions are in the best interest of the Plan and its participants and beneficiaries;

(e) In determining the fair market value of the Property, the I/F obtains an appraisal from an independent, qualified appraiser and ensures that the appraisal is consistent with sound principles of valuation;

(f) The terms and conditions of the CDC Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's-length transaction with an unrelated party;

(g) The Bank Loan is repaid by the Plan solely with funds the Plan retains after paying all of its operational expenses;

(h) The I/F will ensure that the terms and conditions relating to the Guarantee are in the best interest of the Plan and its participants and beneficiaries;

(i) The CDC will waive any right to recover from the Plan in the event that the Bank enforces the Guarantee against the CDC;

(j) If at any time the Plan does not have sufficient funds to make a payment on the CDC Loan, after meeting operational expenses and payments on the Bank Loan, then payments on the CDC Loan will be suspended, without additional interest or penalty, until such funds are available; and

(k) The I/F will take whatever actions it deems necessary to protect the rights of the Plan with respect to the Property and the transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on July 20, 2004 at 69 FR 43450.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of November, 2004.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 04–25106 Filed 11–9–04; 8:45 am]

BILLING CODE 4510–29–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50630; File No. SR–CBOE–2004–62]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 9.3A Relating to Continuing Education for Registerd Persons

November 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 9.3A relating to Continuing Education for Registered Persons. The proposed rule change would eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program. Below is the text of the proposed rule change. Proposed new language is in *italics*. Deletions are in [brackets].

Chapter IX

Rule 9.3A. Continuing Education for Registered Persons

(a) Regulatory Element—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program beginning with the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date"*, shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[(1) Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)–(ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to Rule 9.8 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than 10 years as of the effective date of this rule and provided that such supervisory person has not been subject to any disciplinary action under subsection (a)(3)(i)–(ii) of this rule. In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i)–(ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(1) [(2)] Failure to complete—Unless otherwise determined by the Exchange, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

(2) [(3) Re-entry into program] Disciplinary Actions—Unless otherwise determined by the Exchange, a registered person will be required to [re-enter] *re-take* the Regulatory Element and satisfy all of its requirements in the event such person:

(i) Becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) Becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental

agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(ii) Is ordered as a sanction in a disciplinary action to [re-enter] *re-take* the [continuing education program] *Regulatory Element* by any securities governmental agency or securities self-regulatory organization.

[Re-entry into the program] *A re-taking of the Regulatory Element* shall commence with [initial] participation within one hundred twenty days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above. *The date that the disciplinary action becomes final will be deemed the person's new base date for purposes of this Rule.*

(b)–(c) Unchanged.

* * * Interpretations and Policies:

.01–.04 Unchanged.

[.05 the effective date of this rule, for purposes of determining whether a registered person is exempt from participation in the Regulatory Element is July 1, 1998.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange include statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose [5]

CBOE Rule 9.3A specifies the Continuing Education ("CE") requirement for registered persons subsequent to their initial qualification and registration with the CBOE. The requirements consist of a Regulatory Element and a Firm Element.[6] The Regulatory Element is a computer-based education program administered by National Association of Securities Dealers, Inc. ("NASD") to help ensure that registered persons are kept up to date on regulatory, compliance and sales practice matters in the industry.[7] Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second anniversary date and, thereafter, within 120 days after every third registration anniversary date.[8] There are three Regulatory Element programs: The S201 Supervisor Program for registered principals and supervisors; The S106 Series 6 Program for Series 6 registered persons; and the S101 General Program for Series 7 and all other registrations.

Approximately 135,000 registered persons currently are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action [9] in their CRD record fro the previous ten years ("grandfathered persons"). These also include those persons who had "graduated" from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when CBOE Rule 9.3A was amended and the graduation provision eliminated and did not have a significant disciplinary action in their CRD record for the previous ten years.[10]

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education ("Council") [11] discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons presently do not have the benefit of this material.

In addition, the Council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethnical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidelines from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and

[5] The CBOE requested that the Division of Market Regulation ("Division") staff make minor modifications to language in the purpose section. Telephone discussions between Jamie Galvan, Attorney, CBOE and Mia C. Zur, Attorney, Division, Commission (October 19 and 26, and November 2, 2004).

[6] The Firm Element of the CE Program applies to any person registered with a CBOE member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

[7] CBOE Rule 9.3A permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an option to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, CBOE Rule 9.3A requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

[8] This is the current Regulatory Element schedule, as amended in 1998.

[9] For purposes of CBOE Rule 9.3A, a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of $5,000 or more, or being subject to an order from a securities regulator to re-enter the Regulatory Element. *See* CBOE Rule 9.3A(a)(3).

[10] When CBOE Rule 9.3A was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

[11] As of the date of this rule filing, the Council consists of 17 individuals, six representing self-regulatory organizations ("SROs") (the American Stock Exchange LLC, CBOE, the Municipal Securities Rulemaking Board, the NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange) and 11 representing the industry. The Council was organized in 1995 to facilitate cooperative industry/regulatory coordination of the CE Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping to develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element, developing and updating information about the program for industry-wide dissemination, and maintaining the program on a revenue neutral basis while assuring adequate financial reserves.

are pursuing amendments to their respective rules.

CBOE will announce the effective date of the proposed rule change in a Regulatory Circular to be published no later than 30 days following the proposed rule becoming operative. The effective date will be (1) not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (Web CRD®) administered by the NASD, or (2) April 4, 2005, whichever date is the latest to occur.

Following the effective date of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a "base date" for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with CBOE Rule 9.3A or the date on which a formerly registered person re-qualifies for association with a CBOE member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Registered persons formerly exempt from the Regulatory Element requirement must satisfy this requirement that occurs on an anniversary on or after the effective date of the proposed rule change (*see* examples in the Table below).

Registered person	Initial registration date	First regulatory element requirement of a registered person formerly exempt from the regulatory element (assuming an effective date of April 4, 2005)
A	[12] 4/4/85	4/4/05
B	7/1/83	7/1/06
C	8/1/84	8/1/07
D	4/3/85	4/3/08

It is noted that a person's base date may be revised to be the effective date of a significant disciplinary action in accordance with proposed CBOE Rule 9.3A(2).[13] Proposed CBOE Rule 9.3A(2) has been amended to clarify that a person subject to a significant disciplinary action would be required to "re-take" rather than "re-enter" the Regulatory Element.[14] A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with a member or member organization.

2. Statutory Basis

CBOE believes that the proposed rule is consistent with the provisions of Section 6(b) of the Act, in general and furthers, the objectives of Section 6(b)(5) of the Act,[15] in particular, which requires, among other things, that CBOE's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and, in general, to protect investors and the public interest. CBOE believes that the proposed rule change is designed to accomplish these ends by ensuring that all registered persons are kept up to date on industry rules, regulations, and practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17] Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] This proposed rule change will not become operative until 30 days after the date of filing with the Commission. Furthermore, the Commission notes that CBOE designates the effective date of the proposed rule change to be the latest to occur of: (1) Not more than 30 days following the implementation of necessary changes to Web Central Registration Depository (Web CRD) administered by the NASD, or (2) April 4, 2005. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[12] A registered person with an initial registration date of April 4, 1985 will have a Regulatory Element anniversary date on April 4 of 1987, 1990, 1993, 1996, 1999, 2002 and 2005.

[13] CBOE Rule 9.3A(3) is proposed to be renumbered as CBOE Rule 9.3A(2).

[14] The SEC notes that this requirement would apply to all registered persons that are subject of a significant disciplinary action, and not only to currently exempt persons.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange had satisfied the pre-filing five-day notice requirement.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] *See* Section 19b(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–62 and should be submitted on or before December 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–25066 Filed 11–9–04; 8:45 am]

BILLING CODE 8010–01–M

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50628; File No. SR–CHX–2004–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating To Transfer of CHX Memberships

November 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 28, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The CHX filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A)(i) of the Act,[4] and Rule 19b–4(f)(1) thereunder,[5] as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change, which would add Interpretation and Policy .04 to CHX Article I, Rule 10, "Transfers of Memberships," would effectively prohibit the transfer of CHX memberships to certain newly approved lessors. The text of the proposed rule change appears below. Proposed new language is *italicized*.

* * * * *

ARTICLE I

Membership

Transfers of Memberships

Rule 10. No change.

Interpretations and Policies:

.01–.03 No change.

.04 *No approval of new approved lessors. Effective October 26, 2004, the Exchange will not approve the transfer of a membership to a person or firm who seeks to become an approved lessor, but who is not already the owner of a CHX membership, unless that person or firm qualifies as an accredited investor. This policy will end if and when the Exchange determines that it will not seek approval of the demutualization transaction.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 5, 2004, the Exchange's Board of Governors voted unanimously to present a demutualization plan to the Exchange's members for approval.[6] The proposed transaction involves the private offering of securities using the safe harbor provided by Rule 506 of Regulation D under the Securities Act of 1933.[7] Under Rule 506, an offering of securities is not a public offering if there are no more than, or if the issuer reasonably believes that there are no more than, 35 "purchasers" of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Commission, dated October 27, 2004 ("Amendment No. 1"). In Amendment No. 1, CHX revised the text of the proposed rule to indicate that the rule is effective as of October 26, 2004.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] As with other similar demutualization transactions previously approved by the Commission, the Exchange's proposed demutualization transaction contemplates a change in the Exchange's organizational structure. In this proposed demutualization transaction, the CHX will change from a not-for-profit, non-stock corporation owned by its members to a wholly-owned subsidiary of a holding company, CHX Holdings, Inc., which is to be organized as a for-profit, stock corporation owned by its stockholders. The members of CHX at the time of the proposed demutualization transaction will receive shares of common stock of the new holding company in exchange for their CHX memberships, and thus will become the stockholders of the new holding company. Members who are qualified to trade on the Exchange will receive trading permits that give them continued access to the Exchange's trading facilities.

[7] 17 CFR 230.506.

securities.[8] The calculation of the number of purchasers under Rule 506 excludes any person who qualifies as an "accredited investor."[9] The Exchange has received confirmation from members sufficient to allow the Exchange to believe that it will not be offering securities to more than the appropriate number of persons who are not accredited investors and therefore believes that its proposed transaction will qualify as a private offering under Rule 506. A CHX member vote on the demutualization plan is currently scheduled for mid-November of 2004.

Under the Exchange's existing rules, a person or firm can purchase a membership on the Exchange for the sole purpose of providing a financing mechanism for another person or entity that desires to become an Exchange member.[10] These persons, called "approved lessors," are not considered to be members of the Exchange for purposes of the Exchange's rules or under the federal securities laws.

To ensure that the Exchange's offering of securities can continue to qualify as a private, not a public, offering, the Exchange is proposing to prohibit any new approved lessor from purchasing a CHX membership unless that person or firm qualifies as an accredited investor. The Exchange believes that this proposal is appropriate because it permits the Exchange's proposed demutualization transaction to continue as a private offering under Rule 506, as approved by the Exchange's Board. Moreover, because the Exchange's proposed demutualization transaction includes rule changes that would end the approved lessor program completely by barring its members from transferring the right to trade on the Exchange, the Exchange believes that there is no real business reason for a person who is not currently an approved lessor to become an approved lessor for only a few weeks. Thus, the Exchange represents that the proposed limitation will impose at most a negligible restriction while preserving the ability of the Exchange to effectuate the demutualization quickly through a Regulation D private offering.

This prohibition would remain in effect until the effective date of the demutualization transaction (if it is approved by the Exchange's members and by the Commission). If, for some reason, the Exchange's members reject the demutualization proposal, the prohibition would terminate immediately.

[8] *Id.*

[9] 17 CFR 230.501(e).

[10] *See* CHX Article IA, Rule 1(a).

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(1) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[11] 15 U.S.C. 78(f)(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(1).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–35 and should be submitted on or before December 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3126 Filed 11–9–04; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50629; File No. SR–NASD–2004–166]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Modify the Other Securities Fee Schedule

November 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the Other Securities fee schedule in NASD Rule 4530.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

* * * * *

4530. Other Securities

(a) *Application Fee and* Entry Fee

(1) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq National Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay a non-refundable Application Fee of $1,000.

[(1)] *(2)* When an issuer submits an application for inclusion of any Other Security *or SEEDS* in [The] *the* Nasdaq National Market qualified for listing under Rule 4420(f) *or 4420(g)*, it shall pay an *Entry Fee* [fee ($1,000 of which is a non-refundable processing fee)] calculated *based* on total shares outstanding according to the following schedule:

Up to 1 million shares $ 5,000
1+ to 2 million shares $10,000
2+ to 3 million shares $15,000
3+ to 4 million shares $17,500
4+ to 5 million shares $20,000
5+ to 6 million shares $22,500
6+ to 7 million shares $25,000
7+ to 8 million shares $27,500
8+ to 9 million shares $30,000
9+ to 10 million shares $32,500
10+ to 15 million shares $37,500
Over 15 million shares $45,000

The applicable Entry Fee shall be reduced by any Entry Fees paid previously in connection with the initial inclusion during the current calendar year of any of the issuer's Other Securities and SEEDS in the Nasdaq National Market.

[(2)] *(3) For the sole purpose of determining the Entry Fee, total* [Total] shares outstanding means the aggregate of all classes of Other Securities *and SEEDS of the issuer* to be included in [The] *the* Nasdaq National Market *in the current calendar year* as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

[(3)] *(4)* The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the *Application Fee or Entry Fee* [entry fee] prescribed herein.

[(4)] *(5)* If the application is withdrawn or is not approved, the *Entry Fee* [entry fee (less the non-refundable processing fee)] shall be refunded.

(b) Annual Fee

(1) The issuer of Other Securities *or SEEDS* qualified under Rule 4420(f) *or 4420(g)* for listing on [The] *the* Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an [annual fee] *Annual Fee* calculated *based* on total shares outstanding according to the following schedule:

Up to [1] *5* million shares $ [6,500] *15,000*
[1+ to 2 million shares $ 7,000
2+ to 3 million shares $ 7,500
3+ to 4 million shares $ 8,000
4+ to 5 million shares $ 8,500]
5+ to [6] *10* million shares $ [9,000] *17,500*
[6+ to 7 million shares $ 9,500
7+ to 8 million shares $10,000
8+ to 9 million shares $10,500
9+ to 10 million shares $11,000]
10+ to [11] 25 million shares $[11,500] *20,000*
[11+ to 12 million shares $12,000
12+ to 13 million shares $12,500
13+ to 14 million shares $13,000
14+ to 15 million shares $13,500
15+ to 16 million shares $14,000
Over 16 million shares $14,500]
25+ to 50 million shares $22,500
Over 50 million shares $30,000

(2) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the [annual fee] *Annual Fee* prescribed herein.

(3) *For the sole purpose of determining the Annual Fee, total* [Total] shares outstanding means the aggregate of all classes of Other Securities *and SEEDS of the issuer included in the Nasdaq National Market*, as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change modifies the Other Securities fee schedule contained in NASD Rule 4530. The proposal establishes a new, separate, non-refundable application fee (in addition to the existing entry fee) for "other securities" and SEEDS, and raises the applicable annual fee levels. The proposal also clarifies how the appropriate fee "tier" is determined for an issuer in any given calendar year.

The new application fee and the increase in the annual fee will help Nasdaq recover the often-substantial costs associated with listing the various securities (most of which are known in the industry as "structured products") that will be subject to the revised fee schedule.[4] The review and listing approval process for many such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is marked to show changes to NASD Rule 4530 as currently reflected in the NASD Manual available at *http://www.nasd.com*. No other pending or approved rule filings would affect the text of this Rule.

[4] SEEDS are a type of structured product, and, as such, it is equitable that they be subject to the same fee schedule as the other structured products.

securities frequently involves extensive product-focused consultations between the Nasdaq staff and the staff of the Commission and, in many cases, product-specific rule change filings by Nasdaq with the Commission. As the value of such securities is usually linked to the value of other securities or indexes, Nasdaq examines (as part of the initial listing process) and monitors the activity in (on an on-going basis) such "linked" securities and indexes. Nasdaq believes that the new application fee and the revised annual fees will better reflect the actual level and cost of the resources that Nasdaq devotes to listing these securities and overseeing market activities directly or indirectly (*i.e.*, by virtue of linked securities or indexes) related to these securities and their issuers.

Nasdaq believes that the proposed fee levels are both reasonable in light of the associated costs and at the same time responsive to the need to remain competitive relative to other markets. In this regard, Nasdaq notes that the proposed fees will be similar to the existing applicable American Stock Exchange ("AMEX") fees.[5]

Nasdaq proposes to make all changes effective upon Commission approval, with the exception of the annual fee change, which will become effective on January 1, 2005.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] in general and with section 15A(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[5] *See* AMEX Company Guide §§ 140 and 141.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–166 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–166. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASD–2004–166 and should be submitted on or before December 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3123 Filed 11–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50626; File No. SR–NASD–2004–133]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to NASD Rule 9522 ("Initiation of Eligibility Proceeding; Member Regulation Consideration")

November 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 9522 ("Initiation of Eligibility Proceeding; Member Regulation Consideration"). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

9500. OTHER PROCEEDINGS

* * * * *

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(1) No change.

(e)(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application.

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve an application filed by a disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in subparagraph (e)(1)):

(A) through (C) No change.

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) No change.

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed[.]; *or*

(E) The disqualified person's functions are purely clerical and/or ministerial in nature.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Rule 9520 Series sets forth NASD's eligibility procedures under which persons subject to a statutory disqualification may become or remain associated with a member firm. NASD Rule 9522 specifies when Member Regulation may approve a matter[3] and when the National Adjudicatory Council ("NAC") must consider a matter. The purpose of the proposed rule change to NASD Rule 9522(e)(2) is to give Member Regulation the authority to approve the MC–400 Applications ("Applications") of statutorily disqualified persons who will be engaged solely in clerical and/or ministerial activities.

Rule 19h–1 under the Act,[4] which prescribes the form and content of, and establishes the mechanism by which the SEC reviews, proposals submitted by NASD (and other self-regulatory organizations) to allow persons subject to statutory disqualification to become or remain associated with member firms, exempts from the filing requirement persons who are statutorily disqualified but who perform only clerical or ministerial functions.[5] Currently, the NASD Rule 9520 Series requires the NAC (after a hearing and consideration by the Statutory Disqualification ("SD") Committee) to determine whether a statutorily disqualified person may associate with a member firm in a purely clerical and/or ministerial capacity.

NASD wishes to be able to handle these matters more expeditiously, while also retaining the necessary ability to conduct a thorough review to determine whether a disqualified person may enter or continue in the securities industry in a clerical and/or ministerial capacity. Therefore, under the proposed rule change, the sponsoring firm would continue to be required to file an Application on behalf of the disqualified individual seeking to engage in solely clerical and/or ministerial activities. Member Regulation would have the authority under amended NASD Rule 9522(e)(2) to approve the Application. In the event Member Regulation does not approve the Application, the sponsoring member would have the right to proceed under Rule 9524 (*i.e.*, to have the matter decided by the NAC after a hearing and consideration by the SD Committee).[6]

If Member Regulation determines that the Application should be approved, but with specific supervisory requirements, the parties would have the option of proceeding under NASD Rule 9523. NASD Rule 9523 provides that the Chairman of the Statutory Disqualification Committee ("Chairman"), acting on behalf of the NAC, may accept a letter indicating that the sponsoring firm and Member Regulation have consented to the imposition of an agreed-upon supervisory plan. The Chairman also has the option of rejecting the plan or referring the matter to the NAC. The plan is deemed final if it is accepted by the NAC or the Chairman. If the parties cannot agree on a supervisory plan, the sponsoring member may request NAC consideration of the matter under NASD Rule 9524.

Should the Commission approve this proposed rule change, NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(b)(8) of the Act,[8] which requires that NASD rules provide a fair procedure for the denial of membership to any person seeking membership therein. NASD believes that its proposed rule change is consistent with the provisions of the Act noted above in that it provides for a fair procedure for determining whether a statutorily disqualified person may participate in the securities industry in a clerical and/or ministerial capacity.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] Member Regulation does not have the authority to deny an Application or other written request for relief. *See* NASD Rule 9522(e) and NASD Rule 9523.

[4] 17 CFR 240.19h–1.

[5] Rule 19h–1(a)(2) under the Act specifies that notices must be filed with the Commission if, among other things, a disqualified person "* * * controls [the] member, is a general partner or officer (or person occupying a similar status or performing a similar function) of [the] member, is an employee who, on behalf of [the] member, is engaged in securities advertising, public relations, research, sales, trading, or training or supervision of other employees who engage or propose to engage in such activities, except clerical and ministerial persons engaged in such activities, or is an employee with access to funds, Securities or books and records, * * *"

[6] Member Regulation also retains the discretion to refer any matter to the NAC, rather than exercise its authority under NASD Rule 9522 to review an Application or other request for relief.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C.78o–3(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2004–133 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–133. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASD–2004–133 and should be submitted on or before December 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3124 Filed 11–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50636; File No. SR–NASD–2004–161]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Pilot Program Waiving Fees and Credits for Orders and Quotes Executed in the Nasdaq Opening Cross

November 4, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to waive, for a pilot period of three months, the Nasdaq Market Center execution fees and credits for those quotes and orders executed in the Nasdaq Opening Cross. The pilot program will commence when Nasdaq implements the Opening Cross.

The text of the proposed rule change is below. Proposed new language is in italics.[5]

* * * * *

Rule 7010. System Services

(a)–(h) No Change.

(i) Nasdaq Market Center order execution.

(1)–(3) No Change.

(4) Opening Cross

For a period of three months commencing on the date Nasdaq implements its Opening Cross (as described in Rule 4704(d)), members shall not be charged Nasdaq Market Center execution fees, or receive Nasdaq Market Center liquidity provider credits, for those quotes and orders executed in the Nasdaq Opening Cross.

(j)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved the Nasdaq Opening Cross, which is a new process for determining the Nasdaq Official Opening Price ("NOOP") for the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The proposed rule change is marked to show changes to Rule 7010(i) as currently reflected in the NASD Manual available at *http://www.nasd.com*. There are no other pending or recently approved rule filings that would affect the text of Rule 7010(i).

most liquid Nasdaq stocks.[6] The Nasdaq Opening Cross is designed to create a more robust opening[7] that allows for price discovery, and an execution that results in an accurate, tradable opening price. Nasdaq is seeking to establish a three-month pilot program, commencing with the launch of the Opening Cross, during which no Nasdaq Market Center execution charges will be charged, and no liquidity provider credits will be offered, for those quotes and orders executed in the Nasdaq market center as part of the Nasdaq Opening Cross.[8] The pilot program will enable Nasdaq to evaluate more accurately the effectiveness of the Opening Cross in establishing the NOOP by eliminating any pricing disincentives that could arise as a result of a price schedule not established on the basis of actual trading data. During the pilot program, Nasdaq staff will study the behavior and participation in the Opening Cross to determine the optimum pricing schedule.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] in general, and with section 15A(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the proposed pilot program is an equitable allocation of fees because the program will apply equally to all members whose quotes and orders are executed as part of the Nasdaq Opening Cross. Furthermore, Nasdaq believes that the program is reasonable because it will allow Nasdaq, for a limited period of time, to analyze participation in the process and use the results to create an optimum fee schedule based on actual trading data.

[6] *See* Securities Exchange Act Release No. 50405 (Sept. 16, 2004); 69 FR 57118 (Sept. 23, 2004) (SR–NASD–2004–071).

[7] Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Terri L. Evans, Special Counsel, Commission, on November 4, 2004 (replacing the word "close" with "opening").

[8] Nasdaq established a similar pilot fee waiver with respect to the Nasdaq Closing Cross. *See* Securities Exchange Act Release No. 49576 (April 16, 2004); 69 FR 22112 (April 23, 2004) (SR–NASD–2004–048).

[9] Nasdaq would consider extending the pilot if more information is needed at the end of the three-month period.

[10] 10 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–161 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–161. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASD–2004–161 and should be submitted on or before December 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3125 Filed 11–9–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(a)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4889]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the nineteen letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of

Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 2, 2004.

Peter J. Berry,

Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

September 8, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Germany to support the manufacture of PAC–3 (Patriot Advanced Capability) Missiles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 072–04

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 13, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Israel for the production of AN/APG–68(V)9 radar antenna LRU, transmitter LRU, antenna and transmitter subassemblies and test equipment for end-use in Israel, Greece, Singapore, Chile, Oman and Poland.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 077–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 14, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles for the manufacture in Japan of the AN/APG–63(V)1 Radar System Retrofit Kits for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 076–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 14, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 554 M4 carbines with 100 M–203 grenade launchers and supporting equipment to the Italian Ministry of Defense, Military Police.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 075–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 14, 2004

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Spain for the manufacture of M76 periscopes and components of the M86 Optronic Masts for the S–80 Submarines for end use by the Spanish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 074–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 14, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of technical data and defense services to Egypt for the manufacture, assembly and test training for assembly of the AN/VVS–2(V)4, AN/VVS–1924 and AN/VVS YPR Night Driver's Viewers for the Egyptian Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 070–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 14, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Canada of technical data and defense services necessary for the manufacture in Canada of Exhaust Frame Assemblies and Front Frame Assembly for F404 and F414 Aircraft Engines for end-use in U.S. aircraft. This is an increase in scope and continuation of an on-going contract signed between the parties in 1991.

The United States Government is prepared to license the export of this manufacturing know-how having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 058–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 14, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Germany to support the manufacturing of solid polymer electrolyte fuel cell batteries for use in U212 and U214 diesel submarines.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 055–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 15, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of twelve modified S–92A helicopters with related spare parts, to DHC Helicopter Corporation, Canada to perform offshore oil operations, civil search and rescue, and other civil missions in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 073–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 16, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Australia for the refurbishment and upgrade of mission systems equipment on 18 P–3C Orion aircraft owned by the Royal Australian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 069–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 16, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Germany of technical data, defense services and hardware for the manufacture of components for the Patriot Advanced Capability (PAC–3) Missile for use in the U.S. and Foreign Military Sales (FMS) projects.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 061–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 16, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to India of sixteen F404-GE-IN20 aircraft engines, technical data and defense services necessary for operation, organizational and I–3 maintenance, and to refurbish one of the eleven engines notified under DTC 19–87 for the Light Combat Aircraft of the Indian Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 057–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 24, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense

articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the United Kingdom and Italy for the manufacture, production, maintenance, modification and integration of 2,303 Paveway IV Weapon System on aircraft in the inventory of the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 047–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed lease of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the ten-year lease of fourteen (14) Gripen Aircraft containing U.S.-origin content and spare parts, ground support equipment and integrated logistics support, from Sweden to the Government of the Czech Republic.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 078–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 6, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to France, Russia, Spain, Sweden and Kazakhstan for the launch of the Galaxy XIV commercial satellite to be owned and operated by a U.S. company.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC: 079–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 6, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data, assistance and defense articles to Israel for the sale of the MATBAT Phase II combat simulator for the Israeli Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 049–04A.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 7, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data, assistance and defense articles to the United Kingdom and France for the integration and sale of CTS800–4F engines into the FutureLynx Helicopter for the UK Ministry of Defence. Sublicensees may include foreign nationals from Belgium, Canada, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey, Australia and Ireland. Testing of the engines will be performed in Sweden, and Morocco.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 042–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 12, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of revolvers and pistols (calibers .17, .22, .32, .38, .357, .40, .41, .44, .45, .50, 9mm and .10mm) for export to Belgium for distribution to governments and private entities in the following sales territories: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Luxembourg, Netherlands, Norway, Portugal, Poland, Spain, Sweden, Switzerland and United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 080–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 15, 2004.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and controlled hardware to support continued cooperation

in Japan's Galaxy Express space launch vehicle program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 087–04.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dated: November 4, 2004.

Peter J. Berry,

Director, Office of Defense Trade Controls Licensing, Department of State.

[FR Doc. 04–25107 Filed 11–9–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34601]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line between BNSF milepost 0.0 (Tower 55) and BNSF milepost 4.8 (New Connection) near Fort Worth, TX, a distance of approximately 4.8 miles.

The transaction was scheduled to be consummated on October 29, 2004.

The purpose of the trackage rights is to facilitate directional running by UP and BNSF in the Fort Worth area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34601, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: November 3, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–24901 Filed 11–9–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub–No. 55X)]

Soo Line Railroad Company—Abandonment Exemption—in Milwaukee County, WI

On October 21, 2004, Soo Line Railroad Company (Soo Line) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 5-mile line of railroad known as the West Allis Line, extending from milepost 88.2 +/– near the State Highway 41 crossing in Milwaukee to milepost 93.2 +/– near North 123rd Street in Wauwatosa, in Milwaukee County, WI. The line traverses United States Postal Service Zip Codes 53215, 53295, 53214, and 53226.

The line does not contain federally granted rights-of-way. Any documentation in Soo Line's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 8, 2005.

Any offer of financial assistance (OFA) will be due no later than 10 days after service of a decision granting the petition for exemption. *See* 49 CFR 1152.27(b)(2). Each OFA must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 30, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–57 (Sub-No. 55X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Annie Littlefield, 150 South 5th Street, Suite 2300, Minneapolis, MN 55402. Replies to the Soo Line petition are due on or before November 30, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 3, 2004.

By the Board, David M. Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–25053 Filed 11–9–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 2, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 10, 2004 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0044.
Form Number: TTB F 5110.34.
Type of Review: Extension.
Title: Notice of Change in Status of Plant.
Description: TTB F 5110.34 is necessary to show the use of the distilled spirits plan (DSP) premises for other activities or by alternating proprietors. It describes proprietor's use of plant premises and other information show that the change in plant status is in community with law and regulations. It also shows what bond covers the activities of the DSP at a given time.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.
OMB Number: 1513–0050.
Form Number: TTB F 5110.50.
Type of Review: Extension.
Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).
Description: TTB Form 5110.50 is the bond to secure payment of excise taxes on distilled spirits shipped from Puerto Rico to the U.S. on deferral of the tax. The form identifies the principal, the surety, purpose of bond, and allocation of the penal sum among the principal's locations.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10 hours.
Clearance Officer: William H. Foster, (202) 927–8210, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 04–25049 Filed 11–9–04; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 2, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 10, 2004 to be assured of consideration.

Internal Revenue Service (IRS)
OMB Number: 1545–1631.
Regulation Project Number: REG–209619–93 NPRM.
Type of Review: Extension.
Title: Escrow Funds and Other Similar Funds.
Description: Section 468B(g) requires that income earned on escrow accounts, settlement funds, and similar funds be subject to current taxation. This section authorizes the Secretary to issue regulations providing for the current taxation of these accounts and funds as grantor trusts or otherwise. The proposed regulations would amend the final regulations for qualified settlement funds (QFSs) and would provide new rules for qualified escrows and qualified trusts used in deferred section 1031 exchanges; pre-closing escrows; contingent at-closing escrows; and disputed ownership funds.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, local or tribal government.
Estimated Number of Respondents: 9,300.
Estimated Burden Hours Respondent: 30 minutes.
Frequency of response: On occasion.
Estimated Total Reporting Burden: 4,650 hours.
OMB Number: 1545–1889.
Notice Number: Notice 2004–59.
Type of Review: Extension.
Title: Plan Amendments Following Election of Alternative Deficit Reduction Contribution.
Description: This notice sets forth answers to certain questions raised by the public when there is an amendment to an election to take advantage of the alternative deficit reduction contribution described in Pub. L. 108–218. The notice requires of what are designated as restricted amendments.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 100.
Estimated Burden Hours Respondent: 4 hours.
Frequency of response: On occasion.
Estimated Total Reporting Burden: 400 hours.
Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 04–25050 Filed 11–9–04; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) Inviting Applications for the FY 2005 Funding Round of the Financial Assistance Component of the Community Development Financial Institutions Program

Announcement Type: Initial announcement of funding opportunity.
Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

DATES: Applications for the FY 2005 funding round must be received by 5 p.m. ET on February 24, 2005. All applications submitted must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOFA. Applications received after 5 p.m. ET on the applicable deadline will be rejected and returned to the sender.

Executive Summary: This NOFA is issued in connection with the FY 2005 funding round of the Financial Assistance (FA) Component of the Community Development Financial

Institutions (CDFI) Program. Through the FA Component, the Community Development Financial Institutions Fund (the Fund) provides FA awards and technical assistance (TA) grants to CDFIs that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of capital within their respective Target Markets for community development purposes. Through this NOFA, the Fund makes funding available to Applicants that meet the requirements of either of two categories: (i) Category I/Small and Emerging CDFI Assistance (SECA), and (ii) Category II/Core & Sustainable CDFI Assistance (Core).

I. Funding Opportunity Description

A. Through this NOFA, the Fund intends to target its resources and provide: (i) FA awards to CDFIs that will use award proceeds to serve their respective Target Markets and (ii) TA grants to build Awardee capacity to serve Target Market(s).

B. *CDFI Program Regulations/Interim Rule:* The regulations governing the CDFI Program can be found at 12 CFR Part 1805 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the CDFI Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the application related to this NOFA. Each capitalized term in this NOFA is more fully defined in the Interim Rule or the application.

II. Award Information

A. *Award Information:* Subject to funding availability, the Fund expects that it may award approximately $22 million in appropriated funds through this NOFA, of which approximately $2 million in appropriated funds may be awarded to Category I/SECA Applicants. The Fund reserves the right to award in excess of $22 million in appropriated funds (and/or more or less than $2 million to Category I/SECA applicants) under this NOFA, provided that the funds are available and the Fund deems it appropriate. Through this NOFA, the Fund anticipates making awards: (i) up to and including $300,000 per FA award for Category I/SECA CDFIs; and (ii) up to and including $2,000,000 per award for Category II/Core CDFIs. The Fund, in its sole discretion, reserves the right to award amounts in excess of or less than the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

B. *Types of Awards:* An Applicant may submit an application either for a FA award only, or for a FA award and a TA grant, under this NOFA. While the FA Component offers TA grants in conjunction with FA awards, entities seeking TA grants only should apply for funds through the TA Component of the CDFI Program.

1. *FA Awards:* FA awards may be provided by the Fund through equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant.

2. *TA Grants:* TA awards are in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which are requested by an Applicant. The Fund reserves the right, in its sole discretion, to provide a TA grant for specified purposes, even if the Applicant has not requested a TA grant, and/or to provide a FA award on the condition that the Applicant agrees to use a TA grant for specified purposes. Applicants for TA grants through this NOFA are required to provide information in the application regarding the expected cost, timing and provider of the TA, and a narrative description of how the TA will enhance their capacity to provide greater community development impact. Capacity enhancements may address a range of activities including, but not limited to, improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, and tools that allow the Applicant to assess the impact of its activities in its community.

Eligible TA grant uses include, but are not limited to, the following: (i) acquiring consulting services; (ii) paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses through this NOFA; (iii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; and (iv) acquiring training for staff or management.

The Fund will not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses. The Fund will consider requests for use of TA grant funds to pay for staff salary only when the Applicant demonstrates, to the Fund's satisfaction, that: (i) the staff salary relates directly to building the Applicant's capacity to serve its Target Market; (ii) the proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the Applicant's capacity to achieve its objectives as set forth in its Comprehensive Business Plan; (iii) the proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and (iv) the staff person assigned to the proposed task has the competence to successfully complete the activity.

C. *Notice of Award; Assistance Agreement:* Each Awardee under this NOFA must sign a Notice of Award (for further information, *see* Section VI.A, below) and an Assistance Agreement (see Section VI.B, below) prior to disbursement by the Fund of award proceeds. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award.

III. Eligibility Information

A. Eligible Applicants

The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *Applicant Categories:* All Applicants for FA Component awards must meet the criteria for one of the following two categories of CDFIs:

Applicant category	Criteria	What can it apply for?
Category I/small and/or Emerging CDFA Assistance (SECA).	A Category I/SECA Applicant is a CDFI that:	A Category I/SECA Applicant may request up to and including $300,000 in FA funds, plus any amount of TA funds otherwise allowed under NOFA.
	Has total assets as of December 31, 2004 as follows:. •Insured Depository Institutions and Depository Institution Holding Companies: up to $100 million. •Insured Credit Unions: up to $10 million. •Venture capital funds: up to $10 million. • Other CDFIs: up to $5 million OR. Began operations on or after February 24, 2000 AND. Prior to the application deadline under this NOFA, has not been selected to receive an excess of $300,000 in FA award(s) in the aggregate from the CDFI Program or Native Initiatives Funding Programs.	
Category II/core and sustainable CDF assistance (Core).	A Category II/Core Applicant is a CDFI that meets all other eligibility requirements described in this NOFA.	A Category II/Core Applicant may request up to and including $2 million in FA funds only or a combination of FA and TA funds.

Please Note: any Applicant, regardless of size, years in operation, or prior Fund awards, that requests FA funding in excess of $300,000 is classified as a Category II/Core Applicant.

For the purposes of this NOFA, the term "began operations" is defined as the month and year in which the Applicant first incurred operating expenses of any type. Also, for purposes of this NOFA, the term "Native Initiatives Funding Programs" refers to the following programs administered by the Fund: the Native American CDFI Technical Assistance (NACTA) Component of the CDFI Program, the Native American CDFI Development (NACD) Program, the Native American Technical Assistance (NATA) Component of the CDFI Program, and the Native American CDFI Assistance (NACA) Program.

The Fund will evaluate, rank and make awards to Category I/SECA Applicants separately from Category II/Core Applicants.

2. *CDFI Certification:* For purposes of this NOFA, eligible Applicants include:

(a) Any certified CDFI whose certification has not expired and/or that has not been notified by the Fund that its certification has been terminated. Each such Applicant must submit a "Certification of Material Change Form" to the Fund not later than January 14, 2005, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov*. Failure to timely submit said form may result in the Fund deeming the funding application fatally incomplete and rejecting the funding application without further review. **Please Note:** the Fund provided a number of CDFIs with certifications expiring in 2003 through 2005 with written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement; or

(b) Any Applicant from which the Fund receives a complete CDFI certification application no later than January 14, 2005, evidencing that the Applicant can be certified as a CDFI. Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov*. Applications for certification must be submitted as instructed in the application form.

3. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

(a) *Non-certified Applicants.* Any entity that has received a Notice of Award from the Fund for a prior funding round of the CDFI Program or the Native Initiatives Funding Programs, but that has not submitted a CDFI certification application nor been certified as a CDFI, is not eligible to receive funding under this NOFA (*see* Section III.A.2, above).

(b) *$5 Million Funding Cap.* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the period extends back three years from the date that the Fund signs a Notice of Award issued to an Awardee under this NOFA.

(c) *Failure to Meet Reporting Requirements.* The Fund will not consider an application submitted by an Applicant if that Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in any previously executed assistance, allocation or award agreement(s) with the Fund, as of the application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(d) *Pending Resolution of Noncompliance.* If (i) an Applicant is a prior Awardee or allocatee under any Fund program and has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, then the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the instance of noncompliance. Further, if (i) another entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee and such entity has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its

previous assistance award or allocation agreement, then the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the instance of noncompliance.

(e) *Default Status.* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, award or allocation agreement(s) and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the application deadline, (i) the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and that has been determined by the Fund to be in default of a previously executed assistance award or allocation agreement(s), and (ii) the Fund has provided written notification of such determination to the defaulting entity.

(f) *Termination in Default.* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, within the 12-month period prior to the application deadline of this NOFA, (i) the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of the assistance, award or allocation agreement, and (ii) the Fund has provided written notification of such determination to the defaulting entity.

(g) *Undisbursed Balances.* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA. In the case where another entity Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliates when calculating the amount of undisbursed funds. For the purposes of this section, "undisbursed funds" is defined as (i) in the case of prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) for which a BEA award agreement has been fully executed that remains undisbursed more than three (3) years after the end of the calendar year in which the Fund signed an award agreement with the BEA awardee, and (ii) in the case of prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) for which an Assistance Agreement has been fully executed that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an Assistance Agreement with the Awardee. "Undisbursed funds" does not include (i) tax credit allocation authority allocated through the New Markets Tax Credit Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee as of the application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; and (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the application deadline of this NOFA.

(h) *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) comply with requirements specified in assistance, award and/or allocation agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of said prior award(s). All outstanding reports, compliance or disbursement questions should be directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 22, 2005 (2 business days before the application deadline). The Fund will not respond to Applicants' reporting, compliance or disbursement phone calls or e-mail inquiries that are received after 5 p.m. on February 22, 2005, until after the funding application deadline of February 24, 2005.

(i) *Entities that submit applications together with Affiliates; applications from common enterprises:* As part of the award application review process, the Fund considers whether Applicants are Affiliates, as such term is defined in the Interim Rule. If an Applicant and its Affiliates wish to submit award applications, they must do so collectively, in one application; an Applicant and its Affiliates may not submit separate award applications. If Affiliated entities submit multiple applications, the Fund reserves the right either to reject all such applications received or to select a single application as the only one that will be considered for an award. For purposes of this NOFA, in addition to assessing whether Applicants meet the definition of the term "Affiliate" found in the Interim Rule, the Fund will consider: (i) whether the activities described in applications submitted by separate entities are, or will be, operated or managed as a common enterprise that, in fact or effect, could be viewed as a single entity; and (ii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related that, in fact or effect, they could be viewed as substantially identical applications. In such cases, the Fund reserves the right either to reject all applications received from all such

entities or to select a single application as the only one that will be considered for an award.

4. *Limitation on FA Awards:* An Applicant may receive only one FA award through either the FA Component or the Native American CDFI Assistance (NACA) Program in the same funding year. An Applicant may apply under both the FA Component and the NACA Program, but will not be selected for funding under both. A FA Component Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) a tax credit allocation through the New Markets Tax Credit (NMTC) Program, but only to the extent that the activities approved for FA Component awards are different from those activities for which the Applicant receives a NMTC Program allocation; (ii) an award through the BEA Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102); and (iii) an award through the TA Component of the CDFI Program or the Native Initiatives Funding Programs, but only to the extent that the activities approved for a FA award are different from those for which the Applicant receives a TA or a Native Initiatives Funding Program award.

5. *Other Targeted Populations:* Other Targeted Populations are defined as identifiable groups of individuals in the Applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in other Pacific Islands, lack adequate access to loans, Equity Investments or Financial Services. An Applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services. Additionally, the Fund recognizes that there may be other such groups for which there is strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. Such groups may be identified, and evidence of such lack of access may be provided, in the Market Need section of the application associated with this NOFA, and the application for CDFI certification (if not identified in the Target Market of a currently certified CDFI).

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented:

(a) American Indian, Native American or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: A person having origins in any of the black racial groups of Africa (terms such as "Haitian" or "Negro" can be used in addition to "Black or African American");

(c) Hispanic or Latino: A person of Cuban, Mexican, or Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term "Spanish origin" can be used in addition to "Hispanic or Latino"); and

(d) Native Hawaiian: A person having origins in any of the original peoples of Hawaii; and

(e) Other Pacific Islander: A person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

For further detail, please visit the Fund's Web site at *http://www.cdfifund.gov*, under Certification/Supplemental Information.

B. Matching Funds

1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant seeks an FA grant from the Fund, the Applicant must obtain matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the CDFI Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the CDFI Program, the Fund will deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of CDFI Program funds or other Federal funds. For the purposes of this NOFA, BEA Program awards are not deemed to be Federal funds and are eligible as matching funds.

2. *Matching Funds Requirements Per Applicant Category:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for an FA award any Applicant that does not demonstrate any matching funds committed or in-hand as of the application deadline under this NOFA. Specifically, FA Applicants must meet the following matching funds requirements:

(a) *Category I/SECA Applicants:* The Fund expects Category I/SECA Applicants to demonstrate eligible matching funds equal to no less than 30 percent of the amount of the FA award requested in-hand or firmly committed as of the application deadline. Matching funds in-hand (received) or firm commitments for matching funds made, on or after January 1, 2003, and on or before April 30, 2006, will be considered when determining matching funds eligibility. The Fund reserves the right to rescind all or a portion of an FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand the required matching funds by April 30, 2006 (with required documentation of such receipt received by the Fund not later than May 12, 2006, or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by April 30, 2006.

(b) *Category II/Core Applicants:* The Fund expects that FA award amounts will not exceed 100 percent of eligible matching funds demonstrated in the application as in-hand or firmly committed as of the application deadline. Matching funds in-hand (received) or firm commitments for matching funds made on or after January 1, 2003, and on or before April 30, 2006, will be considered when determining matching funds eligibility. The Fund reserves the right to rescind all or a portion of an FA award and re-

allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand the required matching funds by April 30, 2006 (with required documentation of such receipt received by the Fund not later than May 12, 2006), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate.

3. *Matching Funds Terms Defined.* For purposes of this NOFA, "matching funds in-hand" means that the Applicant has actually received the matching funds and has documentation (such as a copy of a check) to evidence such receipt; "firm commitment for matching funds" means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds have been committed to be disbursed to the Applicant and the Applicant has documentation (such as a copy of a loan agreement, promissory note or grant agreement) to evidence such firm commitment. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.* and guidance materials on the Fund's Web site for more information on eligible matching funds.

4. *Special Rule for Insured Credit Unions.* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for an FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by April 30, 2006, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report.

IV. Application and Submission Information

A. Form of Application Submission

Applicants may submit applications under this NOFA either (i) partially electronically (via an Internet-based application) and partially in paper form or (ii) entirely in paper form. Applications sent by facsimile will not be accepted. Detailed application content requirements are found in the application related to this NOFA which may be found at the Fund's Web site, *http://www.cdfifund.gov.* In order to expedite application review, the Fund requires advance notification for applications submitted entirely in paper form ((ii), above). If an applicant is unable to submit a partially electronic and partially paper application, it must submit to the Fund a request for a complete paper application using the FA Component Paper Application Notification Form; the request must be received by the Fund no later than 5 p.m. ET on February 11, 2005. The Paper Application Notification Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by e-mail to *paper_request@cdfi.treas.gov* or by facsimile to (202) 622–7754. The completed Paper Application Notification Form should be directed to the Fund's Chief Information Officer and must be sent by facsimile to (202) 622–7754.

B. Paper Applications

The Fund will send paper application materials to Applicants that are unable to download them from the Web site. To have application materials sent to you, contact the Fund by telephone at (202) 622–6355; by e-mail at *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. These are not toll free numbers.

C. Application Content Requirements

Detailed application content requirements are found in the FY 2005 application and guidance. Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. Incomplete applications will be rejected and returned to the sender.

D. MyCDFIFund Accounts

All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. Applicants must be registered as both a User and an Organization in myCDFIFund as of the application deadline in order to be considered to have submitted a complete application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the "Frequently Asked Questions" link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

E. Application Submission Dates and Times; Addresses

Applicants must submit all materials described in and required by the application by the applicable deadline. Applicants will not be afforded an opportunity to provide any missing materials or documentation after the deadline.

1. *Electronic Submissions:* Electronic submission of certain parts of the application (as described in the application) must be received by the Fund via the Applicant's myCDFIFund account and in accordance with the instructions provided on the Fund's Web site, by 5 p.m. ET on February 24, 2005. In addition, the required paper portions of the application (including the original signature page, a DUNS number, a letter or other documentation from the Internal Revenue Service confirming the Applicant's EIN, and all other required paper portions) must be received at the address set forth below by 5 p.m. ET on February 24, 2005. Paper portions of the application must be sent to: CDFI Fund Grants Management and Compliance Manager, FA Component, Bureau of Public Debt, 200 Third Street, Room 10, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–5450. Paper portions received in the Fund's offices will be rejected and returned to the sender. Paper portions must be submitted in the format and number of copies specified in the application instructions.

2. *Paper submissions:* A complete paper application must be received at the address set forth below by 5 p.m. ET on February 24, 2005, and must include an original signature page (which includes a DUNS number), a letter or other documentation from the Internal Revenue Service confirming the Applicant's EIN, and all other required paper attachments. Paper applications must be submitted in the format and with the number of copies specified in the application instructions. Paper applications must be sent to: CDFI Fund Grants Management and Compliance Manager, FA Component, Bureau of Public Debt, 200 Third Street, Room 10, Parkersburg, WV 26101. The telephone

number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–5450. Paper applications received in the Fund's offices will be rejected and returned to the sender.

1. *Late Delivery:* The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

D. Intergovernmental Review

Not applicable.

E. Funding Restriction

For allowable uses of FA award proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. Criteria

The Fund will evaluate each application using numeric scores with respect to the following three sections:

1. *Market Need and Community Development Performance Section,* including an evaluation of Market Need, Product Design and Implementation Strategy, and Community Development Performance/Impact:

(a) Market Need: including: (i) The Applicant's understanding of its market and its current and prospective customers; (ii) the extent of economic distress within the designated Investment Area(s), including economic distress caused by severe natural disasters in an Investment Area(s) that has been declared to be a Major Disaster area by the Federal Emergency Management Agency (*see http://www.fema.gov*) or an equivalent State or local agency, or the extent of need within the designated Targeted Population(s); (iii) the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market; (iv) the extent of demand within the Target Market for the Applicant's products and services; and (v) the Applicant's business strategy for addressing demand through its Equity Investments, loans, Development Services, and Financial Services. The Fund, in its sole discretion, may reduce the score and/or amount of funding of an Applicant that serves a Target Market that is well served by one or more other CDFIs that have received awards from the Fund if the Applicant, in the Fund's determination, does not adequately demonstrate a distinct market niche not served by other local CDFIs.

(i) *Priority points for Hot Zones:* The Fund will award priority points in the Market Need subsection as follows:

If the Applicant projects that the following percentage of its activities will be in one or more Hot Zones	Then it will receive the following percentage of priority points
75 percent or more	100 percent.
50 percent to less than 75 percent	75 percent.
25 percent to less than 50 percent	50 percent.
10 percent to less than 25 percent	25 percent.

For purposes of this NOFA, Hot Zones are subsets of Investment Areas that are identified and further described (along with the Fund's methodology for Hot Zone designation) at the Fund's Web site at *http://www.cdfifund.gov.*

(ii) *Priority points for severe economic distress and unmet need in non-Metropolitan markets:* The Fund will award priority points in the Market Need subsection to an Applicant that proposes to deploy a substantial majority of the requested FA award in one or more non-Metropolitan markets in which it demonstrates quantitative and/or qualitative evidence of severe economic distress and unmet need for Financial Products and Financial Services. The Priority Points will be allocated as follows:

If the Applicant projects that the following percentage of its activities will be in one or markets meeting the criteria in this sub-section	Then it will receive the following percentage of priority points
75 percent or more	100 percent.
50 percent to less than 75 percent	75 percent.
25 percent to less than 50 percent	50 percent.
10 percent to less than 25 percent	25 percent.

(b) Product Design and Implementation Strategy: including: (i) An assessment of the Applicant's products and services, marketing and outreach efforts, and delivery strategy (including the Applicant's track record in community development and serving the Target Market); (ii) the extent to which the Applicant will provide products that meet key community development needs; and (iii) the extent, quality and nature of coordination with other Financial Service providers, government agencies, and other key community development participants.

(c) Community Development Performance/Impact: including: (i) The Applicant's track record and the likelihood of its projections for community development impact, including the extent to which the Applicant will concentrate its activities on serving its Target Market, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market; (ii) likely effectiveness of the proposed use of Fund dollars, including the following: (A) an evaluation of the Applicant's effective use of prior Fund awards; (B) the Applicant's need for the requested FA award to achieve the activities proposed in its application; and (C) the impact of the Applicant's projected activities; and (iii) the Applicant's track record and projected level of deployment of resources in the form of Financial Products.

(d) Additional considerations: (i) in the case of an Applicant that has previously received funding from the Fund through the BEA Program, CDFI Program, the NACD Program, the NACTA Program or the NACA Program, the Fund will consider the extent and

effectiveness to which the Applicant has used such prior assistance from the Fund and the community development impact that will be created with new Fund assistance over and above benefits created by prior Fund assistance. (ii) the Fund will take into consideration the Community Reinvestment Act (CRA) rating of any Applicant that is an Insured Depository Institution or Depository Institution Holding Company. The Fund will not approve a FA award to any Applicant that does not currently have at least a "Satisfactory" CRA rating.

2. *Management and Underwriting Section,* including an evaluation of:

(a) *Portfolio quality:* the Applicant's underwriting and portfolio quality;

(b) *Management controls:* risk mitigation strategies and financial management; and

(c) *Management team:* The capacity, skills and experience of the Applicant's management team as appropriate to deliver the proposed products and services and manage compliance with the Fund's reporting requirements. An Applicant's performance in reporting on prior awards with the Fund will be considered in evaluating management.

3. *Financial Health and Viability Section,* including an evaluation of:

(a) *Financial track record:* The Applicant's liquidity and other elements of financial strength, including earnings and capital adequacy;

(b) *Financial projections:* The Applicant's projected financial health, including its ability to raise operating support from sources other than the Fund, and its capitalization strategy; and

(c) *Safety and Soundness:* The Fund will not approve a FA award to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a "3" or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2005 or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested a FA award and the obligations of an Assistance Agreement related to such a FA award.

B. Review and Selection Process

All applications will be reviewed for eligibility and completeness. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected as incomplete and returned to the sender. The application of an Applicant that does not meet the eligibility requirements will be rejected.

If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each application will be reviewed and scored by multiple readers. Readers may include Fund staff and other experts in community development finance. As part of the review process, the Fund may contact the Applicant by telephone or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

Category I/SECA and Category II/Core Applicants will be ranked separately.

(i) Under Category I/SECA, the Market Need and Community Development Performance section will account for 50 percent of the available points while the Management and Underwriting section and the Financial Health and Viability section will each account for 25 percent of the available points. Category I/SECA Applicants will be ranked based on the total scores of all three sections added together.

(ii) Category II/Core Applicants must receive a score in both the Management and Underwriting Section and the Financial Health and Viability Section that is equal to 50 percent of the available points in each of those sections to be considered for funding. For Category II/Core Applicants that exceed this threshold, the Fund will use the Market Need and Community Development Performance scores to rank Applicants for selection for funding.

For all applicants, the Fund will award funding in the order of the ranking.

The Fund will consider the institutional and geographic diversity of Applicants in making its funding decisions.

In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in calendar year 2004 (meaning the last fiscal year end on which the Awardee reported was in calendar year 2004), in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2003 and 2004); and (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable). Additionally, the Fund may take into account performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan. All outstanding reports or compliance questions should be directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov;* by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 22, 2005. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on February 22, 2005 until after the funding application deadline of February 24, 2005.

The Fund will make a final funding determination based on the Applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of Insured CDFIs, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity).

Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (*see* Notice of Award section, below) or written declination if not selected for an award. All Applicants that are not selected for awards based on reasons other than completeness or eligibility issues will be provided a written debriefing on the strengths and weaknesses of their applications. This feedback will be provided in a format and within a

timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by e-mail using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site.

There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. Notice of Award

The Fund will signify its selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Applicant or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award or allocation agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds, until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, award or allocation agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If (i) an Applicant is a prior Fund Awardee or allocatee under any Fund program and has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination regarding whether or not the entity is in default of its previous assistance, award of allocation agreement, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if (i) another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund programand such entity has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds pending full resolution, in the sole determination of the Fund, of the noncompliance. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that an Applicant that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, award or allocation agreement(s), and (ii) has provided written notification of such determination to the Applicant, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if, at any time prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that another entity which Controls the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program, and is in default of a previously executed assistance, award or allocation agreement(s) and (ii) has provided written notification of such determination to the defaulting entity, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If, within the 12-month period prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that an Applicant with a prior award or allocation has been terminated in default of such prior agreement and (ii) has provided written notification of such determination to

such organization, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or delay making a disbursement of award proceeds under this NOFA. Further, if, within the 12-month period prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that another entity which Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program, whose award or allocation terminated in default of such prior agreement(s), and (ii) has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds.

B. Assistance Agreement

Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund prior to disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. Assistance Agreements under this NOFA will generally have three-year performance periods.

The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. Reporting

1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report; (ii) Institution Level Report; (iii) Transaction Level Report; (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report; (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CDFI Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's Web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives a FA award must establish a separate bank account for the FA funds and provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for that separate bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through February 22, 2005. The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on February 22, 2005, until after the funding application deadline of February 24, 2005. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

A. Information Technology Support

Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. Programmatic Support

If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program Operations Manager by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Administrative Support

If you have any questions regarding the administrative requirements of this

NOFA, including questions regarding submission requirements, contact the Fund's Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. Legal Counsel Support

If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled "How to Request a Legal Review," found on the Fund's Web site at *http://www.cdfifund.gov*.

E. Communication With the CDFI Fund

The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp*.

VIII. Information Sessions and Outreach

In connection with the Fiscal Year 2005 funding round, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: November 2, 2004.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 04–24986 Filed 11–9–04; 8:45 am]

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Federal Register

Wednesday,
November 10, 2004

Part II

Department of Homeland Security

Transportation Security Administration

49 CFR Part 1540 et al.
Air Cargo Security Requirements;
Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1540, 1542, 1544, 1546 and 1548

[Docket No. TSA–2004–19515]

RIN 1652–AA23

Air Cargo Security Requirements

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Transportation Security Administration (TSA), an agency within the Department of Homeland Security's Border and Transportation Security Directorate, proposes to amend current transportation security regulations to enhance and improve the security of air cargo transportation. The Aviation and Transportation Security Act directed TSA to implement measures to enhance the security of air cargo transported in both passenger and all-cargo aircraft. In discharging this responsibility, TSA conducted analyses of internal and external threats, risk and vulnerability assessments, and security measures already in place. This proposed rulemaking would require the adoption of security measures throughout the air cargo supply chain; these security measures will be applicable to airport operators, aircraft operators, foreign air carriers, and indirect air carriers. These proposed regulatory requirements would impose significant barriers to terrorists seeking to use the air cargo transportation system for malicious purposes.

This proposal would also change the applicability of the requirement for a "twelve-five" security program from aircraft with a maximum certificated takeoff weight "of 12,500 pounds or more" to those with a maximum certificated takeoff weight of "more than 12,500 pounds." This change would conform the regulation to recent legislation.

DATES: Send your comments on or before January 10, 2005.

ADDRESSES: You may submit comments, identified by the TSA docket number, to this rulemaking using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov*. Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov*.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the proposed rule. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual listed in **FOR FURTHER INFORMATION CONTACT**.

Reviewing Comments in the Docket: You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the NASSIF Building at the Department of Transportation address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Tamika McCree, Transportation Security Administration, Office of Transportation Security Policy (TSA–9), 601 South 12th Street, Arlington, Virginia, 22202, (571–227–2632), *tamika.mccree@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. See **ADDRESSES** above for information on where to submit comments.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, or by mail as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of your comments on this rulemaking, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Except for comments containing confidential information and SSI, we will file in the public docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable. We may change this rulemaking in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Law and Policy web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

ACSSP—Air Carrier Standard Security Program

ASAC—Aviation Security Advisory Committee

ATSA—Aviation and Transportation Security Act

CBP—U.S. Customs and Border Protection

C–TPAT—Customs-Trade Partnership Against Terrorism
DHS—Department of Homeland Security
DOT—Department of Transportation
DSIP—Domestic Security Integration Program
EA—Emergency Amendment
FAA—Federal Aviation Administration
IAC—Indirect Air Carrier
IACSSP—Indirect Air Carrier Standard Security Program
IC—Information Circular
SD—Security Directive
SIDA—Security Identification Display Area
SSI—Sensitive Security Information
TSA—Transportation Security Administration

Outline of Notice of Proposed Rulemaking:

I. Background

On September 11, 2001, terrorist attacks against the United States resulted in unprecedented human casualties and property damage. In response to those attacks, Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration. TSA was created as an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. On March 1, 2003, TSA was transferred to the Department of Homeland Security (DHS);[1] the office formerly designated DOT Under Secretary for Transportation Security is now Administrator of TSA. TSA continues to have the statutory authority and responsibility that ATSA granted to the Administrator with respect to security in all modes of transportation.[2] In ATSA, Congress set forth the following specific requirements for TSA in the area of air cargo security:

- Provide for screening of all property, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier; [3] and
- Establish a system to screen, inspect, or otherwise ensure the security of freight that is to be transported in all-cargo aircraft as soon as practicable.[4]

TSA has addressed air cargo security through the issuance of regulations, Security Directives (SDs), and Emergency Amendments (EAs) to security programs. All cargo loaded on passenger aircraft is subject to security requirements through TSA's known shipper program, which prohibits operators of passenger aircraft from transporting any cargo from shippers that are unknown.[5] Notably, in 49 U.S.C. section 44901(a), Congress expressly provided that the known shipper program is a form of screening that need not be carried out by a Federal government employee, unlike most screening of persons and property that is loaded on a passenger aircraft. Thus, aircraft operators carry out screening using the known shipper program.

The known shipper program has been substantially strengthened since September 11, 2001, and additional security measures have been implemented over the last two years. TSA prohibits aircraft operators in passenger operations under full programs [6] from transporting cargo unless a Known Shipper ships it. Entities may qualify for Known Shipper status if they meet certain security requirements. This proposed rule would codify the known shipper program as well as provide enhancements to the existing structure to strengthen the program further.

This proposed rule also includes other elements to improve security of air cargo carried on passenger aircraft. With respect to all-cargo aircraft, this proposed rule would enhance security significantly by requiring the adoption of a number of measures by airports, aircraft operators, and indirect air carriers (IACs), sometimes known as air freight forwarders.

Following the acts of terrorism on September 11, the Federal Aviation Administration (FAA) and then the Transportation Security Administration (TSA) took steps to amend security regulations governing aviation security, including the acceptance and handling of air cargo. While other agencies, including FAA, regulate safety considerations in the transportation of cargo and U.S. Customs and Border Protection (CBP) regulates the entry of cargo into the United States, TSA is solely responsible for the security of shipments of air cargo. The requirements outlined in this proposed rule, including those presently implemented by security directives, would comprehensively enhance the security of air cargo. These proposals would fill gaps in existing air cargo security regulations to mitigate the threat of terrorism to this vital industry.

Section IV of this NPRM specifically addresses each of the changes made to 49 CFR parts 1540–1548 and discusses how those changes will improve air cargo security. The major objectives of the program are to prevent passenger and large all-cargo aircraft from being used as weapons and to prevent unauthorized explosives from being carried aboard, and potentially detonated, during flight. In summary, DHS is proposing to establish a Standard Security Program for all-cargo aircraft operators utilizing aircraft with a take-off weight of over 45,500 kg. These carriers currently are not covered by the requirement in section

[1] Homeland Security Act, Pub. L. 107–296 (Nov. 25, 2002).
[2] 49 U.S.C. 114(d).
[3] 49 U.S.C. 44901(a)
[4] 49 U.S.C. 44901(f)
[5] See discussion on Known Shipper Program at IV.G.
[6] See discussion of aircraft operator security programs in IV. of this preamble.

1544.101(a) as they relate to the cargo provisions of section 1544.205 because they do not carry passengers. Instead, these all-cargo operators typically follow provisions of 1544.101(d) and (e), which are intended to govern the operations of much smaller aircraft. The current rules for cargo carried on certain passenger aircraft, and for other all-cargo operations under the existing Twelve-Five Standard Security Program, would be enhanced. DHS also proposes to extend security threat assessments, or focused background checks, to air cargo industry workers who handle air cargo but do not operate within a secure area. Currently, these workers are not screened, leaving the possibility that they could introduce weapons, explosives, or individuals into the air cargo system. For similar reasons, we also propose to extend Secure Identification Display Area requirements at airports that have these areas under § 1544.205 to cargo operation areas not covered by the current language of this regulation. We also seek to ensure persons traveling on all-cargo aircraft are screened to ensure they do not pose a threat to the aircraft. Finally the draft regulation would bolster the requirements imposed on indirect air carriers in recognition of the fact that vulnerabilities within their operations could lead to the introduction of weapons, explosives, or individuals who may jeopardize the security of aircraft. None of these measures is currently covered under existing TSA or other agency regulations.

CBP has issued regulations governing international air cargo, but the CBP regulations have a different purpose than these proposed regulations. As a result, there is no redundancy in the two programs. Internationally, CBP requires aircraft operators to report cargo manifest data in advance of arrival into the United States under 19 CFR 4.7–7a. This requirement, however, may be fulfilled at the time the aircraft is already flying to the United States, when it may be too late to prevent an incident that would destroy the aircraft and potential ground-level targets. TSA and CBP are currently engaged in efforts to leverage their respective regulatory programs to further militate against an act of terrorism through air cargo. While CBP also has other security-focused regulations, the CBP mission and statutory authority concentrates on preventing the entry of high-risk goods from entering the United States upon arrival at the border. These CBP regulations do not govern the security requirements that air carriers must implement in order to prevent the introduction of explosives or operatives as cargo moves through the supply chain and onto aircraft for flight. TSA regulations and proposed amendments address this different security threat.

II. Efforts Leading to the Development of This NPRM

This NPRM is the result of more than a year of industry consultation, strategic planning and interagency coordination by TSA and DHS. The foundation of the policy changes recommended here are TSA's consultations with industry through its Aviation Security Advisory Committee (ASAC), the development of the DHS/TSA Air Cargo Strategic Plan, and coordination within the Department of Homeland Security.

A. The Aviation Security Advisory Committee

The Aviation Security Advisory Committee, a standing committee organized under the Federal Advisory Committee Act, was created in 1989, in the wake of the crash of Pan Am 103 over Lockerbie, Scotland, to provide the federal government with expert consultation on aviation security issues. Previously managed by the FAA, ASAC is now managed by TSA. ASAC is composed of 27 organizations with a stake in securing the aviation sector; members include groups representing victims and survivors of terrorist acts, freight forwarders, aircraft owners, airports, aircraft manufacturers, representatives of passenger and cargo airline management and labor, and representatives of key federal government agencies.

In April 2003, ASAC established three Air Cargo Security working groups: Shipper Acceptance Procedures (which focused on known shipper and other screening protocols), Indirect Air Carrier Security and Compliance, and Securing the All-Cargo Aircraft. ASAC working group members consisted of representatives from the following organizations and agencies, listed alphabetically: Air Courier Conference of America; Air Forwarders Association; Air France; Air Line Pilots Association; Air Transport Association; Airport Law Enforcement Action Network; Airports Council International—North America; Allied Pilots Association; American Association of Airport Executives; American Trucking Association; Association of Flight Attendants; Aviation Consumer Action Project; British Airways; Cargo Airline Association; Coalition of Airline Pilots Association; Federal Aviation Administration; Federal Bureau of Investigation; International Air Transport Association; Lufthansa; National Air Carrier Association; National Customs Brokers and Forwarders Association of America; National Industrial Transportation League; Regional Airline Association; Transportation Intermediaries Association; U.S. Customs and Border Protection; U.S. Department of Transportation—Office of the Secretary; U.S. Department of State; U.S. Postal Service; and Victims of Pan Am Flight 103.

On October 1, 2003, ASAC presented TSA with its final report on air cargo security, which included 42 recommendations covering 22 topical areas.[7] The working group's recommendations included strengthening the known shipper program by improving technology links between aircraft operators and the federal government, leveraging new technology to create a more layered cargo security approach, augmenting requirements to achieve known shipper status, strengthening the Indirect Air Carrier Standard Security Program (IACSSP) and securing the all-cargo aircraft operating area. The recommendations from the consensus report are reflected throughout this NPRM.

B. Air Cargo Security Strategic Plan

While the ASAC working groups were completing their independent assessments of air cargo security, TSA was developing an extensive strategic plan for securing air cargo (Air Cargo Strategic Plan). The Air Cargo Strategic Plan, which was completed in November 2003, and approved by the Department of Homeland Security in January 2004, evaluated TSA's and others' analyses of air cargo security, including the ASAC report. Based on these evaluations, the Air Cargo Strategic Plan details a threat-based, risk-managed program for securing the air cargo transportation system. The Air Cargo Strategic Plan contains a vision to ensure that TSA has adequately considered the security of air cargo operations. It identifies priority actions based on risk, cost, deadlines, performance, research and technology initiatives, and coordinated stakeholder outreach efforts. The Air Cargo Strategic Plan focuses on a multi-layered approach to security.

The Air Cargo Strategic Plan contains sensitive security information (SSI); therefore, its contents cannot be

[7] the ASAC report is protected at Sensitive Security Information under 49 CFR part 1520.

disclosed to the public.[8] In summary, it prescribes TSA's mission in the area of air cargo: providing the most effective security program possible while maintaining effective stewardship of resources and not unduly impeding the flow of commerce. The plan is multimodal, ensures that TSA has adequately considered the expanse of the air cargo security domain, and details a program for denying terrorists the opportunity to exploit that system. It identifies priority actions based on risk, cost, deadlines, performance, research and technology initiatives, and coordinated stakeholder outreach efforts in four strategic components: enhancing shipper and supply chain security, identifying elevated risk cargo through prescreening, identifying technology for performing targeted air cargo inspections, and securing all-cargo aircraft through appropriate facility security measures.

This NPRM proposes to implement many of the provisions of the Air Cargo Strategic Plan and ensures that the appropriate regulatory framework exists for additional measures that are not regulatory in nature. In addition to regulatory changes, aspects of the Air Cargo Strategic Plan will be implemented through security program updates, SDs and EAs, research and development programs, and public-private cooperative endeavors.

C. TSA–CBP Air Cargo Coordination

Since its establishment in November 2002 by the Homeland Security Act of 2002 (Pub. L. 107–296), the Department of Homeland Security has had, as one of its central tenets, the goals to reduce redundancy and improve effectiveness. This priority has particularly been the case in the area of air cargo security. Shortly after their transfer to the DHS, TSA and the U.S. Customs and Border Protection (formerly, the United States Customs Service) initiated an interagency program to leverage resources, eliminate unnecessary duplication and ensure compatibility between their respective air cargo security programs. The goal of this endeavor is to ensure that DHS has a comprehensive, coordinated policy for securing air cargo entering, transiting within and departing the United States. This NPRM complements CBP's programs, including the following primary coordination areas: the TSA known shipper program in conjunction with Customs-Trade Partnership Against Terrorism (C–TPAT); targeting, risk assessment, and compliance measurement; technology research and development; and explosives detection canine programs. This interagency coordination is instrumental to the implementation of TSA's layered approach to air cargo security and to many of the systems and processes that will support the regulatory changes proposed in this NPRM, and coincides with a Congressional mandate in the conference report accompanying the DHS appropriations act (H.R. Conf. Report No. 108–280 (2004) ("Air Cargo Report")) that directed TSA to consider testing the expansion of C–TPAT to the domestic air cargo supply chain.

III. Summary of This Rulemaking

As explained further in section IV, this NPRM would enhance aviation cargo security significantly by requiring a number of measures. The NPRM would create a mandatory security program for all-cargo aircraft operations over 45,500 kg (100,309.3 pounds) and would amend existing security regulations and programs for other aircraft operators, foreign air carriers, airport operators, and IACs. The current rules for cargo carried on certain passenger aircraft, and for all-cargo operations under the existing Twelve-Five Standard Security Program[9] would be enhanced. Existing screening requirements for aircraft operators would be extended to cover all-cargo operations. Airports or aircraft operators would be required to secure the cargo operations areas. The definition of "Indirect Air Carrier" included in 49 CFR 1540.5 would be amended to include those transporting goods via all-cargo aircraft and all IACs would be subject to a more thorough vetting by TSA prior to receiving authorization to operate.

This NPRM also would require Security Threat Assessments for individuals who have unescorted access to cargo carried by certain aircraft operators, foreign air carriers, and IACs.

TSA is proposing these amendments after extensive consultation with industry through its Aviation Security Advisory Committee, and with other Federal agencies including the Department of Transportation and U.S. Customs and Border Protection. These amendments would significantly enhance aviation cargo security.

A. Who Is Affected by This NPRM?

TSA regulates four segments of the air cargo industry: (1) Airports serving cargo operations; (2) passenger aircraft operators that transport cargo; (3) all-cargo aircraft operators; and (4) IACs. Each segment is currently required to implement some type of TSA cargo security program. The current regulatory regime covers domestic entities in these four categories as well as foreign air carriers that operate into or out of the United States. The proposals in this NPRM would amend current security requirements for all of these industry segments, both through direct regulatory changes and through anticipated related security program changes.

B. Why Are These Regulatory Changes Necessary?

TSA has identified two critical risks in the air cargo environment: (1) The hostile takeover of an all-cargo aircraft leading to its use as a weapon; and (2) the use of cargo to introduce an explosive device onboard a passenger aircraft in order to cause catastrophic damage. The magnitude of these risks is determined by factoring in the presence of credible threats and the existence of possible vulnerabilities that a terrorist could exploit. Many steps taken since September 11, 2001 have reduced the capabilities of international terrorist organizations; however, the terrorist threat remains. Likewise, new aviation security requirements have reduced the vulnerability of the air cargo system. Nonetheless, TSA, in cooperation with its many partners in the air cargo transportation industry, has identified additional enhancements of air cargo security to reduce further the likelihood of cargo tampering or unauthorized access to the aircraft with malicious intent. This NPRM addresses the remaining vulnerabilities in the air cargo system. TSA invites public comment on whether these concerns are appropriately addressed and adequately accounted for in this NPRM.

Terrorists have attempted to use air cargo to attack U.S. passenger aircraft on occasions in the past, and aviation generally continues to be a priority target for terrorists. The threat to air cargo represents a meaningful risk. TSA believes that strengthening air cargo security requirements through this proposed rulemaking will mitigate the threats.

C. How Did TSA Enhance Cargo Security After September 11, 2001?

Federal air cargo security requirements date back to the 1970's and have since evolved. Since

[8] SSI is information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would: constitute an unwarranted invasion of privacy; reveal trade secrets or privileged or confidential information obtained from any person; or be detrimental to transportation security. 49 CFR 1520.5(a)(1–3); 69 FR 28066, 28082–28083 (May 18, 2004).

[9] See discussions of Twelve-Five Standard Security Program at III.C. and IV.G.

September 11, 2001, the Federal Government has moved expeditiously to strengthen air cargo security even further. Immediately after September 11, FAA prohibited the shipment of all cargo aboard passenger aircraft. Later, this restriction was partially lifted to allow cargo from known shippers to be transported on passenger aircraft operators, but not cargo from unknown shippers.[10] By limiting air cargo aboard commercial passenger aircraft to known shippers only, FAA reduced the likelihood that cargo would pose a security threat to passenger aircraft. Since its creation, TSA has also taken several emergency measures to strengthen existing requirements, including additional qualifying requirements for the known shipper program.[11]

In the all-cargo aircraft environment, several all-cargo aircraft operators have voluntarily adopted the TSA Domestic Security Integration Program (DSIP)[12] to transfer cargo to passenger aircraft operators and to apply security identification display area (SIDA) requirements to all-cargo operations. The DSIP has been in place since 1992. FAA also strengthened the requirements for IACs immediately after September 11 by requiring additional steps to achieve IAC status. On February 22, 2002, TSA implemented the security program for Aircraft 12,500 Pounds or More, which became effective April 1, 2002 and applies to operators of aircraft with Maximum Certificated Take Off Weight (MTOW) more than 12,500 pounds in scheduled or charter service that are carrying passengers, cargo, or both and are not otherwise required to have a full or partial security program.[13] The rule also requires the pilot, flight engineer, or flight navigator assigned to duty during flight time on all regulated aircraft operators to have successfully completed a fingerprint-based criminal history records check (CHRC). It calls for restricted access to the flight deck if the aircraft has a flight deck door, and it mandates use of security coordinators, security training, procedures for bomb threats, and contingency plans.

In June 2002, TSA completed an extensive Air Cargo Security Scenario Analysis. The specific contents of this report are sensitive security information, and accordingly not publicly releasable. Where available, actual data were used for calculations; where data were not obtainable, estimates were identified and used. The analysis examined various scenarios, which focused on varying degrees of cargo screening, and which were selected to prevent or deter the introduction of explosive devices into the cargo holds of passenger aircraft. It was the first known attempt to conceptualize and conduct a detailed examination of the different security regimes, measure implementation costs and assumptions, and account for potential responses of the industry to the security changes, including the potential costs of implementation. The scenarios and variants ranged from screening unknown shipper cargo to screening cargo on passenger aircraft or preventing any cargo from being transported on passenger aircraft. The various scenarios were compared in terms of costs, benefits, and effectiveness.

TSA also has enhanced cargo security by implementing a web-enabled Known Shipper database to centralize data on persons and businesses that are authorized to ship air cargo on passenger aircraft to allow quick and efficient verification of a shipper's status while reducing redundancy. The initial version of the database was deployed in the Fall of 2002 and is currently being used by aircraft operators and IACs on a voluntary basis. Most of the major airlines, and 400 IACs, are participating. The database already consists of over 400,000 known shippers. In the near future, TSA plans to make use of the system mandatory for all aircraft operators, foreign air carriers and IACs required to participate in the known shipper program. This proposed rule would provide authority for this planned change, which would be implemented in the security programs of the aircraft operators, foreign air carriers and IACs.

At the core of this endeavor, the Known Shipper database will allow aircraft operators, foreign air carriers and IACs to submit electronically information on their known shippers to TSA and to verify electronically whether a client has been approved with known status under the program. This effort will offer a number of benefits, both for facilitating trade and improving security. Persons and businesses seeking Known Shipper status will no longer have to obtain this status from every aircraft operator, foreign air carrier or IAC with whom they do business; instead, once a shipper is accepted into the database, they will be considered known to all aircraft operators, foreign air carriers and IACs with access.

In November 2003, TSA required U.S. aircraft operators, foreign air carriers, and IACs to carry out certain additional security measures with respect to cargo. The U.S. intelligence community continued to receive and evaluate a high volume of reports indicating possible threats against U.S. interests. These reports, combined with recent terrorist attacks, created an atmosphere of concern. Terrorist groups such as Al Qaeda are capable of sophisticated tactics. The Department of Homeland Security was concerned about Al-Qaeda's continued interest in aviation, including using cargo aircraft to carry out attacks on critical infrastructure. In recognition of this threat, TSA made a determination that these circumstances required immediate action to ensure safety in air transportation. The additional measures TSA required in response to those concerns are described in IV. A.

D. What Would This Proposed Rulemaking Do To Strengthen the Current Air Cargo Security Regulatory Regime?

TSA is implementing a layered security solution throughout the life-cycle of the air cargo shipment and the aircraft on which it is being transported. As discussed in more detail in section IV. of this NPRM, TSA proposes to:

- Require security threat assessments for individuals with unescorted access to cargo;
- Codify cargo screening requirements first implemented under SDs, EAs, and part 1550 programs issued in November 2003;
- Require airports with SIDAs to extend them to cargo operating areas;
- Require aircraft operators to prevent unauthorized access to the operational area of the aircraft while loading and unloading cargo;
- Require aircraft operators under a full or all-cargo program to accept cargo only from an entity with a comparable security program or directly from the shipper;
- Codify and further strengthen the Known Shipper program;
- Establish a security program specific to aircraft operators in all-cargo operations with aircraft with a maximum certificated takeoff weight more than 45,500 kg;
- Strengthen foreign air carrier security requirements essentially to parallel the requirements on U.S. aircraft operators; and
- Enhance security requirements for Indirect Air Carriers.

[10] See Section IV. G.

[11] The specific criteria for the known shipper program are SSI under 49 CFR part 1520.

[12] The DSIP is a limited program under 49 CFR 1544.101(g). TSA has made this program available to all-cargo aircraft operators, in part, to allow those entities to interline cargo with passenger aircraft operations.

[13] 67 FR 8205 (Feb. 22, 2002).

TSA's proposed security requirements are infused throughout the supply chain instead of concentrating all efforts on one measure, such as physical inspection, at a single stage potentially resulting in significant disruption of the supply chain. This NPRM is a central component of this solution and proposes updating the requirements applicable to airports, aircraft operators, IACs, and foreign air carriers currently operating under a security program, and instituting new security requirements for all-cargo aircraft operators and the freight forwarders servicing them.

E. How Will TSA Enforce Compliance?

TSA relies on its staff of field inspectors to enforce compliance among regulated parties. As noted in various sections above, TSA also believes that issuance of a voluntary disclosure program, development and distribution of security training materials for certain IAC employees and agents, and implementation of enhanced electronic communication capabilities will materially enhance the regulated parties' compliance ability and orientation.

The ASAC working groups recommended that TSA implement a voluntary disclosure program to facilitate and improve compliance by regulated parties. TSA has received numerous similar requests from regulated parties. TSA agrees that aviation security is promoted by creating incentives for regulated entities to identify, disclose and correct their own instances of non-compliance, and to invest in efforts to preclude their recurrence. As a result, in December 2003, TSA implemented a voluntary disclosure program. Details of the program are available via the Internet on the TSA Web site at *http://www.tsa.gov,* with a link titled "TSA Announces Civil Enforcement Policies" in the section on Law & Policy. TSA's program is designed to encourage compliance with TSA regulations, foster secure practices, and encourage the development of internal evaluation programs. Upon detecting an inadvertent violation not yet known to TSA, a regulated entity must take immediate action to correct the violation. The regulated entity must report the violation to TSA in writing within 24 hours of detection and submit a detailed written report within 10 calendar days of the initial reporting. The regulated entity must develop a corrective action plan to ensure that the noncompliance remains corrected. After the regulated entity takes these steps, TSA may issue a letter of correction instead of a civil penalty action for the violation, provided all other elements of the policy are met. This program has been issued in a separate action and is not part of this rulemaking proposal.

F. Did TSA Consider Recommended Changes?

Yes, in addition to its own assessments, TSA based the policy changes proposed in this NPRM on recommendations received from the Department of Transportation Office of Inspector General (OIG), the General Accounting Office (GAO), and the Aviation Security Advisory Committee (ASAC). In addition, TSA has coordinated its efforts with other agencies in the Department of Homeland Security, including the U.S. Customs and Border Protection, which has statutory authority for screening cargo entering and departing the United States.

The Department of Transportation Office of Inspector General completed its audit of the air cargo security program in September 2002. This report is SSI. Accordingly, its distribution is restricted. In the report, the OIG offered 14 specific recommendations to increase the level of security as to "insiders"—namely employees of aircraft operators and IACs with access to cargo. These recommendations varied from increasing the vetting of IACs seeking approval of their security program to training and testing requirements to improved compliance enforcement.

Further, in December 2002, the GAO issued its report, "Vulnerabilities and Potential Improvements for the Air Cargo System (GAO–03–344)." GAO traced the implementation of recommendations delivered during the 1990's and the development of technologies or operational procedures that might be used to enhance air cargo security. GAO did not make specific recommendations, but called for TSA to develop a comprehensive plan for air cargo security that includes priority actions identified on the basis of risk, costs, deadlines for completing those actions, and performance targets. TSA completed this strategic plan in November 2003. As noted previously, this document includes SSI and is not available to the public.

As previously discussed, TSA also considered the ASAC consensus report transmitted on October 1, 2003.

G. Were Other Solutions Considered and Why Were the Proposals in the NPRM Chosen Over Others?

TSA recognizes that the air cargo industry is large and complex, composed of numerous shippers, 226 domestic and foreign aircraft operators providing services through 2,789 stations at U.S. airports, and approximately 3,200 IACs with over 10,000 business locations. Together these entities transport approximately $30 billion worth of goods per year. In recognition of this breadth and complexity, TSA considered the full gamut of potential solutions for enhancing air cargo security in developing this NPRM. TSA analyzed the existing regulatory structure for air cargo security in the United States, partnered with industry, reviewed a variety of external assessments of the air cargo system, and coordinated with other agencies in the Department of Homeland Security with air cargo security experience and responsibilities, such as CBP, to develop solutions for today's challenges. TSA also reached out to numerous international entities including the European Commission, Transport Canada and International Air Transport Association to assess best practices and regulatory regimes that might be applicable to the U.S. environment.

The majority of participants in the ASAC air cargo security working groups have stated that proposals to require the inspection of every piece of cargo shipped on passenger aircraft are impractical. Instead, they recommended a risk-based targeting strategy to identify higher risk cargo for additional scrutiny; relying, in part, on the Government Accounting Office (GAO) report on Vulnerabilities and Potential Improvements for the Air Cargo System,[14] the Department of Transportation's Office of the Inspector General (OIG) Audit of the Cargo Security Program,[15] and TSA's Air Cargo Security Scenario Analysis. These reports have cautioned that, in the absence of an appropriate targeting methodology and data, a requirement for inspection of 100% of air cargo would severely burden the just-in-time delivery that is currently a key competitive feature of many U.S. manufacturing and distribution industries, and could have particularly severe negative impacts on aircraft operators, IACs and their employees and agents. TSA agrees with this assessment. TSA believes that a requirement to inspect every piece of cargo could result in an unworkable cost of more than $650 million in the first year of implementation.[16]

[14] GAO–03–344 December 2002.

[15] Report Number SC–2002–113 (September 19, 2002). This report is SSI.

[16] See Regulatory Evaluation for the Air Cargo Security Requirements NPRM, Table 1, Ten-Year Undiscounted Cost Summary for passenger and all-cargo flight cargo screening.

In its final presentation to TSA, ASAC noted that the layered solution outlined in its forty recommendations would significantly enhance air cargo security while ensuring that commerce is not disrupted, two goals TSA is committed to achieving. It was the sense of the ASAC that technology solutions must be pursued as aggressively as possible. Specifically, the committee's recommendations included using technology to improve communication links between regulated parties and the federal government, leveraging new technology to create a more layered cargo security approach, and using technology to enable enhanced requirements for achieving Known Shipper status.

Similarly, TSA reviewed FAA's October 2001 "Air Cargo Threat Assessment" (DOT/FAA/AR–02/15) analysis of the vulnerabilities of the current air cargo security program.[17] In this report, FAA's overall assessment was that an integrated security regime was required. These FAA recommendations have been considered and are reflected in portions of this NPRM.[18]

The Department of Transportation Office of the Inspector General audited the FAA's air cargo security program. The OIG's report of this audit and its results, including data sources, are SSI. Like the ASAC and FAA, the OIG determined that air cargo security could best be bolstered by implementing layered solutions throughout the air cargo system; and offered fourteen specific recommendations. TSA concurred with the OIG's assessment and these recommendations are reflected in both TSA's air cargo strategic plan and in this NPRM.

TSA will continue to use SDs and EAs as required to address immediate threats. These directives are issued to regulated parties outlining specific requirements that must be met as part of their security programs and are protected as sensitive security information.

Like TSA, CBP also relies on a layered security program for securing air cargo and both agencies are committed to determining how best to leverage individual resources and avoid unnecessary redundancy. As a result, TSA and CBP have initiated a dialogue for coordinating their respective air cargo security activities. TSA and CBP initiated this effort shortly after DHS was established and the agencies received a Congressional mandate to continue this effort during Fiscal Year 2004. TSA and CBP are looking closely at how best to apply their combined experience in promoting supply chain security, securing cargo prior to loading, and applying risk-based targeting programs. In addition, through this effort, DHS is committed to ensuring the maximum degree of consistency between TSA and CBP programs and minimizing the impact on industry by coordinating requirements and procedures.

Within the BTS Directorate, CBP and TSA have distinct, but equally vital, security missions in securing air cargo. Historically, CBP has primarily been responsible for determining the admissibility of the cargo held on the aircraft and as such is concerned about cargo that may carry threats to be deployed once the cargo reaches U.S. borders. TSA, on the other hand, is responsible for securing both domestic aircraft and foreign flights destined for the United States from destruction or hijacking and as a result is primarily concerned with the illicit loading of explosives or stowaways on board.

The priority mission of CBP is to prevent terrorists and terrorist weapons from entering the United States. That mission means improving security at the nation's physical borders and ports of entry, but it also means extending the zone of security beyond our physical borders—so that American borders are not the first line of defense. With regard to the securing of international air cargo, CBP has a long history of screening and inspecting cargo upon arrival in the United States. Today it continues this challenge with a refined focus on stopping terrorists and terrorist weapons at our nation's borders.

TSA's mission is to provide security in all modes of transportation, with a priority emphasis on aviation. Like CBP, TSA employs a threat-based, risk-managed approach to securing air cargo. Therefore, we focus our efforts in the passenger environment on preventing the introduction of explosive devices into the cargo bays of passenger air carriers. In the all-cargo environment, while measures are taken to prevent the introduction of an explosive device on an all-cargo aircraft, our primary concern is focused on keeping intruders or stowaways off the aircraft, as a hijacking causes significant loss of life and other damage on the ground and in the air.

Extensive interagency analysis and outreach to both industry and other federal agencies have led TSA to conclude that a threat based, risk managed, layered solution will provide the highest degree of security in the air cargo environment while causing the least financial and procedural impact on a business sector that contributes significantly to the United States and global economies. TSA invites public comment on the feasibility of this approach overall, on the specific rule changes and requirements proposed in this NPRM, and on other possible actions, such as a requirement to inspect 100% of air cargo, that have been the subject of public discussion but which TSA, for reasons outlined above, has determined not to propose in this NPRM.

IV. Summary of Proposed Amendments

A. Current Regulation of Aircraft Operators and Foreign Air Carriers and Proposed Amendments

TSA regulations currently cover a variety of aircraft operators as part of an overall, layered approach to security. Aircraft operators with scheduled or public charter passenger operations using aircraft with a passenger seating configuration of 61 or more, or those using smaller aircraft that enplane passengers from or deplane passengers into a sterile area, must have *full programs* under § 1544.101(a). These operators often carry cargo in addition to passengers and must comply with cargo security requirements under § 1544.205.

Aircraft operators using aircraft in scheduled or public charter passenger operations using aircraft with a passenger seating configuration of 31 or more but 60 or fewer seats must have a *partial program* under § 1544.101(b).

Aircraft operators using aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, in scheduled or charter service, carrying passengers or cargo or both, must have a *twelve-five program* under § 1544.101(d) & (e).

Aircraft operators using aircraft in private charter passenger operations using aircraft with a passenger seating configuration of 61 or more or a maximum certificated takeoff weight greater than 45,500 kg (100,309.3 pounds) must have a *private charter program* under § 1544.101(f), as well as having a twelve-five program.

This NPRM is proposing to add another type of program. As discussed further in this preamble, TSA is proposing that aircraft operators operating all-cargo aircraft with a maximum certificated takeoff weight of more than 45,500 kg (100,309.3 pounds) have an *all-cargo program* under proposed § 1544.101(h) & (i).

Certain foreign air carriers must have security programs as well. Those with

[17] This document is SSI and, accordingly, not publicly releasable.

[18] This report is protected as Sensitive Security Information under 49 CFR part 1520.

scheduled or public charter passenger operations using aircraft with a passenger seating configuration of 61 or more, or those using smaller aircraft that enplane passengers from or deplane passengers into a sterile area (analogous to U.S. operators with full programs), must have security programs under § 1546.101(a) or (b). Those in scheduled or public charter passenger operations using aircraft with a passenger seating configuration of 31 or more but 60 or fewer seats must have programs under § 1546.101(d) (analogous to U.S. operators with partial programs).

In addition, in November 2003, in response to threats, TSA required foreign air carriers that perform all-cargo operations using aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to carry out the All-Cargo International Security Procedures issued by TSA. 69 FR 3939 (Jan. 27, 2004). In this NPRM, TSA is proposing to codify this procedure and to create foreign air carrier security programs analogous to a U.S. twelve-five program in all-cargo operations and to the proposed all-cargo program in part 1544.

Additionally, in November 2003, TSA issued SDs and EAs requiring domestic aircraft operators under a full program or a twelve-five all-cargo program and foreign air carriers to apply further screening measures to cargo. More specifically, TSA required that these operators inspect a percentage of cargo prior to loading it on an aircraft.

Aircraft operators under a full program must also continue to abide by the requirements of the Known Shipper program. Generally, these aircraft operators may transport only cargo from a known shipper. Congress specified in ATSA, codified at 49 U.S.C. 44901(a), that a Federal employee is not required to carry out screening requirements for a passenger aircraft operator of the Known Shipper program. These screening functions may be performed by the private sector. Likewise at 44901(a), Congress distinguished that Federal screeners must conduct certain passenger screening. Operators of all-cargo aircraft do not share this distinction. All-cargo aircraft operators also may perform cargo screening; it is not required that a Federal employee carry out screening of all-cargo aircraft.

The security procedures required for the varying programs are focused to address the greatest perceived threats to the respective operations. Accordingly, TSA requires the most security procedures under the layered approach to those operations perceived to have the highest threat. For instance, the full program focuses security requirements both to protect the large number of passengers on board the aircraft as well as to prevent the largest of aircraft from being hijacked and used as a missile to attack another target, and thus are subject to the most intense security measures. The proposed *all-cargo program* would focus on the latter threat because aircraft operators under this proposed program generally use the same types of aircraft as those used under a full program. All-cargo operations under the twelve-five program require layers of security appropriate to the lower threats posed by smaller aircraft. TSA has developed a measured approach to match security requirements with the possible risks.

B. Security Threat Assessments for Air Cargo Workers

TSA currently requires a variety of individuals working in aviation to submit to a criminal history records check. Generally, these individuals work on airport grounds and have access to secure areas.

In the cargo environment, many other persons have access to cargo before someone who works for the airport and has had such a check handles it. In this rulemaking, TSA proposes to require additional persons who have unescorted access to air cargo, but do not have unescorted Security Identification Display Area (SIDA) access, to undergo a security check to verify that they do not pose a security threat.

TSA recognizes that the number of individuals with access to cargo is large—approximately 63,000—and that the companies that they work for run the gamut from complex organizations to "mom and pop's." Therefore, requiring all these individuals to undergo fingerprint-based criminal history background checks would be a time-consuming and costly process. TSA believes that potential security concerns related to unescorted access to cargo by these individuals would be best addressed at this time by requiring the individuals to submit to a Security Threat Assessment program, focused on the threat of terrorism. A Security Threat Assessment, as proposed in this NPRM, would rely on checks of existing intelligence-based records and databases to ensure that an individual who is a known or suspected threat is prohibited from working in positions that could allow that individual to have unescorted access to air cargo. This program adopts best practices from the financial services and transportation security communities to reduce the likelihood that a terrorist could gain access to cargo.

In proposed §§ 1544.228, 1546.213, and 1548.15, TSA would prohibit aircraft operators under a full program or all-cargo program; foreign air carriers operating under §§ 1546.101(a) (b) or (e); and each IAC from authorizing any individual to have unescorted access to cargo unless the respective operator has verified the identity of that individual in a manner acceptable to TSA, and that individual has successfully completed a CHRC under 49 CFR 1542, 1544, or 1546, Security Threat Assessment pursuant to proposed Subpart C of part 1540, or another Security Threat Assessment approved by TSA.

TSA has also considered extending security threat assessment requirements in additional contexts. For instance, TSA considered requiring every employee of an entity regulated by TSA that is in the business of cargo transportation to submit to a security threat assessment. TSA proposes that the layered approach of requiring assessments for those individuals with unescorted access to cargo, combined with requirements to secure cargo upon acceptance, are at this time sufficiently focused on the potential security threat.

TSA also considered requiring each person who boards for transportation on an aircraft under an all-cargo security program to submit to a security threat assessment. Alternatively, TSA considered requiring persons who board an aircraft under an all-cargo security program who require prohibited items during the flight to perform their duties to submit to the assessment. TSA has not proposed these measures but invites comments on these considerations.

C. Security Measures for Persons Boarding an All-Cargo Aircraft

TSA is proposing to codify requirements for screening persons other than passengers boarding the all-cargo aircraft with a maximum certificated take-off weight greater than 12,500 pounds. See proposed § 1544.202 and § 1546.202. Under FAA rules, some persons who are not flight crew members or passengers may travel on an all-cargo aircraft, such as handlers escorting an animal being shipped via air cargo. See 14 CFR 121.583 and 121.587. Such individuals could be in a position to attempt to take over the aircraft. TSA believes that it is necessary to screen such persons to ensure that individuals traveling on aircraft under an *all-cargo program,* or under a *twelve-five program* in an all-cargo operation, do not present a security threat. Such screening is now being done under SDs issued in November 2003 and is included as a proposed regulatory requirement in this NPRM. While

Congress specified in 49 U.S.C. 44901(a) that a Federal employee must conduct screening of persons in passenger operations, section 44901(f) has no such requirement for all-cargo operations. Accordingly, the private sector may conduct screening in all-cargo operations in compliance with TSA standards.

D. Screening Cargo

To guard against unauthorized weapons, explosives, persons, and other destructive substances or items in cargo, TSA proposes to codify a requirement for aircraft operators to inspect a portion of air cargo, including that offered by known shippers. See proposed §§ 1544.205 and 1546.205. An SD issued to operators with full programs in November 2003 requires that a portion of known shipper cargo be inspected, and this NPRM would codify that change. In addition, an SD issued requires operators of Twelve-Five all-cargo aircraft inspect a portion of cargo. When conducting inspections, aircraft operators are required to follow TSA-approved requirements.

In addition, aircraft operators operating under full programs are currently required to submit individuals conducting cargo screening to a fingerprint-based CHRC under § 1544.229 to reduce the likelihood that a terrorist could gain such employment to facilitate the introduction of unauthorized persons, explosives, incendiaries, and other substances or items. This proposed rule would also require aircraft operators operating under all-cargo programs to submit their cargo screeners to a CHRC under § 1544.229, mitigating the possibility that an authorized person would threaten or otherwise compromise the security of the aircraft operations.

TSA considered several other requirements for cargo screening that are not included in this NPRM. For instance, TSA considered prohibiting all cargo from transportation on passenger aircraft. TSA recognizes, however, that this requirement would likely lead to significant economic impact on passenger operations. Moreover, TSA proposes that a layered approach to security requirements, including those proposed in this NPRM, would provide for an appropriate level of security and could be implemented without undue hardship on the affected stakeholders. TSA also considered requiring physical inspection of 100% of all cargo on all aircraft, or alternatively on passenger aircraft. However, as noted in III.G. above, 100% inspection of cargo would be impractical and would severely impact the rapid delivery of air cargo. TSA invites comment on these considerations.

E. Securing the Cargo Operating Environment

Measures to prevent unauthorized individuals from gaining access to the cargo operations area are necessary to prevent tampering with the aircraft or the cargo and to remove a potential access point for stowaways. Currently, at airports that have complete programs under 49 CFR 1542, and therefore are required to have a SIDA based on the presence of covered passenger operations, all individuals working in the SIDA must have an airport-approved photo identification (ID) media that meets standards established by TSA. This ID must be displayed at all times above the waist on the individual's outermost garments. To obtain a SIDA ID, a person must successfully undergo a fingerprint-based CHRC and successfully complete training in accordance with the airport's security program (*see* 49 CFR 1542.205, 1542.211, and 1542.213). In addition, procedures must be in place for challenging all persons not displaying appropriate ID for the area in which they are found. Currently, all-cargo operations are not specifically covered under airport SIDA requirements.

At airports that are required to have a SIDA because of the presence of covered passenger operations, TSA proposes in this NPRM to extend SIDA requirements to cargo operating areas. See proposed § 1542.205. As previously discussed, the potential consequences of an all-cargo aircraft being hijacked and used as a missile to attack another target are comparable to the consequences of a hijacking of a passenger aircraft of the same size. Accordingly, TSA proposes to add a layer of security to protect these aircraft further by applying SIDA requirements in cargo operating areas. Airports that currently have SIDA have the associated procedures and requirements in place. TSA believes that airports that have SIDA will be able to extend SIDAs to areas where cargo is loaded and unloaded without great challenges. Indeed, the cargo operation areas at many of these airports already are SIDAs. TSA also considered extending SIDA requirements to airports that serve all-cargo carriers and are not currently required to have a SIDA. Airports without SIDAs, however, would be required to implement many unfamiliar requirements in order to create SIDA. These airports also may have only occasional and unpredictable all-cargo aircraft traffic, such as on-demand charter operations. In this NPRM, TSA proposes that aircraft operators implement other measures that will enhance security instead of requiring airports without SIDAs to create them. Accordingly, TSA proposes in § 1544.225 to require that the aircraft operator prevent unauthorized access to the operational area of the aircraft while loading or unloading cargo. Note that aircraft operators now must comply with § 1544.217, which requires covered aircraft operators to arrange for a law enforcement presence to respond to any situations that may arise. TSA believes that the aircraft operator is well positioned to provide sufficient security for their aircraft operations, in lieu of an airport SIDA. TSA invites public comment on the economic, operational, and security implications of this approach. TSA also proposes to require that, before placing an all-cargo aircraft back into service after a period spent unattended, the aircraft operator conduct a security inspection of the aircraft. See proposed § 1544.225 and § 1546.103(a)(1). Together, these provisions would reduce the likelihood of successful tampering, stowaway boarding, or the introduction of an improvised explosive device or other destructive substance or item. Similar provisions are currently required of passenger aircraft operators operating aircraft of the same size.

F. Accepting Cargo From Comparable Entities

TSA is proposing to authorize aircraft operators under full or all-cargo programs to accept cargo only from the shipper, or from an entity with a security program comparable to the aircraft operator's. See proposed § 1544.205(e) and § 1546.205(e). The purpose of this proposed amendment is to prohibit aircraft operators from carrying cargo transferred from persons or businesses without the appropriate security measures to guard against the introduction of unauthorized weapons, explosives, persons, or other destructive substances or items. TSA will provide these aircraft operators in their security programs with a more detailed account of what cargo may be accepted.

G. Known Shipper Program

TSA proposes to codify and strengthen the Known Shipper program in regulation at 49 CFR 1544.239, 1546.215, and 1548.17. As discussed above in section III., paragraph C., "How did TSA enhance cargo security after September 11, 2001?," the Known Shipper program is a protocol to distinguish shippers about whom security-relevant information is known from those shippers about whom the aircraft operator has inadequate

information. This program applies to aircraft operators with full programs, corresponding foreign air carriers, and IACs that offer cargo to such aircraft operators and foreign air carriers.

TSA considered extending a regulatory program directly to shippers of cargo that intend to use air transportation. By doing so, TSA would have direct oversight and regulatory authority throughout the cargo supply chain. The number of potential shippers, however, may be unwieldy. Potentially any person or business may ship cargo by air. TSA proposes, instead, to focus on aircraft operators and IACs as discussed through this NPRM.

Certain operational elements of the Known Shipper program are sensitive security information and cannot be divulged. However, the existence of the program is a matter of public record. Congress recognized the existence of the Known Shipper program in the Aviation and Transportation Security Act, Pub. L. 107–71, at section 110. Since September 11, 2001, cargo from unknown shippers has not been permitted to be transported aboard aircraft operated under a full program.

TSA considered allowing unknown shipper cargo on passenger aircraft after physical inspection. TSA recognizes that this cargo could provide considerable business opportunity to aircraft operators, but determined that this measure could not assure adequate security. No single technology currently exists with sufficient versatility to handle the vast array of cargo sizes, shapes, and materials to ensure security while maintaining acceptable throughput, or processing time. TSA welcomes comments and recommendations on this issue.

Although the Known Shipper program has been in existence for over 10 years in its current form and has its roots in security programs that date back to 1976, it has not previously been identified in security regulations; rather, it has been in the aircraft operator security programs. TSA is proposing to codify and enhance the Known Shipper program in this NPRM.

TSA will consider, but TSA is not proposing to allow cargo submitted by unknown shippers to be transported on passenger aircraft under a full program at this time. TSA invites public comment on the costs, benefits and practical implications associated with screening cargo from unknown shippers to the degree necessary to permit it to be transported on commercial passenger aircraft.

As discussed in III.C. above, TSA is implementing a comprehensive strengthening of the Known Shipper program. These improvements centralize and automate the vetting of applicants to the Known Shipper program. Under this NPRM, when proposing a shipper for the Known Shipper program, an aircraft operator, foreign air carrier, or IAC would be required to submit an application electronically to TSA for vetting against terrorist and law enforcement data. This information will then be stored in a central database along with the shipper's status in the program. Aircraft operators, foreign air carriers, and IACs would be required to check a shipper's status on the system before accepting its cargo for transport on passenger aircraft. This proposed requirement will enable TSA to conduct a thorough threat assessment of those seeking to ship by passenger aircraft.

To assist in implementing the enhancements to the Known Shipper program, TSA proposes in this NPRM that, when TSA so requires, the aircraft operators, foreign air carriers, and IACs will submit known shipper information electronically and update it as needed. TSA has designed its known shipper database, including the necessary Internet elements, to ensure that shipper lists are not compromised. TSA believes that the proposed changes would facilitate industry participation in the Known Shipper program by reducing the administrative burden on individual aircraft operators.

H. Establish All-Cargo Operator Standard Security Program

Aircraft operators using passenger aircraft with a passenger seating configuration of sixty-one seats or more in scheduled or public charter service must have a full program under 49 CFR 1544.101(a), using the Aircraft Operator Standard Security Program (AOSSP). Aircraft operators using passenger aircraft that have a maximum certificated takeoff weight greater than 45,500 kg (100,309.3 pounds), or a passenger-seating configuration of 61 or more, that are not government charters or in private charter service, must have a program under 49 CFR 1544.101(f). Currently, however, all-cargo aircraft operators operating aircraft of a similar size and potential destructive power are subject to the Twelve-Five program, rather than the full program. These operators are currently required to implement security programs in accordance with TSA's Twelve-Five Standard Security Program governing aircraft with a maximum take off weight of 12,500 pounds or more. In addition, some cargo operators voluntarily participate in the more comprehensive DSIP. Considering the potential risks associated with heavier all-cargo aircraft, TSA proposes to require additional steps for securing all-cargo aircraft weighing more than 45,500 kg (100,309.3 pounds) at § 1544.101(h). These measures would be incorporated into a mandatory All-Cargo Aircraft Operator Standard Security Program. The program will include elements of the DSIP.

Extending pertinent requirements to all-cargo aircraft operators operating above the 45,500 kg threshold would institute security measures for all-cargo aircraft comparable to passenger aircraft of the same size. An all-cargo aircraft with maximum certificated takeoff weight greater than 45,500 kg could cause significant damage if taken over and used as a weapon. TSA also applies this applicability threshold in the private charter program,[19] 49 CFR 1544.101(f), and it is consistent with international security standards adopted by the International Civil Aviation Organization.[20]

TSA recognizes that the operations of all-cargo aircraft operators and passenger aircraft operators are not identical and looks forward to working with industry to ensure that proposed new requirements are tailored to accommodate those differences.

I. Strengthen Foreign Aircraft Operator Security Measures

TSA currently requires foreign air carriers using aircraft of a certain size and engaged in scheduled or public charter passenger operations and landing or taking off in the United States to have a TSA-approved security program. Foreign all-cargo air carriers are subject to certain security requirements identified in a security program issued by TSA under part 1550 in November 2003, including random inspection of cargo. *See* 69 FR 3939 (Jan. 27, 2004). TSA is proposing to amend § 1546.101 to make these requirements permanent and incorporate them into the foreign air carrier regulations in recognition that these measures were implemented on an emergency basis and should now be available for public comment as part of this rulemaking.

TSA proposes to extend to foreign all-cargo air carriers requirements to implement a level of security similar to that of U.S. aircraft operators using the same size aircraft. Under the proposed amendment to § 1546.101, foreign air carriers would be required to adopt and implement a security program acceptable to TSA for all flights using an

[19] 67 FR 41635, 41637 (June 19, 2002).

[20] 67 FR 79881, 79883 (December 31, 2002).

all-cargo aircraft with a maximum certificated takeoff weight of more than 45,500 kg that land or take off in the United States. This security program would essentially parallel the requirements of the proposed all-cargo program for U.S. aircraft operators. This NPRM also proposes that foreign air carriers in all-cargo operations with aircraft over 12,500 pounds and up to 45,500 kg also implement security programs. This security program would essentially parallel the requirements of the Twelve-Five Standard Security Program for U.S. aircraft operators. The remaining proposed amendments would require foreign air carrier security programs to provide a level of security similar to that required of U.S. aircraft operators serving the same airport and employ equivalent procedures. These procedures include application of security measures to persons and property on board the airplane under proposed § 1546.202, measures for acceptance and screening of cargo under proposed § 1546.205, introduction of security threat assessments for cargo personnel in the United States under proposed § 1546.213, and application of Known Shipper program requirements under proposed § 1546.215.

J. Enhancing Existing Requirements for IACs

The IAC, sometimes called a freight forwarder, is a crucial part of the air cargo system, acting as an intermediary between the shipper and the aircraft operator for approximately 80% of all air cargo shipped on passenger aircraft in the United States. TSA estimates that there are 3,200 entities in the United States operating as IACs ranging from large corporations to sole proprietors working out of their homes. All IACs are required to maintain a security program known as the IACSSP and are regulated under 49 CFR 1548. This NPRM proposes to expand the definition of IAC to include businesses engaged in the indirect transport of cargo on larger commercial aircraft, regardless of whether the operation is conducted with a passenger aircraft or an all-cargo aircraft.

In addition, TSA plans to strengthen security requirements for all IACs. Specifically, TSA proposes to vet businesses more thoroughly before they are authorized to do business as IACs, strengthen a requirement for periodic recertification of IAC status, and strengthen security requirements for accepting and processing air cargo. These amendments to the rules governing IAC operations are intended to improve the security of the air cargo supply chain by infusing better security during the period between when a package leaves a shipper and when it is presented to the aircraft operator.

A key element of TSA's proposed enhanced IAC standard security program is a more thorough vetting of entities seeking authority to do business as IACs. To strengthen the application process, TSA is developing a web-based, centralized system for validating and revalidating IACs. This system will improve security through an enhanced, more effective vetting process while facilitating the application, renewal and review process for the industry.

Upon implementation of the Internet-based system, TSA proposes, under § 1548.7, to require all businesses to use the system to obtain initial IAC approval and to renew their approval. In doing so, TSA proposes to require IAC applicants to submit more information about themselves and their business than is currently required, including basic corporate records. IACs would also be required to use the system to notify TSA of any changes to their corporate structure and to renew their status annually. These two steps will allow TSA to check whether the applicant is a legitimate business and determine whether the business or personnel poses a threat to transportation security.

These planned new IAC vetting tools, combined with the centralization of information and automated communications, would enable TSA to implement effectively a program to remove IAC authorization from those persons found to be security risks during revalidation or found to be out of compliance. In this NPRM, TSA proposes procedures for withdrawing IAC security program approval.

TSA's envisioned electronic validation/revalidation process is also indicative of the DHS commitment to improving security while promoting best business practices. By automating much of the current paper-based process, TSA would be able to accelerate the validation and revalidation process, and industry would have an improved means of communication with TSA that facilitates TSA's ability to notify IACs and aircraft operators of pending actions.

K. Establishing New Training and Personnel Requirements

TSA is proposing to add regulatory text to: expand general security requirements to include the protection of stored or en route cargo under § 1548.9; implement training under § 1548.11; require IACs to appoint Security Coordinators under § 1548.13; authorize IACs to receive and require IACs to confirm receipt of, and to implement SDs and Information Circulars under § 1548.15.

To ensure that IAC employees understand and are trained to implement their security responsibilities, TSA is proposing to require a comprehensive and recurrent training program for IACs. This program would cover procedures for accepting, accessing and handling cargo intended for transport on aircraft as well as record keeping, acceptance and maintenance of Sensitive Security Information, and communication protocols and other requirements in the security program. As part of this initiative, TSA proposes to develop computer and/or video-based instructional materials and a testing tool, including a minimum standard that an employee will be expected to meet, and protocols for situations where employees fail to meet the threshold. Development of these training tools will coincide with the review and consideration of this NPRM and revisions to the IACSSP; training materials should be available to IACs shortly after these changes are implemented. TSA believes that development and distribution of these training tools will enhance regulatory compliance among the IAC community. TSA invites public comment on the practical and economic implications of requiring training of IAC and IAC agent personnel, and on the best means for achieving a high training standard without disrupting commerce.

TSA also proposes to require IACs to designate a Security Coordinator at the corporate level. This individual will be responsible for implementing the IAC's security program and will serve as the IAC's primary point of contact for communication with TSA. The Security Coordinator can be an existing employee with additional duties, but someone in this role must be available 24 hours a day. Establishment of IAC security coordinators is crucial to ensuring that TSA has an open line of communication with this important class of regulated parties. Currently, airport operators and aircraft operators must have Security Coordinators.

As TSA is presented with new threat and vulnerability information, TSA may need to require IACs to adjust their actions accordingly. Currently, TSA communicates such information to regulated parties, particularly to aircraft operators, by issuing SDs and Information Circulars. TSA is proposing to implement a parallel capability for IACs. IACs would be authorized to receive SDs, and required to verify receipt of the directive or circular and

to notify TSA how they will comply with it. If an IAC is unable to comply with a SD, it would be allowed to propose an alternative means of compliance to TSA. Formalizing this two-way communication is necessary to ensure sufficient measures are enacted when the threat changes, such as during a heightened state of alert.

TSA also proposes to codify existing general requirements of the IACSSP to require IACs to enhance the security of cargo stored or en route to the aircraft operator. The proposal to enhance en route and storage security is intended to ensure that IACs are held accountable for securing the goods entrusted to them throughout those legs of the supply chain for which they are responsible. Acceptable security measures are likely to include standards for facility security, and lock and seal requirements for conveyances. TSA invites suggestions from interested parties regarding the most appropriate solutions available.

V. Section-by-Section Analysis of Proposed Changes

Part 1540—Civil Aviation Security: General Rules

Section 1540.5—Terms Used in This Subchapter

TSA proposes to broaden the definition of "Indirect Air Carrier" by removing the word "passenger," in order to expand TSA security program requirements to freight forwarders that offer cargo to all-cargo aircraft operations. The ASAC Air Cargo Security working groups ("ASAC working groups") recommended, and TSA agrees, that limiting the definition of IAC to only those persons that tender cargo to a passenger aircraft would be inconsistent with TSA's goal of extending a security regime to all-cargo aircraft operations.

Sections 1540.201 Through 1540.209—Subpart C—Security Threat Assessments

The ASAC working groups recommended, and TSA agrees, that the identities of personnel who have unescorted access to cargo to be shipped by air should be verified, and that such personnel should be subject to appropriate background checks. TSA proposes to create a type of personnel background check to be called a "Security Threat Assessment." This Security Threat Assessment would include a search by TSA of domestic and international databases to determine the existence of indicators of potential terrorist threats that meet the standards set forth in proposed Subpart C of part 1540. This subpart is procedural and sets out the scope and basic procedural requirements of a Security Threat Assessment, including related fee requirements, and provides for review of TSA determinations in connection with Security Threat Assessments.

In proposed §§ 1544.228, 1546.312, and 1548.15, operators would be required to ensure that individuals who have unescorted access to cargo undergo a Security Threat Assessment or other check. See the discussion of § 1544.228 below. This requirement would apply to aircraft operators operating under full or all-cargo programs, the corresponding foreign air carriers, and IACs that offer cargo to such operators.

TSA's proposed Security Threat Assessment would require in § 1540.203 that operators verify the individual's identity, after which TSA would check their identity information against intelligence records and other data related to terrorism. Operators would be required to submit the individual's name, date and place of birth, social security number and date of naturalization (if a naturalized citizen), citizenship status, alien registration number (if applicable) and a detailed description of the measures taken to verify the individual's identity. After assessing this data to determine whether the individual poses or is suspected of posing a threat to national security, transportation security or of terrorism, under proposed § 1540.205, TSA would notify the regulated party and the individual. This notification can take 3 forms:

1. *Security Authorization for Unescorted Cargo.* This notification would indicate that TSA has not found that the individual presents a known or suspected threat to security. Upon receipt of this notification, the operator may authorize the individual unescorted access to air cargo.

2. *Initial Denial of Authorization for Unescorted Cargo Access.* This notification would be issued if TSA knew or suspected the individual of posing a threat. The individual would be able to appeal this determination through adjudication, but the individual would not be permitted unescorted access to air cargo while the appeal is pending.

3. *Final Denial of Authorization for Unescorted Cargo Access.* If the individual was determined to present a threat after an initial determination was issued and the individual has an opportunity to appeal that determination, this notification would inform the operator and the individual that he or she must be barred from having unescorted access to air cargo.

Section 1540.207 would set out the appeals procedures under this proposal to provide appropriate due process. Section 1540.209 would establish the fee requirements necessary to recover associated costs of the Security Threat Assessment. Under the proposed rule, the operator would not permit the individual to handle cargo until the operator and the individual were notified of a Security Authorization for Unescorted Cargo Access by TSA. In cases where TSA issues a Denial of Authorization for Unescorted Cargo Access, TSA may notify government agencies for law enforcement or security purposes, or in the interests of national security. TSA recognizes that the requirement for background checks may cause affected businesses to alter their hiring practices. However, TSA believes that the security benefits of this requirement will be considerable and that TSA will be able to conduct the initial assessments in an expeditious fashion, providing timely notice to the regulated party.

Part 1542—Airport Security

Section 1542.1—Applicability of This Part

Currently, part 1542 applies to airport operators regularly serving aircraft operators with full programs, private charter programs, or partial programs under part 1544, or the corresponding foreign air carriers under part 1546. Airport operators under part 1542 must have and carry out security programs as described in that part and, under § 1542.5, must allow TSA to conduct inspections on the airport. Airports that do not regularly serve such operations, or only serve twelve-five programs, are not now subject to part 1542.

TSA proposes to revise § 1542.1 by adding subparagraph (d) to require that each airport that serves an aircraft operator with any security program under part 1544 or a foreign air carrier under part 1546 would be subject to § 1542.5. This would ensure that TSA could inspect aircraft operators and foreign air carriers using an airport that does not have a security program. It is critical that TSA have access to those aircraft operations to determine whether they are in compliance with the security requirements. Accordingly, the proposed addition of subparagraph (d) would provide that TSA may enter an airport that is not otherwise subject to part 1542 to conduct an inspection on an aircraft operator or a foreign air carrier regulated under parts 1544 and 1546, respectively. This proposal would not require that any additional airport operators obtain security programs; it

would only require that certain airport operators allow TSA to conduct inspections under § 1542.5.

Section 1542.205—Security of the Security Identification Display Area (SIDA)

The ASAC working groups recommended, and TSA agrees, that, at airports that currently have one or more SIDAs, the SIDA should be extended or a new SIDA created to encompass air cargo operations. These airports have complete programs under § 1542.101(a) and serve the passenger aircraft operators with full programs. Under current § 1542.205, for each SIDA the airport operator must establish and carry out a personnel identification system, subject each individual who has unescorted access to a criminal history records check, and ensure each individual with unescorted access is properly trained. Currently, air cargo operations are not required to be conducted in SIDAs.

Under paragraph 1542.205(a) TSA is proposing to add a new paragraph (a)(2) that expands the scope of operations that must be in a SIDA by requiring airports with SIDAs either to expand existing or create new SIDA to incorporate areas of cargo operations. These cargo operations areas would include areas where cargo is regularly sorted, loaded, or unloaded by certain aircraft operators or foreign air carriers. The SIDA would only be extended to areas on airport grounds.

This proposed change would apply only to aircraft operations conducted under a full program, and those operating under an all-cargo program. Also, only areas of the airport that are regularly used for these cargo operations would be made SIDAs. Areas on these airports that are only occasionally used would not need to be SIDAs, but the aircraft operator would be required to provide security for the area under proposed § 1544.225(d). Similarly, at airports that do not have SIDAs pursuant to §§ 1542.103(a) and 1542.205(a), aircraft operators would provide security under proposed § 1544.225(d). All airport operators who would be affected by the proposed amendment of paragraph 1542.205(a) currently have a SIDA and are already subject to the requirements of § 1542.103(a) and § 1542.205.

TSA also proposes to revise current paragraph 1542.205(b)(2), which states that an individual must undergo an employment history verification under § 1542.209 before gaining unescorted access to a SIDA. This paragraph would be changed to clarify that a criminal history records check is required pursuant to § 1542.209 rather than an employment history verification. This clarification would make the text of § 1542.205(b)(2) consistent with that of § 1542.209.

Finally, TSA proposes to add new paragraph 1542.205(c). This paragraph would make it clear that an airport operator that is not required to have a complete program under § 1542.103(a) is not required to establish a SIDA under proposed § 1542.205.

The security measures required in a SIDA provide additional safeguards against unauthorized persons from gaining access to cargo operations where they could tamper with the cargo or stow away in attempt to take over the aircraft in flight, or introducing into cargo an unauthorized explosive, incendiary, or destructive substance or item.

Part 1544—Aircraft Operator Security: Air Carriers and Commercial Operators

Section 1544.101—Adoption and Implementation

The ASAC working groups recommended, and TSA agrees, that all-cargo aircraft operations conducted in aircraft with a maximum certificated take-off weight of more than 45,500 kg (100,309.3 pounds) should be subject to certain security requirements beyond those applicable to such operations under the current Twelve-Five Standard Security Program. TSA has already determined that this size aircraft is of a size that could cause significant damage if taken over and used as a weapon, and thus when this size aircraft is used in private charter passenger operations it must be operated under a private charter security program.[21] Additionally, the 45,500 kg threshold is consistent with international security standards adopted by the International Civil Aviation Organization. Accordingly, to ensure consistent treatment of similar aircraft, TSA proposes, in § 1544.101(h) and (i), to apply the same threshold by requiring that all-cargo operations in such aircraft be covered under an all-cargo program. Note that such aircraft carry both cargo and certain other persons (not passengers) in accordance with FAA rules. 14 CFR 121.547 and 121.583. These persons handle the cargo and perform other operations related to the flight.

Operations under an all-cargo program would no longer be under the current twelve-five program. Accordingly, TSA proposes to amend paragraph 1544.101(d)(1) to conform to the addition of the all-cargo program by providing that the twelve-five program does not apply for operations under an all-cargo program.

In addition, TSA proposes to change the requirement for a twelve-five program from aircraft with a maximum certificated takeoff weight "of 12,500 pounds or more" to "more than 12,500 pounds." This section initially was based on the requirement in ATSA section 132(a) that TSA implement a security program for charter air carriers for aircraft having a maximum certificated takeoff weight of 12,500 pounds *or more*. In Vision 100, section 606(a), this was changed to require security programs for aircraft with a weight of *more than* 12,500.[22] This proposed amendment is consistent with Congressional intent. Vision 100 also codified the requirement for charter air carrier security programs in 49 U.S.C. 44903(l)(1).

Vision 100 section 606(a) also codifies in new 49 U.S.C. 44903(l)(2) an exemption for armed forces charters so they are not subject to the requirements of 44903(l)(1). Such military operations are not subject to the requirements of § 1544.101(d) or (e) and no TSA rule change is needed to implement this provision.

TSA also proposes to amend paragraph 1544.101(e)(1), which lists the elements of the twelve-five program. TSA proposes the following enhancements to the twelve-five program for all-cargo operations: § 1544.202 (Persons and property onboard the all-cargo aircraft) and § 1544.205(a), (b), and (d) (Acceptance and screening of cargo: Preventing or deterring the carriage of any explosive or incendiary, Screening and inspection of cargo, and Refusal to transport).

Section 1544.202—Persons and Property Onboard the All-Cargo Aircraft

Section 1544.201 currently requires passenger operations under full programs or private charter to screen, inspect, and provide other security for persons who board their aircraft and their accessible property. This section is geared largely to cover screening of passengers and their accessible property, though it also covers security measures for other persons boarding aircraft operated under full programs or private charter programs.

TSA proposes to add new § 1544.202. This section would require aircraft operators to apply the security measures in their security programs to persons who board the aircraft, and to their property. This proposed requirement is

[21] 67 FR 41635 (June 19, 2002), amended by 67 FR 79861 (Dec. 31, 2002).

[22] Century of Aviation Reauthorization Act, Pub. L. 108–176.

intended to prevent persons who may pose a security threat from boarding and to prevent or deter the carriage of unauthorized explosives, incendiaries, and other destructive substances or items. This section would authorize TSA to incorporate into the security programs screening for unauthorized persons, or substances or items that could be used to pose a threat to transportation security.

TSA proposes to incorporate this requirement into both the twelve-five program for all-cargo operations and the proposed new all-cargo program. Such operators currently apply security measures to persons who board their aircraft under SDs that TSA has issued in response to threats. TSA envisions these measures to continue under this proposed rule.

Section 1544.205—Acceptance and Screening of Cargo

The ASAC working groups recommended, and TSA agrees, that security measures for and screening of air cargo should be enhanced. TSA proposes to amend paragraphs 1544.205(a), (b), (c), and (d) to broaden the scope of security measures that may be required in an aircraft operator security program, and to reference the Known Shipper program.

Specifically, TSA is proposing to require aircraft operators operating under a full, all-cargo, or twelve-five security program to inspect cargo for unauthorized persons, explosives, incendiaries, and other destructive substances or items. TSA believes that this amendment is necessary to prevent the introduction of stowaway hijackers, explosive devices, or other threats into air cargo. Carriers under these programs are currently required to inspect cargo to protect against such potential threats. This proposed provision would not alter that requirement but is adding it to the CFR and providing industry an opportunity for public comment. The security measures in proposed § 1544.205(a) and (b) are the same as those incorporated into SDs that have been issued and are currently being carried out by aircraft operators with full programs and twelve-five programs.

Proposed § 1544.205(b) would authorize TSA to incorporate into an aircraft operator's security program screening of cargo for unauthorized persons, or substances or items the intentional misuse of which could pose a threat to transportation security.

Current § 1544.205(c) provides that the aircraft operator must prevent access by persons other than an aircraft operator employee or its agent. TSA is proposing to add that persons authorized by the airport operator or host government also may have access. Such individuals as Customs inspectors and airport law enforcement officers must have access to such areas.

TSA also proposes to strengthen the cargo acceptance requirements applicable to aircraft operators operating under a full program or an all-cargo program. Pursuant to proposed § 1544.205(e), an aircraft operator would be permitted to accept cargo for air transportation only from entities that have comparable security programs. TSA believes that this provision is necessary to secure the aircraft by strengthening the integrity of the air cargo supply chain. These requirements parallel those currently applied to operations conducted under a full program.

TSA also proposes, in § 1544.205(f), to require each aircraft operator to carry out the requirements of its security program for cargo to be loaded on its aircraft outside the United States. Not all of the part 1544 requirements can be carried out in other countries. Rather, TSA works with the host governments, under international agreements, to ensure that the security measures in place provide the appropriate level of security.

Section 1544.225—Security of Aircraft and Facilities

The ASAC working groups recommended, and TSA agrees, that additional steps should be taken to assure that attempted unauthorized access to the aircraft and cargo is detected and prevented.

Proposed paragraph 1544.225(d) would require the operators of aircraft operating under a full program or an all-cargo program to prevent unauthorized access to the operational area of the aircraft while loading or unloading cargo. This requirement would apply to operations conducted both within and outside a SIDA. TSA recognizes that current paragraph 1544.225(b) requires all aircraft operators operating under security programs to prevent unauthorized access to each aircraft. Proposed paragraph (d) would broaden this requirement, for aircraft operated under a full or an all-cargo program, to clarify that unauthorized access must be prevented to the operational area around the aircraft during cargo loading and unloading operations. This measure would provide an additional layer of protection around the aircraft.

Section 1544.228—Security Threat Assessments for Cargo Personnel

TSA proposes to require persons who have unescorted access to cargo to undergo a security check. This would require that they comply with the requirements of subpart C of part 1540 by successfully completing a Security Threat Assessment, or that they undergo a criminal history records check under current rules, or other approved Security Threat Assessment. This requirement would apply to aircraft operators under a full program or an all-cargo program.

TSA believes that this step is necessary to reduce the likelihood of a terrorist gaining employment in a position with access to cargo for the purpose of introducing an explosive, stowaway hijacker, or other destructive substance into air cargo. Extending Security Threat Assessments to these individuals would allow for a comparable degree of security for all personnel with access to cargo on behalf of regulated parties from the time it is picked up from a shipper to the time it is loaded on the aircraft.

This proposal would allow for another Security Threat Assessment to be approved by TSA. For instance, if the individual had undergone a Security Threat Assessment for the issuance of a hazardous materials endorsement on a commercial drivers license in accordance with 49 CFR 1572.5, TSA could approve that as acceptable for compliance with proposed § 1544.228.

TSA has proposed a fee structure and collection process to fund some or all of the costs associated with the proposed Security Threat Assessment requirements. The proposed fee may be found at section VII titled Fee Authority for the Security Threat Assessment of this NPRM.

Section 1544.229—Fingerprint-Based Criminal History Records Checks (CHRC): Unescorted Access Authority, Authority To Perform Screening Functions, and Authority To Perform Checked Baggage or Cargo Functions

The ASAC working groups recommended, and TSA agrees, that the identities of persons who perform certain key actions with air cargo should be subject to verification and that the backgrounds of these persons should be checked. TSA proposes to broaden the background check requirements by revising paragraph 1544.229(a)(1)(iii)(B) to include a cross-reference to the new paragraph 1544.229(a)(1)(iii)(C). The new paragraph requires persons who screen cargo that will be carried on an aircraft of an operator required to screen cargo under part 1544 to submit to a CHRC under § 1544.229. Currently, § 1544.229 applies, in pertinent part, only to persons having authority to screen cargo, in the United States, of an

aircraft operator required to screen passengers under this part, or serving as an immediate supervisor of such an individual, when the cargo will be carried in the cabin of the aircraft. Accordingly, only cargo screeners for operators with full programs currently are subject to § 1544.229. This new requirement parallels the current requirement that persons who screen passengers and carry-on baggage (accessible property) must comply with § 1544.229. TSA also proposes to require that cargo screeners for operators with all-cargo programs be subject to the criminal history records check requirements of § 1544.229. This change would provide an additional protection against individuals who screen cargo for the largest all-cargo aircraft from using their positions to introduce unauthorized explosives, incendiaries, persons, or destructive substances or items into the cargo or aircraft.

Section 1544.239—Known Shipper Program

Proposed § 1544.239 would codify the Known Shipper program in the federal regulations. The "known shipper" concept, which differentiates cargo being shipped by recognized entities from that originating with unknown parties, has been a fundamental element of air cargo security since 1976. The program has also been recognized as a global standard by the International Air Transport Association (IATA) and was recognized by the United States Congress as a form of screening in ATSA. Aircraft operators operating under a full program would be required to have a Known Shipper program including measures to ensure the shippers' validity and integrity, to inspect or further screen cargo, and to provide shipper data to TSA. Aircraft operators must meet these requirements in accordance with the standards detailed in their security program. The Known Shipper program would apply to operations under full programs.

Aircraft operators with full programs are already required to maintain a Known Shipper program under their security programs. TSA believes that it is prudent to set out the major features of this program in regulation at this time. Additional changes to how the Known Shipper program must operate may be included in revisions to the security program.

Part 1546—Foreign Air Carrier Security

Section 1546.101—Adoption and Implementation

The ASAC working groups recommended, and TSA agrees, that cargo operations of foreign air carriers that land or take-off in the United States should be required to conform to essentially the same requirements as those applicable to comparable operations by domestic aircraft operators. TSA proposes to broaden the provisions of § 1546.101 to require each foreign air carrier landing or taking off in the United States to adopt and carry out an appropriate security program for each covered all-cargo operation. TSA proposes to establish the requirements of an appropriate security program for a covered foreign air carrier conducting all-cargo operations for operations in aircraft having a maximum certificated take-off weight greater than 45,500 kg (100,309.3 pounds) (analogous to a U.S. all-cargo program under part 1544), and for operations in aircraft having a maximum certificated take-off weight greater than 12,500 pounds up to 45,500 kg (100,309.3 pounds) (analogous to a U.S. twelve-five program in all-cargo operations under part 1544).

Section 1546.103—Form, Content, and Availability of Security Program

TSA proposes to make an administrative change to paragraph 1546.103(a) by removing the word "passenger" and changing "U.S. air carriers" to "U.S. aircraft operators."

In paragraph 1546.103(b), TSA proposes to add paragraphs 1546.101 (e) and (f) to the introductory text. This proposed change broadens the requirements to embrace cargo operations.

Section 1546.202—Persons and Property Onboard the Airplane

This proposed new section parallels the requirements of the proposed aircraft operations in the United States. The rationale for this addition is described in the section-by-section analysis for § 1544.202.

Section 1546.205—Acceptance and Screening of Cargo

The ASAC Working groups recommended, and TSA agrees, that, consistent with recognition of the sovereignty of foreign states, aviation security regulations should be clarified with respect to the duty of foreign air carriers for the security of air cargo loaded in or destined for the United States. TSA proposes to amend paragraph (a) and add paragraphs (c), (d), (e), and (f) to § 1546.205. These paragraphs are parallel to those for U.S. aircraft operators in proposed § 1544.205.

Proposed paragraph 1546.205(d), "Screening and inspection of cargo in the United States," would provide that each foreign air carrier must ensure that, as required in its security program, cargo is screened and inspected for explosives, incendiaries, unauthorized persons, and other destructive substances or items as provided in the foreign air carrier's security program, in accordance with § 1546.207, and § 1546.215 if applicable, before loading it on its aircraft in the United States.

Proposed paragraph 1546.205(e), "Acceptance of cargo in the United States," would provide that each foreign air carrier may accept cargo in the United States only from the shipper, or from an aircraft operator, foreign air carrier, or IAC operating under a security program under this chapter, with a comparable cargo security program as provided in its security program.

Proposed paragraph 1546.205(f) would provide that, for cargo to be loaded on its aircraft outside the United States, each foreign air carrier must carry out the requirements of its security program.

Section 1546.213—Security Threat Assessment for Cargo Personnel in the United States

TSA proposes to require persons who are not required to complete a CHRC under §§ 1542.209, 1544.229, or 1544.230 and who have unescorted access to cargo, to comply with the requirements of subpart C of part 1540 by successfully completing a Security Threat Assessment. This requirement would apply to foreign air carriers under paragraphs 1546.101(a), (b), or (e). The rationale for this security measure parallels that rationale described in the section-by-section analysis for § 1544.228.

Section 1546.215—Known Shipper Program

TSA proposes to codify the Known Shipper program for the foreign air carriers just as we proposed in § 1544.239. The rationale for adding this new section is the same as stated in the section-by-section analysis for § 1544.239.

Part 1548—Indirect Air Carrier Security

Section 1548.5—Adoption and Implementation of the Security Program

TSA proposes to revise paragraphs (a), (b), and (c) of § 1548.5 regarding the adoption and implementation of the

IACSSP. The proposed change to paragraph 1548.5(a) would specify that no IAC may offer cargo to an aircraft operator operating under a full program or an all-cargo program specified in part 1544, or to a foreign air carrier operating a passenger operation under paragraphs 1546.101(a) and (b) or an all-cargo program under paragraph 1546.101(e), unless that IAC has and carries out an approved security program under part 1548.

The proposed change to paragraph 1548.5(b) would broaden the scope of screening actions that may be required in an individual IAC's security program. IACs having cargo screening responsibilities under current § 1548.5(b)(1) and their approved security programs must "[p]rovide for the safety of persons and property traveling in air transportation against acts of criminal violence and air piracy and the introduction of any unauthorized explosive or incendiary into cargo aboard a passenger aircraft." TSA proposes to revise this requirement to provide that the IAC must "provide for the security of persons and property traveling in air transportation against acts of criminal violence and air piracy and the introduction of any unauthorized person, explosive, incendiary, or other destructive substances or items as provided in the IAC's security program."

This provision would also broaden the duty of IACs to include cargo to be carried on an aircraft operated under an all-cargo program rather than solely in passenger operations. This change parallels the cargo security requirements in proposed §§ 1544.205 and 1546.205. It authorizes TSA to incorporate into an IAC's individual security program screening of cargo for unauthorized persons, or substances or items the intentional misuse of which could pose a threat to transportation security. Under § 1548.5(b)(1)(i), this requirement would apply from the time the IAC accepts the cargo to the time it transfers the cargo to an entity that is not an employee, agent, contractor, or subcontractor of the IAC. This proposed provision clarifies the existing IAC security program requirement that the IAC is responsible for carrying out security measures under this part when its employee, agent, contractor or subcontractor fulfills its function. Section 1548.5(b)(1)(ii) would apply while the cargo is stored, en route, or otherwise being handled by an employee, agent, contractor, or subcontractor of the IAC. Section 1548.5(b)(1)(iii) would apply regardless of whether the IAC has or ever has physical possession of the cargo. At times, IACs perform cargo services that may include arranging for transportation of cargo by other entities. This proposed amendment clarifies that the IAC is responsible for these shipments even though the IAC, itself, does not have physical possession. Proposed paragraph 1548.5(b) would also require the IAC to assure that its employees, agents, contractors, and subcontractors comply with the requirements of the IAC's security program. This provision currently is in the IACs' standard security programs.

The proposed change to paragraph 1548.5(c) would assure that the content of each IAC security program reflects the scope of security measures established under proposed § 1548.5(b), references Known Shipper program requirements that are proposed to be codified in § 1548.17, and establishes a new requirement that each IAC security program include documentation of the procedures and curriculum used to accomplish the training of persons who accept, store, transport or deliver cargo for or on behalf of the IAC. This training would be required under proposed new § 1548.11.

Section 1548.7—Approval, Amendment, Annual Renewal, and Withdrawal of Approval of the Security Program

TSA proposes to restructure and revise this section both to reflect actual practices and enhance the security of this regulatory regime. The proposed revision of paragraph 1548.7(a) accounts for the fact that TSA has developed the IACSSP. Consistent with current practices, rather than submitting a security program for TSA approval, an entity would request approval to operate under the IACSSP. The proposed addition explains how an applicant must seek approval to operate under the IACSSP, including a record-keeping requirement and a list of information that the applicant must submit to TSA for consideration. Paragraph 1548.7(a) also proposes the process that TSA will follow to approve an applicant's operation under a security program, proposes that approvals would be effective for one year, and provides that the approved IAC must notify TSA of changes to the initial application. TSA would use the information submitted by IAC applicants to verify their legitimacy through a check of publicly-available records and to cross check that information against data on known and suspected terrorists.

Under current practices, TSA issues an IACSSP to expire each year. The proposed addition of paragraph 1548.7(b) presents the processes an IAC must follow to annually seek renewed TSA approval to operate under the IACSSP. Annual renewal would be a continuation, and codification, of the current practice. Other entities regulated by a TSA security program, such as aircraft operators and airports, must obtain FAA certification. IACs are not required to do so. Additionally, TSA has found that the IAC industry has a high degree of turnover. Accordingly, TSA proposes in paragraph 1548.7(b) that the IAC must submit to TSA for renewal at least 30 calendar days prior to expiration of the IACSSP as well as other standards for the submission. The proposed renewal standards also include that the IAC certify that it has provided TSA with its most up-to-date information and acknowledge that intentional falsification of the information may be subject to civil and criminal penalties. The addition further proposes the standard for TSA to renew the approval of an IACSSP. Proposed § 1548.7(b) otherwise codifies the existing security program required for annual renewal.

The proposed additions of paragraphs 1548.7(c), (d), and (e) revise the existing requirements of paragraphs 1548.7(b), (c) and (d), respectively. Many of the changes parallel changes made previously to similar requirements for airport operator security programs and aircraft operator security programs in §§ 1542.105 and 1544.105. In part, the new paragraphs have been moved to ensure that the structure of the section remains logical. Proposed § 1548.7(c) closely parallels the existing § 1548.7(b), but adds § 1548.7(c)(6)—allowing a group of IACs to submit a proposed amendment together. Proposed paragraph 1548.7(d) is the same as the existing paragraph 1548.7(c). The proposed paragraph 1548.7(e) revises the existing Emergency Amendments (EA) standards of the existing paragraph 1548.7(d). The proposed paragraph is separated into three subparagraphs for easier reading. Proposed paragraph 1548.7(d)(1) substitutes "aviation security" for "safety in air transportation or in air commerce" to clarify the breadth of TSA's EA authority. Proposed paragraph 1548.7(d)(2) reorganizes existing EA standards to emphasize immediate effectiveness and that TSA will provide a brief statement regarding the rationale for the EA. Finally, paragraph 1548.7(d)(3) provides the IAC with 15 days to file a petition for reconsideration but provides that the filing of the petition does not stay the effective date of the amendment.

TSA proposes to codify procedures for TSA to withdraw an IAC's approval to operate under the IACSSP with the

addition of paragraph 1548.7(f). The proposed standard for withdrawal is a TSA determination that the operation is contrary to security and the public interest. Proposed paragraph 1548.7(f) provides procedures for notice, response, and petition for reconsideration. The affected IAC would be able to request a stay of the withdrawal. TSA also proposes the codification of emergency withdrawal procedures. This proposal creates procedural guidelines to implement withdrawal of a security program and affords due process to the IAC. The emergency procedures would allow the IAC to submit a petition for reconsideration, but the filing of a petition will not stay the effective date of withdrawal.

Proposed paragraph 1548.7(g) adds provisions for proper service of documents in the withdrawal proceedings. Procedures for time extensions are proposed at paragraph 1548.7(h).

Section 1548.9—Acceptance of Cargo

TSA proposes to revise paragraph 1548.9(a) to broaden the scope of the IAC's duty to prevent or deter the carriage of unauthorized persons or destructive substances or items on board an aircraft to the existing requirements regarding explosives and incendiaries. With the expanded definition of IAC, this provision proposes to require IACs to carry out these procedures whenever offering cargo for air transportation on all-cargo aircraft, as well as a passenger aircraft under a full program. This proposed section further provides that, subject to TSA approval of the provisions of the IAC's security program. Additionally the proposed amendment would add a requirement that the IAC request the shipper's consent to search or inspect the cargo.

TSA proposes to revise paragraph 1548.9(b) by adding all-cargo aircraft operations to the search and inspection requirements. Under current paragraph 1548.9(b), this duty extends only to cargo that is intended for shipment aboard a passenger aircraft. By removing the word "passenger," this paragraph would extend to cargo for shipment aboard all-cargo aircraft operations as well. Proposed paragraph 1548.9(b) would delete the requirement, found in current paragraph 1548.9(b), that the IAC must search or inspect cargo. This amendment is primarily aimed at creating a parallel structure to the requirements found in parts 1544 and 1546.

Section 1548.11—Training and Knowledge for Individuals with Security-Related Duties

The ASAC working groups recommended, and TSA agrees, that certain employees of IACs, and of agents, contractors, and subcontractors performing services for IACs, should be subject to security-related training. These enhanced requirements for training covers individuals who perform security-related duties to ensure the appropriate security standards are met.

TSA proposes to add new § 1548.11(a), which specifies that an IAC must not use any individual to perform any security-related duties to meet the requirements of its security program unless the individual has received training as specified in its security program. This requirement would cover employees of the IAC as well as employees of any agent, contractor, or subcontractor performing security-related duties for the IAC.

Under proposed § 1548.11(b), additional training would be specified for individuals who accept, handle, transport, or deliver cargo for or on behalf of the IAC. This training must include, at a minimum, requirements contained in the applicable provisions of part 1548, applicable SDs and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's or IAC's security program to the extent that such individuals need to know in order to perform their duties.

Proposed paragraph 1548.11(c) would require annual recurrent training of covered individuals in these elements of knowledge. Pursuant to proposed § 1548.7(a), initial training of the identified individuals performing duties for the IAC must be completed before an IAC may begin operations under its approved security program.

Section 1548.13—Security Coordinators

The ASAC working groups recommended, and TSA agrees, that communication among regulated aircraft operators, airport operators, TSA, and IACs concerning security matters must be improved, and responsibility for compliance by IACs with TSA security requirements must be clarified. TSA proposes to require each IAC to designate and use an Indirect Air Carrier Security Coordinator (IACSC). The IAC would be required to appoint the IACSC at the corporate level, and IACSC would be directed to serve as the IAC's primary contact for security-related activities and communications with TSA, as set forth in the IACSSP. Either the IACSC or an alternate IACSC would be required to be available on a 24-hour basis. This proposed addition parallels existing security coordinator positions required of airport operators in § 1542.3 and aircraft operators in § 1544.215.

Section 1548.15—Security Threat Assessments for Individuals Having Unescorted Access to Cargo

The ASAC working groups recommended, and TSA agrees, that the identities of personnel who have unescorted access to cargo to be shipped by air should be verified, and that such personnel should be subject to an appropriate background check. TSA proposes to add new § 1548.15, which would prohibit each IAC from authorizing any individual unescorted access to cargo until the IAC has verified the identity of that individual in a manner acceptable to TSA, and that individual has successfully completed a Security Threat Assessment pursuant to proposed subpart C of 1540. The rationale for this security measure parallels that described in the section-by-section analysis for § 1544.228.

Section 1548.17—Known Shipper Program

TSA proposes to add new § 1548.17 to codify the Known Shipper program in regulation. This addition is essentially the same as that for aircraft operators under proposed § 1544.239.

Section 1548.19—Security Directives and Information Circulars

The ASAC working groups recommended, and TSA agrees, that communication between regulated IACs and TSA concerning security matters must be improved, and responsibility for compliance by IACs with TSA security requirements must be clarified. In the past, when threat conditions required that additional security measures be carried out immediately, TSA has issued EAs to IACs' security programs. This section would, in part, provide a procedure for TSA to impose such measures using SDs. TSA proposes to add new § 1548.19, which would authorize TSA to issue SDs and Information Circulars to regulated IACs, and would mandate compliance by the IAC with each SD that it receives. Proposed § 1548.19 would also require the IAC to acknowledge in writing receipt of the SD within the time prescribed in the SD, and to specify the method by which the measures in the SD have been implemented (or will be implemented, if the SD is not yet effective) within the time prescribed in the SD. In the event that the IAC is unable to implement the measures in an SD, proposed § 1548.19 would authorize

the IAC to submit proposed alternative measures and the basis for the alternative measures to TSA for approval. The IAC would be required to submit the proposed alternative measures within the time prescribed in the SD and, if they are approved by TSA, the IAC would be required to implement them.

Proposed § 1548.19 also provides that each IAC that receives an SD may comment on the SD by submitting data, views, or arguments in writing to TSA, and that TSA may amend the SD based on comments received. Proposed § 1548.19 also provides that submission of a comment would not delay the effective date of the SD.

Proposed § 1548.19 also provides that each IAC that receives a SD or Information Circular and each person who receives information from a SD or Information Circular would be required to restrict the availability of the SD or Information Circular, and information contained in either document, to those persons with a need-to-know. The IAC would be required to refuse to release the SD or Information Circular, and information contained in either document, to persons other than those with a need-to-know without the prior written consent of TSA.

VI. Proposed Compliance Schedule

Most of the provisions in this proposed rule would codify existing SD requirements. It appears to TSA that most of the new provisions in this proposed rule are achievable by the regulated parties within 90 days. However, TSA recognizes the need for further time to implement some provisions. TSA proposes that the proposed rule, if adopted, would become effective as follows:

(1) The proposed rule would become effective 90 days after the date of publication of the final rule in the **Federal Register** and operators would generally be required to comply with the requirements (with the exception of the compliance date described in VI. (2)).

(2) TSA proposes that certain measures in the proposed rule would require compliance by 180 days from the date of publication of the final rule in the **Federal Register**. TSA believes IACs will need as much as 180 days to introduce new training requirements under § 1548.11 and to establish and operate under a TSA security program pursuant to § 1548.7. Finally, TSA proposes to provide 180 days for aircraft operators, foreign air carriers, and IACs to comply with the security threat assessment for those individuals required to submit to the requirements pursuant to proposed §§ 1544.228, 1546.213, and 1548.15.

TSA requests additional information from the public on how many operators would be affected, what the impact would be on those individual operators, and the proposed compliance schedule.

VII. Fee Authority for Security Threat Assessment

The USA PATRIOT Act did not grant TSA authority to collect fees to cover the costs associated with completing background checks. However, on October 1, 2003, legislation was enacted requiring TSA to collect reasonable fees to cover the costs of providing credentialing and background investigations in the transportation field, including implementation of the USA PATRIOT Act requirements.[23] Fees collected under this legislation (Section 520) must be used to pay for the costs of conducting or obtaining a criminal history records check (CHRC); reviewing available law enforcement databases, commercial databases, and records of other governmental and international agencies; reviewing and adjudicating requests for waivers and appeals of TSA decisions; and any other costs related to performing the background records check or providing the credential.

Section 520 mandates that any fee collected shall be available for expenditure only to pay for the costs incurred in providing services in connection with performing the background check or providing the credential. The fee shall remain available until expended. TSA is establishing this fee in accordance with the criteria in 31 U.S.C. 9701 (General User Fee Statute), which requires fees to be fair and based on (1) costs to the government, (2) the value of the service or thing to the recipient, (3) public policy or interest served, and (4) other relevant facts.

Summary of Security Threat Assessment Requirement

TSA currently requires a variety of individuals working in aviation to submit to criminal history records checks to reduce the likelihood that a terrorist would gain employment that would give them access to the aircraft. Generally, these individuals work on airport grounds and have unescorted access to secure areas. In the cargo environment, many other persons have access to cargo before someone who has had such a check handles it. TSA recognizes that the number of individuals handling cargo is very large and that extending fingerprint-based records checks to these people would likely be a very time-consuming and costly process that would cause a major disruption to the domestic and international transportation of goods. TSA is proposing a focused Security Threat Assessment program to determine whether individuals seeking to handle cargo present a terrorist threat. This program will reduce the likelihood that a terrorist might gain access to a cargo aircraft.

Flexibility will be achieved by ensuring that each of the following individuals with unescorted access to cargo be required to have either a Security Threat Assessment or unescorted SIDA access: (1) IAC personnel; (2) Aircraft Operator personnel operating under a full program or an all-cargo program; and (3) Foreign Air Carrier personnel under 49 CFR 1546.101(a), (b), or (e). TSA also proposes to conduct a Security Threat Assessment on each officer, director and person who holds 25 percent or more of total outstanding voting stock of an Indirect Air Carrier or entity applying to become an IAC.

Security Threat Assessment Population

Personnel with unescorted access to cargo that work for an IAC, an aircraft operator, or a foreign air carrier would be required to undergo a name-based Security Threat Assessment. Additionally each officer, director and person who holds 25 percent or more of total outstanding voting stock of an Indirect Air Carrier or entity applying to become an IAC would be required to undergo a name-based Security Threat Assessment. TSA approximates a *de minimis* number of persons who hold 25 percent or more total outstanding voting stock that are not also officers or directors of these IACs. Accordingly, TSA has not accounted for these individuals separately. However, those personnel with unescorted SIDA access have undergone a criminal history records check. TSA would accept the criminal history records check in lieu of the proposed Security Threat Assessment for these personnel.

The Indirect Air Carrier Population

TSA estimates that there are approximately 3,800 companies that are defined as IACs. TSA further estimates that there are approximately 7 employees per IAC. Therefore the total population is estimated to be 26,600.

[23] Department of Homeland Security Appropriations Act, 2004, Section 520, Pub. L. 108–90, October 1, 2003, 117 Stat. 1137.

Cargo Personnel Not Subject to Other TSA Security Threat Assessments

TSA has estimates that there are approximately 65 aircraft operators and foreign air carriers operating all-cargo flights that have employees who are subject to the proposed Security Threat Assessment. As discussed in the economic evaluation, aircraft operators and foreign air carriers have some employees who are required to submit to the fingerprint-based SIDA check but some employees would only be required to submit to the Security Threat Assessment. Because most of the operator employees are covered in the SIDA background check requirements, TSA believes that only a limited number of employees would be required to submit to a Security Threat Assessment and not the security assessment for SIDA workers. There may be instances where all employees with access to the cargo will have the security assessment for SIDA workers. TSA estimates that there are approximately 25 employees for each aircraft operator and foreign air carrier operating all-cargo flights who would be required to submit to a Security Threat Assessment. Therefore the total population is estimated to be 1,625 (65x25).

Total Initial Population

Given the IAC population of 26,600 and the population of relevant aircraft operators and foreign air carriers operating all-cargo flights employees of 1,625, the total population subject to a Security Threat Assessment is 28,225 (26,600 + 1,625). This initial population would be required to submit to a Security Threat Assessment during the first year of the program.

Recurring Population

TSA estimates approximately 15% of the initial total population would be required to submit to a Security Threat Assessment each year after the initial assessment. This percentage represents new employees or employees with a new requirement for the Security Threat Assessment. Therefore the recurring population that would be required to submit to a Security Threat Assessments is estimated to be 4,234.

Five Year Population

Given the first year population of 28,225 and subsequent annual recurring population of 4,234, we estimate that the total population receiving a Security Threat Assessment over the first 5 years is 45,161 (28,225 + 4 × 4,234).

Program Costs

This section summarizes TSA's estimated costs for establishing the program, processes, and resources to establish and perform the Security Threat Assessment on the appropriate population.

Leveraging Existing Resources

Where possible, TSA would leverage existing processes, infrastructure and personnel that are envisioned to be in place for other Security Threat Assessment programs at the time this program on Security Threat Assessment begins operation. Existing infrastructure that would be leveraged include the HAZMAT Endorsement Program's [24] Hazardous Materials Endorsement Screening Gateway System (HMESG); however, some modifications to these systems would be necessary to meet proposed requirements. These changes would include connectivity with additional government agencies, software enhancement and additional backup capabilities. In addition to the HMESG, this program would leverage existing real estate and Project Management Office personnel. The additional costs that would be incurred by the HAZMAT program have been identified in the recurring cost section below.

Start-Up Costs

We estimate that the total start-up costs would be $690,000. This includes $570,000 for hardware and software modifications for the existing HAZMAT HMESG and $120,000 for program management personnel. See Figure 1 below for additional details.

Recurring Costs

We estimate that the total annual recurring costs would be $928,354 for the first year and $214,102 for each subsequent year. These costs include an annual $50,000 expense TSA will incur for connectivity and $66,454 expense for use of the HAZMAT program infrastructure. The use of the HAZMAT program infrastructure would include use of program management, adjudication and fee processing personnel, use of real estate, and use of systems. The first recurring year would have significantly higher costs associated with those costs that are completely variable (*i.e.*, a function of the number of Security Threat Assessments performed). The combined first year cost for third party terrorist threat [25] checks and third party clearinghouse fees will be $783,675 and the costs for the four following years would be $93,414 annually.

FIGURE 1.—COSTS ESTIMATES

Category and subcategory	Description	Start-Up	Year 1	Recurring
Hardware/Software:				
HAZMAT HMESG Modification	The Hazardous Materials Endorsement Screening Gateway System.	$570,000		
HAZMAT HMESG Connectivity			$50,000	$50,000
Hardware/Software Total		570,000	50,000	50,000
Federal Personnel: Personnel to staff program office.	Additional federal employees will be required to staff the program office during the start-up phase. In the start-up phase, one FTE at $120,000 annually will be necessary for program implementation and development.	120,000		
Total Federal Personnel		120,000		

[24] The HAZMAT Endorsement Program is a program currently being developed by the TSA to provide background checks on drivers with a Hazardous Materials Endorsement on their Commercial Drivers License. Initially, all current endorsement holders will have a name-based check performed on them and, as an individual renews or applies for a HAZMAT endorsement, a fingerprint-based background check will be performed.

[25] The third party assessments include (i) those performed by the Office of National Risk Assessment (ONRA) and (ii) FBI named-based checks through Automated Case Systems (ACS).

FIGURE 1.—COSTS ESTIMATES—Continued

Category and subcategory	Description	Start-Up	Year 1	Recurring
Third Party Clearinghouse Fee: Third Party Clearinghouse Fee.	The third party clearinghouse will collect and process the applicant's biographical information, collect the applicant fee and forward the information and fee to TSA.	.....	84,675	12,702
Total Third Party Clearinghouse Fee	.....	.....	84,675	12,702
Terrorist Threat Assessment:				
Automated Case System Fee (FBI name based checks-Automated Case Systems).	A terrorist threat analysis is the process of querying applicant names in terrorist threat and criminal databases. This cost is derived by multiplying the total population by the cost per applicant of several database checks. $20 per applicant.	.....	564,500	67,260
Office of National Risk Assessment Fee	A terrorist threat analysis is the process of querying applicant names in terrorist threat and criminal databases. The cost is derived by multiplying the total population by the cost per applicant of several database checks: $4 per applicant.	.....	134,500	13,452
Total-Terrorist Threat Assessment	.....	.....	699,000	80,712
Additional costs to existing programs: Additional costs incurred by HAZMAT program.	Leveraging the planned infrastructure to the HAZMAT program will increase the total recurring costs by 1% per year. The cost here is 1% of the average relevant annual costs. Includes Federal and Contractor personnel, Office Facilities, and Systems.	.....	66,454	66,454
Total additional costs to existing programs	.....	.....	66,454	66,454
Total Costs	.....	690,000	928,354	214,102

Total Costs

Based on its population and cost estimate assumptions, TSA estimates that start-up phase costs would be approximately $690,000 and recurring phase costs would be approximately $928,354 annual for the first recurring year and $214,102 for each subsequent year. Therefore the total cost of the program for the first 5 years would be $2,474,762.

Cost Adjustments

Pursuant to the Chief Financial Officers Act of 1990, DHS/TSA will review this fee at least every two years.[26] Upon review, if it is found that the fee is either too high or too low, a new fee will be proposed.

Fee Calculation

TSA is proposing to charge a fee to cover the recurring costs of the program. Start-up costs will be provided by TSA.

Recurring Phase Costs

TSA estimates that the total annual recurring phase costs for the first 5 years would be $1,784,762. These total costs consist of the sum of the first year costs plus the four recurring years at $214,102 per year. The expected applicants divide these costs over the first 5 years. Therefore the fee associated will be $39 ($1,784,762/45,161) per applicant, rounded to the nearest dollar from $39.52. The fees are based on summing the annual costs and population over 5 years. This calculation is done in order to account for any variability that may arise from the imprecise nature of the population and cost estimates.

Fee Remittance Process

TSA would employ a third party to establish the infrastructure for collecting data and fees, cleansing data, and forwarding the funds and information to TSA. This process would function in a similar manner to other TSA background check programs and may include the services of Pay.gov. The third party processing costs are accounted for in the "Third Part Clearinghouse Fee" category in Figure 1–Cost Estimates.

VIII. Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, TSA has determined this proposed rule:

(1) Has benefits which are likely to justify its costs, is not a "significant regulatory action" as defined in the Executive Order, but is significant due to public interest, rather than economically;

(2) Will not have a significant impact on a substantial number of small entities;

[26] 31 U.S.C. 902.

(3) Imposes no significant barriers to international trade; and

(4) Does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

These analyses, available in the docket, are summarized below.

Economic Impacts

This summary highlights the costs and benefits of the proposed rule to amend the transportation security regulations to further enhance and improve the security of air cargo transportation. TSA has determined that this is not a major rule within the definition of Executive Order 12866, as annual costs or benefits to all parties do not pass the $100 million threshold in any year. Likewise there are no significant economic impacts for each of the required analyses of small business impact, international trade, or unfunded mandates. A separate detailed regulatory evaluation is available in the docket and TSA invites comments on all aspects of the economic analysis.

TSA proposes to create a mandatory security program for all-cargo aircraft operations over 45,500 kg (100,309.3 lbs) and to amend existing security regulations and programs for aircraft operators, foreign air carriers, airport operators, and IACs. IAC would be redefined to include those transporting goods via all-cargo aircraft. Mandatory security programs for all-cargo operations would replace the voluntary DSIP and extensively build on the requirements of the Twelve-Five Standard Security Program. TSA also proposes to expand the use of background checks and threat assessments to new populations, including IAC employees and individuals who have unescorted access to cargo, where such operations are either outside of the currently defined airport SIDA.

Costs

The following sections summarize the estimated costs of this NPRM by general category of who pays. A summary table is provided for an overview of the cost items, the regulation section creating the requirement, and a brief description of cost elements. Both in this summary and the economic evaluation, descriptive language is used to address the consequences of the regulation. Although the regulatory evaluation attempts to mirror the terms and wording of the regulation, no attempt is made to replicate precisely the regulatory language and readers are cautioned that the actual regulatory text, not the text of the regulatory evaluation, is binding.

Aircraft Operators will incur additional costs to comply with requirements of this NPRM. Over the 10-year period of 2004–2013, all-cargo aircraft operators are estimated to incur costs totaling approximately $600,000 to comply with new requirements to require background checks for individuals who screen cargo for all-cargo airplanes and their supervisors, as well as for employees with unescorted access to the cargo. The NPRM proposes to require all-cargo aircraft operators to screen all persons entering the aircraft. This requirement is estimated to impose additional costs of approximately $33.7 million over the ten-year period of this analysis. All-cargo aircraft operators also will be required to take additional measures to secure the aircraft and facilities at an estimated cost of $33.6 million. Although every all-cargo operator will now have to designate a security coordinator, many already have the requirement. The estimated cost for these duties is $200,000. All-cargo aircraft operators who conduct operations with airplanes having a maximum certificated take-off weight greater than 45,500kg (100,309.3 lbs) would be required to provide additional law enforcement capability to comply with proposed requirements to extend or create new secure areas to encompass air cargo operations. TSA estimates this ten-year cost to be $27 million. Finally, proposals to require random screening of cargo on passenger aircraft and on all-cargo flights are estimated to impose additional ten-year costs of $493 million, and $167 million, respectively.

Airport Operators of airports that currently have one or more SIDAs will be required to extend or create a new SIDA to encompass air cargo operations. This proposed change would apply only to aircraft operations conducted with airplanes having a maximum certificated take-off weight greater than 45,500kg (100,309.3 lbs) operating a full or all-cargo program. TSA estimates the cost of this requirement to be $900,000 over the ten-year period of this analysis. This cost reflects the cost of additional employee badges, and the administrative costs of updating the airports' security plans.

Indirect Air Carriers will be impacted in several ways if the proposals in this NPRM become effective. IACs will be required to complete Security Threat Assessments for individuals having unescorted access to cargo. This requirement is estimated to impose costs totaling $3.4 million over ten years. IACs also will be required to implement training and develop a testing tool for individuals who perform security related duties to meet the requirements of their security programs. These costs are estimated at $15.1 million over the ten-year period 2004–2013. These costs include the cost of initial training and annual recurrent training for the IAC labor force. This NPRM establishes new requirements for IACs to obtain approval, to amend, and for annual recertification of their security programs. The costs estimated to comply with these requirements are $36 million over the period of this analysis.

Foreign Air Carriers' costs inside the United States are considered domestic costs for the purpose of this analysis, and therefore were not estimated separately from domestic carrier costs; a separate discussion for these costs is not included. This method of cost consideration reflects the way DOT reports on foreign aircraft operations in the U.S. and the way it reports the cost impact of such aircraft operations on the U.S. economy.

TSA will incur costs as a result of the proposed rule. To develop the training that IACs will be required to implement and ensure that IAC employees have completed will cost the agency approximately $450,000. TSA also will incur costs to administer the Known Shipper program of approximately $24.5 million. The cost to TSA for the vetting of IACs is estimated at $2.6 million. TSA will also be modifying a system under development for another rule to accommodate the Security Threat Assessments in this proposed rule. The costs of utilizing this system are included in a fee proposal and therefore are captured in the unit costs used to develop the costs for the aircraft operators and IACs.

In summary, the cost impacts of this NPRM are estimated to total approximately $837 million, undiscounted, over the period 2004–2013. Aircraft operators will incur costs totaling $758 million; airport operators $900,000; IACs $51 million; and TSA anticipates cost expenditures to administer the provisions of the NPRM at $28 million over the ten year analysis period. Details on how estimates were developed, as well as the discounted value comparisons, are included in the full regulatory evaluation. The following table summarizes the estimated costs.

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TEN-YEAR UNDISCOUNTED COST SUMMARY

Ten-Year Costs (Undiscounted, Millions of Constant 2003 Dollars)

Section	Who \ Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total*
1540 , 1548 15 1544 228	Expand security threat assesments for IAC employees w/unescorted access to cargo and U S air carrier employees w/access to cargo but have not had a CHRC	2 1	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	0 2	3 7
1542 205	Extend SIDA to all-cargo areas	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0 1	0.1	0 9
1544 229	(all cargo) Expand background check requirements to individuals who screen cargo for all-cargo planes with unescorted access to cargo in the SIDA and new ID requirements	, 0 2	0.0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0.5
1544 101	Implement all-cargo AO std sec program (for all-cargo operations and operations >45 5kg)	2 7	2 7	2 7	2.7	2 7	2 7	2 7	2 7	2.7	2 7	26 6
1544 101; 1544 202	Require all-cargo AO to screen all persons entering the aircraft (new for all-cargo AO and upgrades 12 5 program)	3 0	2 9	3 0	3 1	3 3	3 4	3 5	3 7	3 9	4 0	33 7
1544 101, 1544 225	New requirements for inspecting the aircraft (tampering, items not belonging)	2 4	2 6	2 9	3 1	3 4	3 7	4 0	4 4	4 8	5 2	36 6
1544 101; 1544 215 1544 305	Require that all-cargo AO designate security coordinators	0 0	0 0	0.0	0 0	0 0	0 0	0 0	0 0	0 0	0.0	0 2
1544 205	Passenger Flight Cargo Screening	56 2	56 1	59 1	46 0	46 0	46 0	46.0	46 0	46 0	46 0	493.1
1544.205	All-Cargo Flight Cargo Screening	18 8	18.7	20 9	15 4	15 4	15 4	15 4	15 4	15 4	15.4	166 4
1546	Foreign Air Carriers	(FAA data doesn't separate data by carrier registration, so foreign flag carrier cost in U S is reflected in other detail lines Costs incurred overseas will be similar to those of domestic carriers)										
1544 239 1546 215, 1548 17	TSA-managed web-based Known Shipper Database	2 9	2 4	2 4	2 4	2 4	2 4	2 4	2 4	2 4	2 4	24.5
1548 11	Develop and implement an IAC and Agent training (on pax acft), Develop a TSA testing tool	3 1	1 3	1 3	1 3	1 3	1 3	1.3	1 3	1.3	1.3	15 1
1548 7	IAC security program requirements	4 2	3 7	3 5	3 5	3 5	3.5	3 5	3 5	3 5	3.5	36.0
	Total*	95 7	90 8	96.1	77 8	78.2	78.7	79.2	79 7	80 3	80.9	837 3

***Note: Totals may not sum due to rounding.**

Benefits

The primary benefit of the proposed rule would be increased protection to persons and property in the U.S. from acts of terrorism; however, some aspects of this proposed rule would provide

cost savings for the industry as well. This NPRM is intended to enhance and improve the security of air cargo transportation. The proposed rule is designed to prevent unauthorized persons, explosives, incendiaries, and other substances or items from being introduced into the air cargo supply chain. Persons on the ground, in buildings, and elsewhere in our society would also be afforded enhanced protection against acts of terrorism involving the use of an all-cargo aircraft.

The warning late in 2003 from U.S. Intelligence sources was swift and simple: terrorists are considering using cargo aircraft—freighters that carry mostly boxes instead of people. Homeland Security officials recently declared the existence of intelligence that indicated al-Qaeda may be plotting an attack using cargo planes. One security conscious carrier has petitioned the U.S. government to allow checks on people with access to cargo planes.[27]

Strengthening air cargo security and expanding security measures to all-cargo aircraft operations would provide important countermeasures against possible terrorist activities aimed at ultimately destroying commercial passenger aircraft and all-cargo aircraft in flight. Provisions of the NPRM also reduce the opportunity for terrorists to use aircraft involved in the transport of cargo to achieve their goals.

Although it is difficult to impossible to project statistically the likelihood of incidents of terrorist acts involving aircraft, the following table reports the costs of several significant events that give examples of the potential impact of terrorism to civil aviation:

EXAMPLES OF INCIDENTS

Year	Event	Type of attack	Property loss	Loss of life/bodily injury	Total cost
1986	Pan Am 073	Aircraft hijacking	$0.55M	$66M death $72.5M injury	$139.05M
1987	Korean Airlines 858	Mid-air explosion		$345M	
1988	Pan Am 103	Mid-air explosion	$184M	$810M	$994M
2001	New York World Trade Center.	Aircraft used as a weapon			$16B[28]

[28] The General Accounting Office (Review of Studies of the Economic Impact of the September 11, 2001, Terrorist Attacks on the World Trade Center, GAO–02–700R, May 29, 2002) reviewed 8 separate studies that estimated the impact of the 9/11 destruction of the World Trade Center. Their conclusion was that the best estimate of un-reimbursed cost was $16 billion.

Following significant security incidents, such as those reported in the table titled "Examples of Incidents," security agencies have strengthened measures designed to prevent recurrences. For this reason, the full benefits of avoiding losses such as those presented in the table are not claimed in this NPRM. However, terrorist events continue to be threatened. Moreover, it appears that the use of a large commercial aircraft as a weapon, unprecedented prior to September 11, 2001, has the potential to raise the cost of a terrorist event by an order of magnitude. (The table titled "Example of Incidents" does not reflect the additional costs of investigations, government action, and loss of business due to decreased passenger levels. Consideration of these costs would increase the cost of a successful terrorist event beyond the numbers presented in the table titled "Example of Incidents." Against this scale, it is clear that avoiding just one incident of the magnitude that has been characteristic of the types of terrorist acts this proposed rule is intended to protect against more than justifies the costs imposed by this NPRM.)

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As part of implementing the security plan, TSA expects security to be integrated into actions the same way safety has become integral to how things are done rather than adding layers or extra program costs. For this reason, in years beyond the initial year, costs are limited to an annual report, insuring their own plan is followed, and vetting any new employees. TSA has conducted an initial regulatory flexibility analysis. There are a substantial number of IACs and all-cargo carriers that are impacted, but TSA's initial finding is that the impacts are not substantial.

TSA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the proposed rule. For example, even though TSA believes most airports and all-cargo carriers have many elements of this rule already in place as good business practice or out of their own concerns for security, costing was done as if the entire group would be implementing these as new requirements. Based on information gathered through other efforts with the airports, TSA believes the airports have reached out to the aviation community and already successfully completed fingerprint-based criminal history records checks, and provided access badges and the associated access training. As a conservative measure, TSA has assumed that there are additional expenses to provide IDs for a limited group of employees at 100 locations. Also, there is a distinct possibility that very few additional law enforcement officers would be required,

[27] Paraphrase from *Business-Times* article of Dec. 9, 2003. The same elements were reported in numerous news services at approximately the same time.

but TSA allowed for the full-time equivalent coverage for two shifts for 20 of the carrier locations. This equated to an average of 0.6 per carrier and $27 million over the 10 years.

IACS

IACs are a subset of freight forwarders. The larger category of freight forwarders includes all modes of transportation.[29] Without better information, the characteristics of the total industry are assumed to apply to the IACs. The threshold for small business for this industry is $6 million and the distributions are as follows:

FREIGHT FORWARDING

[Number of firms in Duns for SIC 4731 02 by employees (not all records have employee data)]

Employees	Primary SIC	+Secondary SIC	# w FTE and sales data	Category %	Cmltv %
1–4	4154	4404	4311	55.2	55.23
5–9	1493	1602	1584	20.3	75.52
10–19	826	907	898	11.5	87.02
20–49	519	597	591	7.6	94.59
50+	336	427	422	5.4	100.00
Total	7328	7937	7806	100.0	

[Number of firms in Duns for SIC 4731 02 by sales]

Sales	Primary	+Secondary	Category %	Cmltv %
<$20k	5	5	0.0	0.0
$20–$50k	41	62	0.6	0.6
$50,001–$100k	109	167	1.6	2.2
$100,001–$249,999	749	880	8.3	10.5
$250k–$499,999	1763	1877	17.7	28.3
$500k–$999,999	3230	3360	31.8	60.0
$1m–$6m	3264	3503	33.1	93.1
>$6 million	627	725	6.9	100.0
Total	9788	10579	100.0	

Using the data above and the 3,800 population values in the analysis, all but 6.9% (or 3540) would be small entities for this analysis. To evaluate the impact, the data was segmented and the smallest of the small were examined to see if there was a significant impact. If the smallest group can be shown not to have significant impact, and because the relationship remains somewhat proportional as firm size increases, it is a reasonable conclusion that the overall impact is also insignificant. Once again, specific D&B firm data for the smallest 10.5% with revenues less than $250,000 was examined. This group provided 1110 useable records.

To estimate the impact, the individual cost items from the report above per employee are multiplied times the number of employees and then the cost per firm is added. The results are summed over the entire population which results in an impact of $72,700 on $170,278,465 of revenue or at a rate of .04% in the first or most expensive year. This rate of impact is not significant. See the following table for a summary of the calculation.

Item	Rate	Firm costs	Per employee costs
Annual Reporting	75/report/firm	75	
Training	4 hrs/employee @ $25		100
Security duties	20 Hrs/Firm @ 43	860	
Decertification	1 5 of Firms @250=2.50/Firm	2.5	
STA	55/Employee		55
Total		937.5	155

All-Cargo Operations

For All-Cargo Operations, DOT form 41 data from BTS TRASTATS was analyzed. The following distribution was found.

FREIGHT

[Aircraft size percentage]

Firm size	>=100	<100	Total
Large	77.7	0.8	78.5
Small	21.1	0.3	21.5

FREIGHT—Continued

[Aircraft size percentage]

Firm size	>=100	<100	Total
All Firms	98.8	1.2	100.0

[29] For a technical explanation of how the detailed data was segmented see the separate Regulatory Evaluation.

DEPARTURES

[Aircraft size percentage]

Firm size	>=100	<100	Total
Large	47.2	15.9	63.1
Small	22.9	14.0	36.9
All Firms	70.0	30.0	100.0

PASSENGER FLIGHT REPORTING FREIGHT

[Aircraft size percentage]

Firm size	Large	Small	Grand total
Large	88.3	8.5	96.7
Small	1.5	1.8	3.3
	89.8	10.2	100.0

Although it reflects revenue data for the large carriers (>$6 million) and many midsize carriers, too many small carriers are missing revenue data to make a cost comparison. TSA invites public comment on existing cost and revenue relationship as firms are experiencing under the existing security directives.

X. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this proposed rule and has determined that it imposes the same costs on domestic and international entities and thus has a neutral trade impact.

XI. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

XII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This proposal contains information collection activities subject to the PRA. Accordingly, the following information requirements are being submitted to OMB for its review.

Title: Air Cargo Security Requirements.

Summary: TSA proposes to amend current transportation security regulations to further enhance and improve the security of air cargo transportation. Specifically, TSA proposes to create a mandatory security program for all-cargo aircraft operations over 45,500 kg (100,309.3 lbs) and to amend existing security regulations and programs for aircraft operators, foreign air carriers, airport operators, and IACs. TSA is also proposing to expand security threat assessment requirements to new populations, including certain individuals who have unescorted access to air cargo and each officer, director and person who holds 25 percent or more of total outstanding voting stock of an Indirect Air Carrier or entity applying to become an IAC.

Use of: Security programs that are developed or amended as a result of this proposal will be kept on file and updated so that TSA inspectors may check for regulatory compliance and uniform application of the rules. Evidence of appropriate employee training in security matters will also become a part of this record. Security threat assessments conducted as a result of this proposal will be used to determine employment suitability for those who have unescorted access to cargo and each officer, director and person who holds 25 percent or more of total outstanding voting stock of an Indirect Air Carrier or entity applying to become an IAC.

Respondents (including number of): The likely respondents to this proposed information requirement are aircraft operators, foreign air carriers, IACs, and their employees who undergo security threat assessments for a total of approximately 37,090 respondents the first year and approximately 8,800 respondents each following year, for an average of 18,230 respondents for each of the next 3 years. The annual respondents include both new entrants and renewals. The number consists of 65 all-cargo operators, 3800 IACs, and their affected employees. TSA invites comments regarding these estimates.

Frequency: Upon implementation, security programs related to this proposal, including employee training records, will need to be kept on file and updated as necessary. Security threat assessments will be conducted for all existing and subsequent new employees who have unescorted access to cargo where such employees do not already have unescorted SIDA access.

Annual Burden Estimate: The annual burden associated with the security program is estimated to be 30,920 hours, while the annual burden associated with the security threat assessments is estimated to average 3,559 hours over the next 3 years, for a combined average annual total of 34,479 hours.

The agency is inviting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by January 10, 2005, and should direct them via fax to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806. Comments to OMB are most useful if received within 30 days of publication.

As protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after OMB approves it.

XIII. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is TSA policy to comply with International Civil Aviation Organization (ICAO) Standards

and Recommended Practices to the maximum extent practicable. TSA has determined that these proposed regulations are consistent with ICAO Standards and Recommended Practices.

XIV. Executive Order 13132, Federalism

TSA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

XV. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion. The FAA order continues to apply to TSA in accordance with the Homeland Security Act (Pub. L. 107–296), until DHS publishes its NEPA implementing regulations.

Energy Impact

The energy impact of this document has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1540

Air carriers, Aircraft, Airports, Civil Aviation Security, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1542

Air carriers, Aircraft, Airport Security, Aviation safety, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, Foreign Air Carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

IX. The Proposed Amendment

For the reasons set forth above, the Transportation Security Administration proposes to amend Title 49 of the Code of Federal Regulations parts 1540, 1542, 1544, 1546, and 1548 as follows:

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

1. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

2. Amend § 1540.5 by revising the definition of "indirect air carrier" to read as follows:

§ 1540.5 Terms used in this subchapter.

* * * * *

Indirect air carrier means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of an air carrier. This does not include the United States Postal Service (USPS) or its representative while acting on the behalf of the USPS.

* * * * *

3. Add Subpart C—Security Threat Assessments to read as follows:

Subpart C—Security Threat Assessments

Sec.

§ 1540.201 Applicability and definitions.

(a) This subpart applies to:

(1) Each aircraft operator operating under a full program described in 49 CFR 1544.101(a);

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101;

(3) Each indirect air carrier subject to 49 CFR part 1548; and

(4) Each individual with unescorted access to cargo under one of these programs.

(b) For purposes of this subpart, aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section are referred to as "operator," and the individuals listed in paragraph (a)(4) of this section are referred to as "individual."

(c) An individual poses a security threat under this subpart when TSA determines that he or she is a threat:

(1) To national security;

(2) To transportation security; or

(3) Of terrorism.

(d) For purposes of this subpart

(1) *Date of service* means—

(i) The date of personal delivery in the case of personal service;

(ii) The mailing date shown on the certificate of service;

(iii) The date shown on the postmark if there is no certificate of service;

(iv) Another mailing date shown by other evidence if there is no certificate of service or postmark; or

(v) The date in an e-mail showing when it was sent.

(2) *Day* means calendar day.

§ 1540.203 Operator responsibilities.

(a) Each operator subject to this subpart must ensure that an individual with unescorted access to cargo must complete the Security Threat Assessment described in this section.

(b) Each operator must:

(1) Authenticate the identity of the individual by—

(i) Reviewing two forms of identification, one of which must be a government-issued photo ID; or

(ii) Other means approved by TSA.

(2) Submit to TSA a Security Threat Assessment application for each individual that is signed by the individual and that includes:

(i) Legal name, including first, middle, and last; any applicable suffix; and any other names used.

(ii) Current mailing address, including residential address if different than current mailing address, and all other residential addresses for the previous seven years and email, if applicable.

(iii) Date and place of birth.

(iv) Social security number, if applicable.

(v) Citizenship status and date of naturalization if the individual is a naturalized citizen of the United States.

(vi) Alien registration number, if applicable.

(vii) The following statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a Security Threat Assessment to evaluate your suitability for completing the functions required by this position. Your Social Security Number (SSN) or alien registration number will be used as your identification number in this process and to verify your identity. Furnishing this information, including your SSN or alien registration

number, is voluntary; however, failure to provide it will prevent the completion of your Security Threat Assessment, without which you may not be granted authorization to have unescorted access to cargo. *Routine Uses:* Routine uses of this information include disclosure to TSA contractors or other agents who are providing services relating to the Security Threat Assessments; to appropriate governmental agencies for law enforcement or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of authorization or in the case of parties regulated under this section, removal of authorization to operate under this chapter, if applicable.

(3) Retain the individual's signed Security Threat Assessment application and any communications with TSA regarding the individual's application, for 180 days following the end of the individual's service to the operator.

(c) Records under this section may include electronic documents with electronic signature or other means of personal authentication, where accepted by TSA.

§ 1540.205 Notification.

(a) *TSA review.* In completing the Security Threat Assessment, TSA reviews—

(1) The information required in § 1540.203(b) and transmitted to TSA; and

(2) Domestic and international databases relevant to determining whether an individual poses a known or suspected security threat or that confirm an individual's identity.

(b) *Security Authorization for Unescorted Cargo Access.* TSA serves a Security Authorization on the individual and the operator if TSA determines that an individual does not pose a known or suspected security threat.

(c) *Initial Denial of Authorization for Unescorted Cargo Access.* TSA serves an Initial Denial of Authorization on the individual and the operator if TSA determines that the individual poses a known or suspected security threat. The Initial Denial of Authorization for Unescorted Cargo Access includes—

(1) A statement that TSA has determined that the individual poses a security threat;

(2) The basis for the determination;

(3) Information about how the individual may appeal the determination; and

(4) A statement that if the individual chooses not to appeal TSA's determination within 30 days of receipt of the Initial Denial of Authorization, or does not request an extension of time within 30 days of the Initial Denial of Authorization in order to file an appeal, the Initial Denial of Authorization becomes a Final Denial of Authorization for Unescorted Cargo Access.

(d) *Final Denial of Authorization for Unescorted Cargo Access.* If TSA determines that an individual poses a known or suspected security threat, TSA serves a Final Denial of Authorization for Unescorted Cargo Access on the operator and the individual who appealed the Initial Denial of Authorization.

(e) *Withdrawal by TSA.* TSA serves a Withdrawal of the Initial Denial of Authorization for Unescorted Cargo Access on the individual and a Security Authorization for Unescorted Cargo Access on the operator, if the appeal results in a determination that the individual does not pose a threat to security.

(f) *Final Disposition.* Within 30 days of receipt of a Security Authorization for Unescorted Cargo Access or a Final Denial of Authorization for Unescorted Cargo Access, the operator must:

(1) Update the individual's permanent record to reflect the results of the Security Threat Assessment;

(2) Grant or deny the individual's unescorted access to cargo based on the results of the threat assessment.

§ 1540.207 Appeal procedures.

(a) *Scope.* This section applies to individuals who wish to appeal an Initial Denial of Authorization for Unescorted Cargo Access that is based on TSA's Security Threat Assessment.

(b) *Grounds for Appeal.* An individual may appeal an Initial Denial of Authorization for Unescorted Cargo Access if the individual is asserting that he or she does not pose a known or suspected security threat.

(c) *Appeal.* An individual initiates an appeal by submitting a written reply or written request for materials from TSA. If the individual fails to initiate an appeal within 30 days of receipt, the Initial Denial of Authorization for Unescorted Cargo Access becomes final, and TSA serves a Final Denial of Authorization for Unescorted Cargo Access on the operator and the individual.

(1) *Request for materials.* Within 30 days of the date of service of the Initial Denial of Authorization for Unescorted Cargo Access, the individual may serve upon TSA a written request for copies of the materials upon which the Initial Denial of Authorization was based.

(2) *TSA response.* Within 30 days of receiving the individual's request for materials, TSA serves copies upon the individual of the releasable materials upon which the Initial Denial of Authorization was based. TSA will not include any classified information or other protected information described in paragraph (f) of this section.

(3) *Correction of records.* If the Initial Denial of Authorization for Unescorted Cargo Access was based on a record that the individual believes is erroneous, he or she may correct the record, as follows:

(i) The individual may contact the jurisdiction or entity responsible for the information and attempt to correct or complete information contained in his or her record.

(ii) The individual must then provide TSA with the revised record, or a certified true copy of the information from the appropriate entity, before TSA may determine that the individual meets the standards for the Security Threat Assessment.

(4) *Reply.* (i) The individual may serve upon TSA a written reply to the Initial Denial of Authorization for Unescorted Cargo Access within 30 days of service of the Initial Denial of Authorization, or 30 days after the date of service of TSA's response to the individual's request for materials under paragraph (c)(1) of this section, if the individual served such a request.

(ii) In an individual's reply, TSA will consider only material that is relevant to verifying identification or determining that the individual does not pose a known or suspected security threat.

(5) *Final determination.* Within 30 days after TSA receives the individual's reply, TSA serves a Final Denial of Authorization for Unescorted Cargo Access or a Withdrawal of the Initial Denial of Authorization.

(d) *Final Denial of Authorization for Unescorted Cargo Access.* (1) If TSA determines that the individual poses a security threat, TSA serves a Final Denial of Authorization for Unescorted Cargo Access upon the individual and the operator. The Final Denial of Authorization includes—

(2) A statement that TSA has reviewed the Initial Denial of Authorization, the individual's reply, if any, and any other materials or information available to him or her and has determined that the individual poses a known or suspected security threat.

(e) *Withdrawal of Initial Denial of Authorization.* If TSA concludes that the individual does not pose a security threat, TSA serves a Withdrawal of the Initial Denial of Authorization on the individual and the operator.

(f) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose classified information to the individual, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(g) *Extension of time.* TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

(h) *Judicial review.* For purposes of judicial review, the Final Denial of Authorization for Unescorted Cargo Access constitutes a final TSA order in accordance with 49 U.S.C. 46110.

§ 1540.209 Security threat assessment fee.

(a) *Imposition of fees.* The fee of $39.00 is required for TSA to conduct a security threat assessment for a candidate who has unescorted access to cargo and who is subject to the requirements of Part 1540, Subpart C, and each officer, director and person who holds 25 percent or more of total outstanding voting stock of an Indirect Air Carrier or entity applying to become an IAC.

(b) *Remittance of fees.* (1) A candidate must remit the fee required under this subpart to TSA, in a form and manner acceptable to TSA, each time the candidate or an aircraft operator, foreign air carrier, or indirect air carrier submits the information required under § 1540.203 to TSA.

(2) Fees remitted to TSA under this subpart must be payable to the "Transportation Security Administration" in United States currency and drawn on a United States bank.

(3) TSA will not issue any fee refunds, unless a fee was paid in error.

PART 1542—AIRPORT SECURITY

4. The authority citation for part 1542 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44917, 44935–44936, 44942, 46105.

5. Amend § 1542.1 by adding paragraph (d) to read as follows:

§ 1542.1 Applicability of this part.

* * * * *

(d) Each airport that serves an aircraft operator operating under a security program under part 1544 of this chapter, or a foreign air carrier operating under a security program under part 1546 of this chapter. Such airport operators must comply with § 1542.5 of this part.

6. Revise paragraphs 1542.205(a) and (b)(2) and add paragraph (c) to read as follows:

§ 1542.205 Security of the security identification display area (SIDA).

(a) Each airport operator required to have a security program under § 1542.103(a) must establish at least one SIDA, which must include the following areas:

(1) Each secured area must be a SIDA.

(2) Each area that is regularly used to sort cargo that may be carried by an aircraft operator under a full or all-cargo program as provided in § 1544.101(a) or (h) or under a foreign air carrier program under § 1546.101(a), (b), or (e), and each area that is regularly used to load cargo on or unload cargo from such aircraft, must be a SIDA.

(3) Other areas of the airport may be SIDAs.

(b) * * *

(1) * * *

(2) Subject each individual to a criminal history records check as described in § 1542.209 before authorizing unescorted access to the SIDA.

* * * * *

(c) An airport operator that is not required to have a complete program under § 1542.103(a) is not required to establish a SIDA under this section.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

7. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

8. Amend § 1544.101 by revising paragraphs (d)(1), (d)(4), and (e)(1) and add new paragraphs (h) and (i) to read as follows:

§ 1544.101 Adoption and implementation.

* * * * *

(d) * * *

(1) Is an aircraft with a maximum certificated takeoff weight more than 12,500 pounds.

* * * * *

(4) Is not under a full program, partial program, or all-cargo program under paragraph (a), (b), or (h) of this section.

(e) * * *

(1) The requirements of §§ 1544.215, 1544.217, 1544.219, 1544.223, 1544.230, 1544.235, 1544.237, 1544.301(a) and (b), 1544.303, and 1544.305; and for all-cargo operations, §§ 1544.202, 1544.205(a), (b), and (d).

* * * * *

(h) *All-Cargo program—adoption:* Each aircraft operator must carry out the requirements of paragraph (i) of this section for each operation that is—

(1) In an aircraft with a maximum certificated takeoff weight of more than 45,500 kg (100,309.3 pounds); and

(2) Carrying cargo and authorized persons and no passengers.

(i) *All-Cargo program—contents:* For each operation described in paragraph (h) of this section, the aircraft operator must carry out the following, and must adopt and carry out a security program that meets the applicable requirements of § 1544.103(c):

(1) The requirements of §§ 1544.202, 1544.205, 1544.207, 1544.209, 1544.211, 1544.215, 1544.217, 1544.219, 1544.225, 1544.227, 1544.228, 1544.229, 1544.230, 1544.231, 1544.233, 1544.235, 1544.237, 1544.301, 1544.303, and 1544.305.

(2) Other provisions of subpart C of this part that TSA has approved upon request.

(3) The remaining requirements of subpart C of this part when TSA notifies the aircraft operator in writing that a security threat exists concerning that operation.

9. Add new § 1544.202 to read as follows:

§ 1544.202 Persons and property onboard the all-cargo aircraft.

Each aircraft operator operating under an all-cargo program or a twelve-five program in an all-cargo operation, must apply the security measures in its security program for persons who board the aircraft, and for their property, to prevent or deter the carriage of unauthorized weapons, explosives, incendiaries, persons, and other destructive substances or items.

10. Amend § 1544.205 by revising paragraphs (a), (b), (c) introductory text, (c)(2) and (d); and adding new paragraphs (e) and (f) to read as follows:

§ 1544.205 Acceptance and screening of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each aircraft operator operating under a full program, an all-cargo program, or a twelve-five program in an all-cargo operation, must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of unauthorized persons,

explosives, incendiaries, and other destructive substances or items in cargo onboard an aircraft.

(b) *Screening and inspection of cargo.* Each aircraft operator operating under a full program or an all-cargo program, or a twelve-five program in an all-cargo operation, must ensure that cargo is screened and inspected for unauthorized persons, explosives, incendiaries, and other destructive substances or items as provided in the aircraft operator's security program and § 1544.207, and as provided in § 1544.239 for operations under a full program, before loading it on its aircraft.

(c) *Control.* Each aircraft operator operating under a full program or an all-cargo program must use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

(1) * * *

(2) Prevents access by persons other than an aircraft operator employee or its agent, or persons authorized by the airport operator or host government.

(d) *Refusal to transport.* Each aircraft operator operating under a full program, an all-cargo program, or a twelve-five program when in an all-cargo operation, must refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with the system prescribed by this part.

(e) *Acceptance of cargo only from specified persons.* Each aircraft operator operating under a full program or an all-cargo program may accept cargo for air transportation only from the shipper, or from an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program, except as provided in its security program.

(f) *Screening of cargo outside the United States.* For cargo to be loaded on its aircraft outside the United States, each aircraft operator must carry out the requirements of its security program.

11. Amend § 1544.225 by adding new paragraph (d):

§ 1544.225 Security of aircraft and facilities.

* * * * *

(d) When operating under a full program or an all-cargo program, prevent unauthorized access to the operational area of the aircraft while loading or unloading cargo.

12. Add new § 1544.228 to read as follows:

§ 1544.228 Security threat assessments for cargo personnel.

This section applies to each aircraft operator operating under a full program or an all-cargo program, and to each individual who has unescorted access to cargo accepted by such an aircraft operator.

(a) Before gaining unescorted access to cargo, each individual must successfully complete one of the following:

(1) A criminal history records check under §§ 1542.209, 1544.229, or 1544.230 of this chapter, if the individual is otherwise required to undergo such a check under those sections; or

(2) A Security Threat Assessment under part 1540 subpart C of this chapter; or

(3) Another Security Threat Assessment approved by TSA.

(b) Each aircraft operator must ensure that each individual who has access to its cargo has either successfully completed one of the checks in paragraph (a) of this section or is escorted by such an individual.

13. Amend § 1544.229 by adding introductory text, revising paragraphs (a)(1)(iii) introductory text and (a)(1)(iii)(B) and adding new paragraph (a)(1)(iii)(C) to read as follows:

§ 1544.229 Fingerprint-based criminal history records checks (CHRC): Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions.

This section applies to each aircraft operator operating under a full program, a private charter program, or an all-cargo program.

(a) * * *

(1) * * *

(iii) Each individual granted authority to perform the following screening functions at locations within the United States (referred to as "authority to perform screening functions"):

(A) * * *

(B) Serving as an immediate supervisor (checkpoint security supervisor (CSS)), and the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(1)(iii)(A) or (a)(1)(iii)(C) of this section.

(C) Screening cargo that will be carried on an aircraft of an aircraft operator required to screen cargo under this part.

* * * * *

14. Add new § 1544.239 as follows:

§ 1544.239 Known shipper program.

This section applies to each aircraft operator operating under a full program under § 1544.101(a).

(a) For cargo to be loaded on its aircraft in the United States, each aircraft operator must have and carry out a known shipper program in accordance with its security program. The program must:

(1) Determine the shipper's validity and integrity as provided in its security program;

(2) Provide that the aircraft operator will separate known shipper shipments from unknown shipper shipments; and

(3) Provide for the aircraft operator to ensure that cargo is screened or inspected as set forth in its security program.

(b) When required by TSA, each aircraft operator must submit in a form and manner acceptable to TSA:

(1) Information identified in its security program regarding an applicant to the known shipper program; and

(2) Upon learning of a change to the information specified in paragraph (b)(1) of this section, corrections and updates of this information.

PART 1546—FOREIGN AIR CARRIER SECURITY

15. The authority citation for part 1546 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

16. Amend § 1546.101 by revising the introductory text and paragraph (a) and by adding paragraphs (e) and (f):

§ 1546.101 Adoption and implementation.

Each foreign air carrier landing or taking off in the United States must adopt and carry out a security program, for each scheduled and public charter passenger operation or all-cargo operation, that meets the requirements of—

(a) Section 1546.103(b) and subparts C, D, and E of this part for each operation with an airplane having a passenger seating configuration of 61 or more seats;

* * * * *

(e) Sections 1546.103(b)(2) and (b)(4), 1546.202, 1546.205(a), (b), (c), (d), (e), and (f), 1546.213, and 1546.215 for each all-cargo operation with an airplane having a maximum certificated take-off weight more than 45,500 kg (100,309.3 pounds); and

(f) Sections 1546.103(b)(2) and (b)(4), 1546.202, 1546.205(a), (b) and (c), 1546.213, and 1546.215 for each all-cargo operation with an airplane having a maximum certificated take-off weight more than 12,500 pounds but no more than 45,500 kg.

17. Amend § 1546.103 by revising paragraph (a)(1) and paragraph (b) introductory text to read as follows:

§ 1546.103 Form, content, and availability of security program.

(a) * * *

(1) Acceptable to TSA. A foreign air carrier's security program is acceptable only if TSA finds that the security program provides a level of protection similar to the level of protection provided by U.S. aircraft operators serving the same airports. Foreign air carriers must employ procedures equivalent to those required of U.S. aircraft operators serving the same airport if TSA determines that such procedures are necessary to provide a similar level of protection.

* * * * *

(b) *Content of security program.* Each security program required by § 1546.101(a), (b), (c), (e) or (f) as applicable, must be designed to:

* * * * *

18. Add § 1546.202 to read as follows:

§ 1546.202 Persons and property on board the airplane.

Each foreign air carrier operating under § 1546.101(e) or (f) must apply the security measures in its security program for persons who board the airplane, and for their property, to prevent or deter the carriage of unauthorized weapons, explosives, incendiaries, persons, and other destructive substances or items.

19. Amend § 1546.205 by revising paragraphs (a) and (b) and adding new paragraphs (c), (d), (e) and (f) to read as follows:

§ 1546.205 Acceptance and screening of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each foreign air carrier operating a program under § 1546.101(a), (b), (e) or (f) must use the procedures, facilities and equipment described in its security program to prevent or deter the carriage of unauthorized persons, explosives, incendiaries, and other destructive substances or items in cargo onboard an airplane.

(b) *Refusal to transport.* Each foreign air carrier operating a program under § 1546.101(a), (b), (e), or (f) must refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with the system prescribed by this part.

(c) *Control.* Each foreign air carrier operating a program § 1546.101(a), (b), or (e) must use the procedure in its security program to control cargo that it accepts for transport on an airplane in a manner that:

(1) Prevents the carriage of any unauthorized persons, explosives, incendiaries, and other destructive substances or items aboard the airplane.

(2) Prevents access by unauthorized persons other than a foreign air carrier employee or its agent, or persons authorized by the airport operator or host government.

(d) *Screening and inspection of cargo in the United States.* Each foreign air carrier operating a program under § 1546.101(a), (b), (e), or (f) must ensure that, as required in its security program, cargo is screened and inspected for explosives, incendiaries, unauthorized persons, and other destructive substances or items as provided in the foreign air carrier's security program, in accordance with § 1546.207, and § 1546.213 if applicable, before loading it on its airplane in the United States.

(e) *Acceptance of cargo in the United States.* Each foreign air carrier operating a program under § 1546.101(a), (b), or (e) may accept cargo in the United States only from the shipper, or from an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program, as provided in its security program.

(f) *Acceptance of cargo to be loaded outside the United States.* Each foreign air carrier subject to this section that accepts cargo to be loaded on its airplane outside the United States must carry out the requirements of its security program.

20. Add a new § 1546.213 to read as follows:

§ 1546.213 Security threat assessments for cargo personnel in the United States.

This section applies to each foreign air carrier operating under § 1546.101(a), (b), or (e), and to each individual who has unescorted access in the United States.

(a) Before gaining unescorted access to cargo, each individual must successfully complete one of the following:

(1) A criminal history records check under §§ 1542.209, 1544.229, or 1544.230 of this chapter, if the individual is otherwise required to undergo such a check under those sections; or

(2) A Security Threat Assessment under part 1540 subpart C of this chapter; or

(3) Another Security Threat Assessment approved by TSA.

(b) Each foreign air carrier must ensure that each individual who has access to its cargo has either successfully completed one of the checks in paragraph (a) of this section or is escorted by such an individual.

21. Add new § 1546.215 as follows:

§ 1546.215 Known shipper program.

This section applies to each foreign air carrier operating a program under § 1546.101(a) or (b).

(a) For cargo to be loaded on its aircraft in the United States, each foreign air carrier must have and carry out a known shipper program in accordance with its security program. The program must:

(1) Determine the shipper's validity and integrity as provided in its security program;

(2) Provide that the foreign air carrier will separate known shipper shipments from unknown shipper shipments; and

(3) Provide for the foreign air carrier to ensure that cargo is screened or inspected as set forth in its security program.

(b) When required by TSA, each foreign air carrier must submit in a form and manner acceptable to TSA:

(1) Information identified in its security program regarding an applicant to the known shipper program; and

(2) Upon learning of a change to the information specified in (b)(1) of this section, corrections and updates to the information.

PART 1548—INDIRECT AIR CARRIER SECURITY

22. The authority citation for part 1548 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

23. Amend § 1548.5 by revising paragraphs (a), (b) and (c) to read as follows:

§ 1548.5 Adoption and implementation of the security program.

(a) *Security program required.* No indirect air carrier may offer cargo to or perform cargo services for an aircraft operator operating under a full program or an all-cargo program specified in part 1544 of this subchapter, or to a foreign air carrier operating under a program under § 1546.101(a), (b), or (e) of this subchapter, unless that indirect air carrier has and carries out an approved security program under this part.

(b) *General requirements.* (1) The security program must provide for the security of persons and property traveling in air transportation against acts of criminal violence and air piracy and the introduction of any unauthorized person, explosive, incendiary or other destructive substances or items as provided in the indirect air carrier's security program. This requirement applies:

(i) From the time the indirect air carrier accepts the cargo to the time it transfers the cargo to an entity that is not an employee, agent, contractor or subcontractor of the indirect air carrier;

(ii) While the cargo is stored, en route, or otherwise being handled by an employee, agent, contractor or subcontractor of the indirect air carrier; and

(iii) Regardless of whether the indirect air carrier has or ever had physical possession of the cargo.

(2) The indirect air carrier must assure that its employees, agents, contractors, and subcontractors comply with the requirements of the indirect air carrier's security program.

(c) *Content.* Each security program under this part must —

(1) Be designed to prevent or deter the introduction of any unauthorized person, explosive, incendiary or other destructive substances or items onto an aircraft;

(2) Include the procedures and description of the facilities and equipment used to comply with the requirements of §§ 1548.9 and 1548.17 regarding the acceptance and offering of cargo.

(3) Include the procedures and curriculum used to accomplish the training required under § 1548.11 of persons who accept, handle, transport, or deliver cargo for or on behalf of the indirect air carrier.

* * * * *

24. Revise § 1548.7 to read as follows:

§ 1548.7 Approval, amendment, annual renewal, and withdrawal of approval of the security program.

(a) *Original Application.* (1) The applicant must apply for a security program in a form and a manner prescribed by TSA not less than 90 calendar days before the applicant intends to begin operations. The application must be in writing and include:

(i) Business name; other names, including doing business as; state of incorporation, if applicable; and tax identification number.

(ii) The names, addresses, and dates of birth of each officer, director, and each person who holds 25 percent or more of total outstanding voting stock of the entity.

(iii) A signed statement from each person listed in paragraph (a)(1)(ii) of this section stating whether he or she has been an officer, director, or owner of an IAC that had its security program withdrawn by TSA.

(iv) Copies of government-issued identification of persons listed in (a)(1)(ii) of this section.

(v) Addresses of all business locations.

(vi) Whether the business is a "small business" pursuant to section 3 of the Small Business Act (15 U.S.C. 632).

(vii) Statement acknowledging and ensuring that each employee of the indirect air carrier who is subject to training under § 1548.11 will have successfully completed the training outlined in its security program before performing security-related duties.

(viii) Other information requested by TSA concerning Security Threat Assessments.

(ix) Statement acknowledging and ensuring that each individual will successfully complete a Security Threat Assessment under § 1548.15 before the individual has unescorted access to cargo.

(2) *Approval.* TSA will approve the security program by providing the indirect air carrier with the Indirect Air Carrier Standard Security Program and any Security Directives upon determining that:

(i) The indirect air carrier has met the requirements of this part, its security program, and any Security Directives.

(ii) The approval of its security program is not contrary to the interests of security and the public interest.

(iii) The indirect air carrier has not held a security program that was withdrawn within the previous year, unless otherwise authorized by TSA.

(3) *Commencement of operations.* The indirect air carrier may operate under a security program when it meets all requirements, including but not limited to successful completion of training and Security Threat Assessments by relevant personnel.

(4) *Duration of security program.* The security program will remain effective until the end of the calendar month one year after the month it was approved.

(5) *Requirement to report changes in information.* Each indirect air carrier with an approved security program under this part must notify TSA, in a form and manner approved by TSA, of any changes to the information submitted during initial application. This notification must be submitted to the designated official for reapproval within 30 days from the date the change occurred. Changes included in the requirement of this paragraph include but are not limited to changes in the indirect air carrier's contact information, owners, business addresses and locations, and form of business entity.

(b) *Renewal Application.* (1) Unless otherwise authorized by TSA, each indirect air carrier that has a security program under this part must timely submit to TSA, at least 30 calendar days prior to the first day of the anniversary month of initial approval of its security program, an application for renewal of its security program in a form and a manner approved by TSA. Upon timely submittal of an application for renewal and unless and until TSA denies the application, the indirect air carrier's approved security program remains in effect.

(2) The application for renewal must be in writing and include a signed statement that the indirect air carrier has reviewed and ensures the continuing accuracy of the contents of its initial application for a security program, subsequent renewal applications, or other submissions to TSA confirming a change of information and noting the date such applications and submissions were sent to TSA, including the following certification:

> [Name of indirect air carrier] (hereinafter "the IAC") has adopted and is currently carrying out a security program in accordance with the Transportation Security Regulations as originally approved on [insert date of initial approval]. In accordance with TSA regulations, the IAC has notified TSA of any new or changed information required for the IAC's initial security program. If new or changed information is being submitted to TSA as part of this application for reapproval, that information is stated in this filing.
>
> The IAC understands that intentional falsification of certification to an air carrier or to TSA may be subject to both civil and criminal penalties under 49 CFR 1540 and 1548 and 18 U.S.C. 1001. Failure to notify TSA of any new or changed information required for initial approval of the IAC's security program in a timely fashion and in a form acceptable to TSA may result in withdrawal by TSA of approval of the IAC's security program.

(3) TSA will renew approval of the security program if TSA determines that:

(i) The indirect air carrier has met the requirements of this part, its security program, and any Security Directives; and

(ii) The renewal of its security program is not contrary to the interests of security and the public interest.

(4) If TSA determines that the indirect air carrier meets the requirements of paragraph (b)(3) of this section, it will renew the indirect air carrier's security program. The security program will remain effective until the end of the calendar month one year after the month it was renewed.

(c) *Amendment requested by an indirect air carrier or applicant.* An indirect air carrier or applicant may submit a request to TSA to amend its security program as follows:

(1) The request for an amendment must be filed with the designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to an indirect air carrier security program may be approved if the designated official determines that safety and the public interest will allow it, and if the proposed amendment provides the level of security required under this part.

(4) Within 30 calendar days after receiving a denial of the proposed amendment, the indirect air carrier may petition the Administrator to reconsider the denial. A petition for reconsideration must be filed with the designated official.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment or by affirming the denial.

(6) Any indirect air carrier may submit a group proposal for an amendment that is on behalf of it and other indirect air carriers that co-sign the proposal.

(d) *Amendment by TSA.* TSA may amend a security program in the interest of safety and the public interest, as follows:

(1) TSA notifies the indirect air carrier, in writing, of the proposed amendment, fixing a period of not less than 30 calendar days within which the indirect air carrier may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the indirect air carrier of any amendment adopted or rescinds the notice of amendment. If the amendment is adopted, it becomes effective not less than 30 calendar days after the indirect air carrier receives the notice of amendment, unless the indirect air carrier petitions the Administrator to reconsider no later than 15 calendar days before the effective date of the amendment. The indirect air carrier must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice of amendment or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 calendar days of receipt by either directing the designated official to withdraw or amend the notice of amendment, or by affirming the notice of amendment.

(e) *Emergency Amendments.* (1) If TSA finds that there is an emergency requiring immediate action with respect to aviation security that makes procedures in this section contrary to the public interest, the designated official may issue an emergency amendment, without the prior notice and comment procedures described in paragraph (d) of this section.

(2) The emergency amendment is effective without stay on the date the indirect air carrier receives notification. TSA will incorporate in the notification a brief statement of the reasons and findings for the emergency amendment to be adopted.

(3) The indirect air carrier may file a petition for reconsideration with the Administrator no later than 15 calendar days before the effective date of the emergency amendment. The indirect air carrier must send the petition for reconsideration to the designated official; however, the filing does not stay the effective date of the emergency amendment.

(f) *Withdrawal of approval of a security program.* TSA may withdraw the approval of the indirect air carrier's security program, if TSA determines continued operation is contrary to security and the public interest, as follows:

(1) *Notice of proposed withdrawal of approval.* The designated official will serve a notice of proposed withdrawal of approval that notifies the indirect air carrier, in writing, of the facts, charges, and applicable law, regulation, or order that forms the basis for the determination.

(2) *IAC reply.* The indirect air carrier may respond to the notice of proposed withdrawal of approval no later than 15 calendar days after receipt of the withdrawal by providing the designated official in writing with any material facts, arguments, applicable law, and regulation.

(3) *TSA review.* The designated official will consider all information available, including any relevant material or information submitted by the indirect air carrier, before either issuing a withdrawal of approval of the indirect air carrier's security program or rescinding the notice of proposed withdrawal of approval. If a withdrawal of approval is issued, it becomes effective upon receipt by the indirect air carrier or 15 calendar days after service, whichever occurs first.

(4) *Petition for reconsideration.* The indirect air carrier may petition the Administrator to reconsider the withdrawal of approval by serving a petition for consideration no later than 15 calendar days after the indirect air carrier receives the withdrawal of approval. The indirect air carrier must serve the petition for reconsideration to the designated official. Submission of a petition for reconsideration will not automatically stay the withdrawal of approval. The indirect air carrier may request the designated official to stay the withdrawal of approval pending consideration of the petition.

(5) *Administrator's review.* The designated official transmits the petition together with all pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 15 calendar days of receipt by either directing the designated official to rescind the withdrawal of approval or by affirming the withdrawal of approval. The decision of the Administrator is a final order under 49 U.S.C. 46110.

(6) *Emergency withdrawal.* If TSA finds that there is an emergency requiring immediate action with respect to aviation security that makes procedures in this section contrary to the public interest, the designated official may issue an emergency withdrawal of the indirect air carrier's security program, without first issuing a notice of proposed withdrawal effective without stay on the date that the indirect air carrier receives notice of the emergency withdrawal. In such a case, the designated official will send the indirect air carrier a brief statement of the facts, charges, and applicable law, regulation, or order that forms the basis for the emergency withdrawal. The indirect air carrier may submit a petition for reconsideration under the procedures in paragraphs (f)(2) through (f)(5) of this section; however, this petition will not stay the effective date of the emergency withdrawal.

(g) *Service of documents for withdrawal of approval of security program proceedings.* Service may be accomplished by personal delivery, certified mail, or express courier. Documents served on an indirect air carrier will be served at the indirect air carrier's official place of business as designated in its application for

approval or its security program. Documents served on TSA must be served to the address noted in the notice of withdrawal of approval or withdrawal of approval, whichever is applicable.

(1) *Certificate of service.* An individual may attach a certificate of service to a document tendered for filing. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered, served by certified mail on a specific date, or served by express courier on a specific date.

(2) *Date of service.* The date of service will be the date of personal delivery; if served by certified mail, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark; or if served by express courier, the service date shown on the certificate of service, or by other evidence if there is no certificate of service.

(h) *Extension of time.* TSA may grant an extension of time of the limits set forth in this section for good cause shown. An indirect air carrier's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

25. Revise § 1548.9 to read as follows:

§ 1548.9 Acceptance of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each indirect air carrier must use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage on board an aircraft of any unauthorized person, explosive, incendiary, and other destructive substances or items as provided in the indirect air carrier's security program.

(b) *Refusal to transport.* Each indirect air carrier must refuse to offer for transport on an aircraft any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with this part, or part 1544 or 1546 of this chapter.

26. Add new § 1548.11 to read as follows:

§ 1548.11 Training and knowledge for individuals with security-related duties.

(a) No indirect air carrier may use any individual to perform any security-related duties to meet the requirements of its security program unless that individual has received training as specified in its security program including their individual responsibilities in § 1540.105 of this chapter.

(b) Each indirect air carrier must ensure that individuals who accept, handle, transport, or deliver cargo for or on behalf of the indirect air carrier have knowledge of the applicable provisions of this part, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's or indirect air carrier's security program to the extent that such individuals need to know in order to perform their duties.

(c) Each indirect air carrier must ensure that each individual under paragraph (b) of this section for the indirect air carrier successfully completes recurrent training at least annually on their individual responsibilities in § 1540.105 of this chapter, the applicable provisions of this part, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's or indirect air carrier's security program to the extent that such individuals need to know in order to perform their duties.

27. Add new § 1548.13 to read as follows:

§ 1548.13 Security coordinators.

(a) *Indirect Air Carrier Security Coordinator.* Each indirect air carrier must designate and use an Indirect Air Carrier Security Coordinator (IACSC). The IACSC and alternates must be appointed at the corporate level and must serve as the indirect air carrier's primary contact for security-related activities and communications with TSA, as set forth in the security program. Either the IACSC or an alternate IACSC must be available on a 24-hour basis.

(b) [Reserved].

28. Add new § 1548.15 to read as follows:

§ 1548.15 Security threat assessments for individuals having unescorted access to cargo.

This section applies to each indirect air carrier, and to each individual who has unescorted access to cargo accepted by such an indirect air carrier.

(a) Before gaining unescorted access to cargo, each individual must successfully complete either—

(1) A criminal history records check under §§ 1542.209, 1544.229, or 1544.230 of this chapter, if the individual is otherwise required to undergo such a check under those sections; or

(2) A Security Threat Assessment under part 1540 of this chapter; or

(3) Another Security Threat Assessment approved by TSA.

(b) Each indirect air carrier must ensure that each individual who has access to its cargo has either successfully completed one of the checks in paragraph (a) of this section or is escorted by such an individual.

29. Add new § 1548.17 to read as follows:

§ 1548.17 Known shipper program.

This section applies for cargo that an indirect air carrier offers to an aircraft operator operating under a full program under § 1544.101(a), or to a foreign air carrier operating under § 1546.101(a) or (b).

(a) For cargo to be loaded on aircraft in the United States, each indirect air carrier must have and carry out a known shipper program in accordance with its security program. The program must:

(1) Determine the shipper's validity and integrity as provided in its security program;

(2) Provide that the indirect air carrier will separate known shipper shipments from unknown shipper shipments.

(b) When required by TSA, each indirect air carrier must submit to TSA, in a form and manner acceptable to TSA:

(1) Information identified in its security program regarding an applicant to the known shipper program; and

(2) Upon learning of a change to the information specified in subparagraph (b)(1) of this paragraph, corrections and updates of this information.

30. Add new § 1548.19 to read as follows:

§ 1548.19 Security directives and information circulars.

(a) TSA may issue an Information Circular to notify indirect air carriers of security concerns. When TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(b) Each indirect air carrier required to have an approved indirect air carrier security program must comply with each Security Directive issued to the indirect air carrier by TSA, within the time prescribed in the Security Directive for compliance.

(c) Each indirect air carrier that receives a Security Directive must—

(1) Within the time prescribed in the Security Directive, acknowledge in writing receipt of the Security Directive to TSA.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the indirect air carrier is unable to implement the measures in the Security Directive, the indirect air carrier must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval. The indirect air carrier must submit the proposed alternative measures within the time prescribed in the Security Directive. The indirect air carrier must implement any alternative measures approved by TSA.

(e) Each indirect air carrier that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to TSA. TSA may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each indirect air carrier that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular must:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with a need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with a need-to-know without the prior written consent of TSA.

Issued in Arlington, VA, on November 3, 2004.

David M. Stone,

Assistant Secretary.

[FR Doc. 04–24883 Filed 11–9–04; 8:45 am]

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Federal Register

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November 10, 2004

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 175
Hazardous Materials: Revision of Requirements for Carriage by Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 175

[Docket No. RSPA–02–11654 (HM–228)]

RIN 2137–AD18

Hazardous Materials: Revision of Requirements for Carriage by Aircraft

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing changes to the requirements in the Hazardous Materials Regulations (HMR) for the transportation of hazardous materials by aircraft. These proposed changes include clarifying the applicability of part 175; excepting cargo aircraft from the quantity limits in § 175.75; reformatting the exceptions in § 175.10 into three sections based on applicability; and providing new separation distances for the shipment of radioactive materials by cargo aircraft. These changes are being proposed in order to clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand.

DATES: Comments must be received by January 31, 2005.

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

—*Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

—*Fax:* 1–202–493–2251.

—*Mail:* Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

—*Hand Delivery:* To the Docket Management System; 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.

—*http://www.Regulations.gov.*

Instructions: You must include the agency name and docket number (RSPA–02–11654 (HM–228)) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. You should identify the docket number RSPA–02–11654 (HM–228) at the beginning of your comments. You should submit two copies of your comments, if you submit them by mail. If you wish to receive confirmation that RSPA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov* and may access all comments received by DOT at *http://dms.dot.gov.* Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The HMR (49 CFR parts 171–180) govern the transportation of hazardous materials in commerce by all modes of transportation, including aircraft (49 CFR 171.1. parts 172 and 173 of the HMR include requirements for classification and packaging of hazardous materials, hazard communication, and training of employees who perform functions subject to the requirements in the HMR. Part 175 contains additional requirements applicable to aircraft operators transporting hazardous materials aboard an aircraft, and authorizes passengers and crew members to carry hazardous materials on board an aircraft under certain conditions. In addition, aircraft operators must comply with the training requirements in 14 CFR parts 121 or 135, as appropriate.

RSPA ("we" or "our") and the Federal Aviation Administration (FAA) are proposing amendments to part 175 and other sections of the HMR applicable to transportation of hazardous materials by aircraft. These amendments will increase safety in the air transportation of hazardous materials by:

(1) Modifying or clarifying requirements to promote compliance and enforcement;

(2) Eliminating unnecessary regulatory requirements;

(3) Adopting current exemptions and outstanding petitions for rulemaking;

(4) Facilitating international commerce; and

(5) Making the regulations easier to understand.

On February 26, 2002, RSPA published an advance notice of proposed rulemaking ("ANPRM"; 67 FR 8769) inviting public comments on how to accomplish the goals of this rulemaking. This provided an opportunity for comment on amendments that RSPA is considering and a forum for the public to present additional ideas for improving the safe transportation of hazardous materials by aircraft. We received 26 comments addressing the various issues in the ANPRM from the Air Line Pilots Association, International (ALPA), individual air carriers, and others involved in the transportation of hazardous materials by aircraft. Most commenters were supportive of RSPA's efforts to simplify and revise part 175 in order to clarify some issues in the industry and make the part more user friendly. Some comments received were beyond the scope of this rulemaking and, therefore, are not specifically addressed by RSPA in the comment summary below. Comments concerning the International Civil Aviation Organization's (ICAO) Technical Instructions (TI) for the Safe Transport of Dangerous Goods by Air will be addressed in another docket (Docket HM–215F) which is reviewing §§ 171.11, 171.12. and 171.12a. In addition, comments related to reducing the number of undeclared shipments of hazardous materials by passengers and cargo shippers will be used by RSPA and FAA as we continue to work with the airline industry and others on regulatory and non-regulatory initiatives to increase public awareness through outreach and education efforts.

II. Section-by-Section Review of Part 175

Sections 175.1 and 175.5 Purpose, Scope and Applicability

Part 175 of the HMR prescribes requirements for aircraft operators transporting hazardous materials aboard aircraft that are in addition to those contained in parts 171, 172, and 173 (§ 175.1). Part 175 applies to the

acceptance for transportation, loading, and transportation of hazardous materials in any aircraft in the United States, and in aircraft of United States registry anywhere in air commerce (§ 175.5). Part 175 includes exceptions from the requirements of the HMR for those aircraft under the direct, exclusive control of a government and not used for commercial purposes (§ 175.5).

Three commenters offered suggestions with regard to clarification of the applicability of part 175. All three suggested that we clarify in § 175.1 that part 175 applies to all persons who perform acceptance functions, including indirect air carriers.

We believe there is some confusion over the applicability of the HMR, specifically, part 175 to persons who are not air carriers, such as freight forwarders. Although the language of § 175.1 refers to aircraft operators, part 175 also applies to persons who are not direct air carriers but perform the same functions. Such persons include: persons who accept packages for air commerce; ground handling crews; contracted employees; air freight forwarders; and subsidiary companies formed by aircraft operators that perform pallet building and handle, load, and unload hazardous materials in air commerce.

Currently, some packaging, shipping, and freight forwarding facilities erroneously believe they are not subject to the requirements of the HMR, in particular § 175.26, because they are not air carriers. The HMR require each person who accepts or transports packages for transportation by air to display notification signs. Packaging, shipping, and freight forwarding facilities are not excepted from § 175.26, because they are performing carrier functions when they accept packages on a carrier's behalf. Therefore, in this rulemaking we are proposing to clarify that the requirements of the HMR apply to those persons who offer, accept, or transport hazardous materials in commerce by aircraft to, from, or within the United States. In addition, we are modifying § 175.1 to clarify that part 175 applies to any person who performs, attempts to perform, or is required to perform any function subject to this subchapter, including—

(1) Air carriers, indirect air carriers, and freight forwarders and their flight and non-fight employees, agents, subsidiary and contract personnel (including cargo, passenger and baggage acceptance, handling, loading and unloading personnel); and

(2) Air passengers that carry any hazardous material on their person or in their carry-on or checked baggage.

For purposes of clarity we are proposing to move the relevant paragraph of § 175.5 to § 175.1 or § 173.3 (see preamble discussion of § 173.3). We are also proposing to remove unnecessary provisions of § 175.5, such as § 175.5(a)(1).

Section 175.3 Unacceptable Hazardous Materials Shipments

No amendments are proposed for this section.

Section 175.10 Exceptions

Section 175.10(a)(2) excepts from the HMR certain hazardous materials required to be aboard an aircraft in accordance with applicable airworthiness requirements and operating instructions. However, items of replacement for such materials and other company materials (COMAT) of an airline that are hazardous materials must be properly classed, described, marked, labeled, packaged, handled, stored, and secured in accordance with the HMR. These requirements are discussed in an advisory notice on COMAT published on December 13, 1996 (61 FR 65479).

The HMR provide the following limited exceptions for COMAT: (1) Items of replacement for installed equipment containing hazardous materials are excepted from the packaging requirements of the HMR if they are contained in specialized packaging providing at least an equivalent level of protection to that of the required packaging; (2) aircraft batteries are excepted from the quantity limitations in §§ 172.101 and 175.75(a); and (3) an aircraft tire assembly is not subject to the HMR if it is not inflated to a gauge pressure exceeding the maximum rated pressure for the tire. Other hazardous materials such as paint, chemicals for corrosion removal, automotive batteries, wastes, and engine-powered ground equipment containing fuels do not qualify for this limited relief.

Section 175.10 also provides limited exceptions for the transportation of: (1) Certain personal items of passengers or crew members that are hazardous materials, such as toiletries, alcoholic beverages, and medicinal items; and (2) certain hazardous materials for special aircraft operations, such as avalanche control flights, aerial applications, and sport parachute jumping.

In its comments to the ANPRM, ALPA stated that reorganizing § 175.10 into three sections, applicable to passengers and crewmembers, COMAT, and special operations respectively, would produce better organization than the current format and be more user friendly. In addition, ALPA stated that the exceptions, including those applicable to persons with medical conditions, should remain in § 175.10. ALPA also stated that more specific wording should be added prohibiting carriage of another carrier's COMAT.

In general, ALPA stated that COMAT should only be carried to facilitate repair or dispatch of an "aircraft-on-ground." According to ALPA, it is common practice for an airline to pre-position oxygen bottles, aircraft batteries, and tires at outlying stations. ALPA stated that all these types of items could be pre-positioned by way of surface transportation domestically and pre-positioned as declared hazardous material on an all-cargo aircraft, if required, internationally.

ATA did not oppose reorganizing § 175.10, but, stated that the "ATA member air carriers are familiar with the application of § 175.10 as it now stands." ATA stated it did not see the need to remove any of the exceptions applicable to persons with medical conditions from § 175.10 and place them into another part of the HMR.

In reference to the COMAT exceptions, ATA commented that clarification would be helpful. ATA stated that "regarding the few exceptions applying to the operators materials and the aircraft-on-the ground (AOG) question, DOT must realize that there is no possible way for individual airlines to manage a COMAT program if the exceptions apply to only AOG shipments. The few COMAT exceptions that exist should apply to the operator's property at any time and place. The few exceptions are helpful in the operation of an airline in situations other than AGO."

ATA commented that RSPA should provide additional exceptions in § 175.10 for personal monitors and devices, but questioned RSPA's ability to keep current with new technology changes and maintain a large list of such items. ATA stated that "the entire list should be reviewed and such issues as the number of CO_2 cartridges in a life jacket should be harmonized. (*e.g.*, ICAO permits two spare cartridges, 49 CFR permits one spare cartridge), etc. It would be helpful if the lists could be compared and matched."

ATA also stated that hazardous materials for emergency response situations should not be excepted from the HMR, and that the current exemption process is appropriate and adequate. ATA stated that, "we suggest that there could be unforseen safety implications should certain considerations be made for emergency response that takes decisionmaking out

of the hands of DOT–RSPA. An exemption must come from DOT–RSPA." ATA commented that only provisions on aircraft airworthiness should require FAA approval.

The Regional Airlines Association (RAA) recommended that we relocate all "excepted hazmat" to a single, easily referenced section. According to RAA, present exceptions are located throughout the subchapter, *e.g.*, inconsistent exceptions for the air mode exist in § 175.10 and also in § 173.307. It recommended RSPA develop this new "excepted hazmat" section with no other exceptions included in this new section, divided by modes, *e.g.*, "Excepted Hazmat: All modes." RAA stated that this approach will also achieve better consistency regarding exceptions in the HMR.

RAA also stated that the § 175.10(a)(5) reference to 14 CFR 108 is obsolete and should be updated. In addition, RAA recommended that RSPA "create within part 175, a dedicated subpart containing only the requirements (or with very limited references to other locations) for "R & R (recognition and refusal) only" air operations, those choosing not to transport regulated hazmat. A & C (acceptance and carriage) operators may need to refer to this subpart for certain rules (*e.g.*, discrepancy reporting, training, etc.)." RAA states that this is necessary because, "it is extremely difficult to extract from part 175 the requirements that apply to R & R carriage."

RAA also recommended that RSPA expand the COMAT exception for "R & R" carriers to include small quantity hazardous material COMAT "items used for repair," *e.g.*, bonding and sealant kits, as well as certain items presently allowed in the passenger cabin. RAA stated that this is necessary because "R & R carriers presently can ship only a very limited number of hazmat COMAT." RAA stated that operators should be permitted to carry items considered hazardous materials, in limited quantities, as passengers and crewmembers do, *e.g.*, toiletries, alcohol, etc. that are hazardous due to their flammable properties. RAA stated that unlike these items referenced, the COMAT is already properly packaged and unopened. According to RAA, "This one change and clarification of the § 175.10 exceptions would save carriers hundreds of thousands of dollars in labor, transportation costs, AOG aircraft and lost revenues with only an insignificant increase in risk. For example, the transportation costs and time needed to transport small items used for minor aircraft repairs is extremely costly for R & R carriers. Often these kits consist only of a 1–2 oz individually sealed tube within a prefabricated kit. The mechanic would fly to the station on the carrier's aircraft but his/her repair kit cannot. Consequently, an air carrier's mechanic often takes lengthy 'road trips' to simply transport the needed repair kits."

RAA also recommended RSPA remove all rules related to "aerial work operations" and relocate them to one specific subpart (perhaps a revised subpart C, titled "Special Air Transport Exceptions and Rules, and Aerial Work Operations Involving Hazardous Materials") stating that "most readers of part 175 do not need to read thru the 'clutter' of portions of part 175 including: § 175.10(a)(3), (9), (11), and (12), and § 175.85 (c)(2) and (3)."

Federal Express (FedEx) commented that it understands the exceptions, including COMAT, as written. However, it indicated that clarification would be helpful regarding COMAT in order to prevent another carrier's materials from being transported on its aircraft as hazardous materials.

FedEx commented that the authority to transport hazardous materials for emergency response situations where the possibility of imminent loss of life or property exists should be granted only through an exemption issued by DOT and not by an exception in the HMR. FedEx recommended that, in the absence of an exemption, the material be shipped fully regulated.

United Parcel Service (UPS) commented regarding revising the approval provisions in part 175, stating, "RSPA may consider revising 49 CFR 175.10(a)(12)(vi), 175.31(a), and 175.85(c)(2) to recognize the integration of the FAA's Civil Aviation Security Organization into the newly formed Transportation Security Agency (TSA). These provisions of the HMR require persons to make certain communications to FAA Civil Aviation or Air Transportation Security Field Offices. In light of the TSA integration, UPS is uncertain as to whether such Security Field Offices still exist."

UPS commented that RSPA should reorganize § 175.10 into three sections based on their applicability. UPS does not agree with applying the COMAT exception to the transportation of only those materials intended for aircraft-on-ground. UPS stated:

> There is no safety justification or other compelling basis for limiting the COMAT exception to the transportation of COMAT intended for aircraft-on-ground. Section 175.10(a)(2) is narrowly drafted to provide an exception solely for (i) hazardous materials required to be carried aboard an aircraft, and (ii) items of replacement for such hazardous materials. This narrow exception provides a more than adequate margin of safety. RSPA fails to cite any incidents directly resulting from the transportation of COMAT not intended for an aircraft-on-ground. Without an articulated reason for why a drastic limitation of the HMR's COMAT provisions would promote safe air transportation, RSPA should not revise § 175.10(a)(2).

Southwest Airlines commented on the exceptions in § 175.10, stating that "the personal smoking material exception in § 175.10(a)(10) is often confusing. While safety matches or a lighter are allowed on one's person, air carriers are often left with the decision on how many lighters or safety matches to allow each customer to carry. A regulatory published limit on the number of lighters and/or safety matches allowed on one's person would greatly help consistency among carriers and the Transportation Security Administration (TSA)."

Southwest Airlines also stated, "when transporting ammunition under the exception in § 175.10(a)(5), it would be helpful (if this is the intent) to add a sentence that states (as provided in § 176.63 for OMR–D) that magazines or clips must have the primers (firing mechanism) protected from accidental initiation." Southwest Airlines also indicated that it attempted to identify mechanical limbs operated by carbon dioxide cartridges (§ 175.10(a)(18)), for purposes of training staff, and were unsuccessful in identifying any currently on the market. Therefore, there may be no need to specify this exception if technology is not currently available.

Southwest stated that the exception in § 175.10(a)(25) for carbon dioxide cylinders when used in a self-inflating life vest, is inconsistent with the allowable quantities of two small cylinders plus two spares in the international rules, and that consistency is needed between the two sets of regulations. Southwest stated that in addition, the exception for carbon dioxide, solid (dry ice) should be reviewed and compared with the simplified version in the IATA Dangerous Goods Regulations that limits dry ice to 4.4 pounds in checked or carry on baggage.

Southwest Airlines also indicated that a reference to the diagnostic specimen exception would be helpful in clarifying the intent of § 173.199 provisions with shippers and carrier employees. In addition, Southwest Airlines indicated that no current exception exists for units that previously contained fuel, *e.g.*, camp stoves and internal combustion engines, and suggested regulations be reviewed to determine if an exception

could be provided for such units that have been emptied.

Southwest Airlines stated that, "Keeping the exceptions [applicable to persons with medical conditions] together simplifies the use of the regulations and maintains consistency. Every change requires updating of manuals and training material to accommodate the transition of information. Change should be substantive." With regard to providing additional exceptions for personal monitors and devices such as apnea and heart monitors, nebulizers, and nerve stimulators, Southwest stated, "Any exceptions that provide consistency with both the HMR and the ACAA (14 CFR 382) are welcome. The difficulty will be wording the exception in a manner that is general enough to meet the changing technologies in the medical equipment field."

Airborne Express indicated that it does understand that the COMAT exception does not apply to the transportation of another air carrier's material; however, it believed that a clarification would be helpful. Whether the COMAT exception should apply only to the transportation of those materials intended for an aircraft-on-ground (AOG), Airborne Express stated, "DOT must realize that there is no good way to manage a COMAT program if the exceptions apply only to AOG shipments. The few COMAT exceptions that exist should apply to the operator's property at any time and place. The few exceptions are helpful in the operation of an airline in situations other than AOG." Airborne Express indicated that the current exemption process regarding hazardous materials for emergency response situations is appropriate and adequate as it is applied today.

The United States Parachute Association (USPA) supports the retention of exceptions for skydiving activities in § 175.10, or a new section, which allows "smoke grenades, flares, or similar devices" when carried only for skydiving purposes. USPA stated that for consistency with other Federal regulations, the term "sport parachute jumping activity" should be replaced by the term "parachute operation," which was incorporated in 14 CFR part 105. Additionally, USPA proposed the inclusion of other devices often used, and in some cases required by the FAA and/or USPA, for skydiving safety. These devices include items such as light systems, oxygen bottle (bailout bottle), floatation device, and an automatic activation device. USPA recommended § 175.10(a)(9) be written as follows: "lights, oxygen bottles, floatation devices, automatic activation devices, smoke grenades, flares, or similar devices carried only for use during a parachute operation."

Several commenters expressed concern on the proposal to remove or revise exceptions in § 175.10 on personal items, medicines, perfumes, and alcoholic beverages transported on aircraft by passengers or crew members and requested that the exceptions be maintained in § 175.10 as currently written. Commenters believed that any such revisions would not enhance air transportation safety and would create inconsistencies between the HMR and ICAO TI. Commenters included: Dangerous Goods Advisory Council (DGAC), Distilled Spirits Council of the United States (DISCUS), Association of Hazmat Shippers (AHS), International Association of Airport Duty Free Stores (IAADFS), Inflight Sales Group, Inc. (ISG), and the Cosmetic, Toiletry, and Fragrance Association (CTFA).

The American Chemistry Council (ACC) stated that § 175.10 should be reorganized into three sections applicable to passengers and crewmembers, COMAT, and special operations. In addition, ACC stated, "Passengers are shippers who are not directly under the control of the carrier prior to boarding the aircraft. However, while on the aircraft, passengers must be monitored by the carrier." ACC stated that, if § 175.10 is reorganized, reference to persons with medical conditions should remain in this section.

ACC stated that an exception to the HMR should be provided for hazardous materials necessary for emergency response situations where there is a possibility of imminent loss of life or property. ACC stated this exception should be limited to chartered aircraft taking part in the incident response. ACC stated, "Applying this limitation to the exception along with, using "authorized" packaging for these materials, will enhance safety by limiting public access to these flights."

Based on the comments received, we are proposing to divide the current exceptions in § 175.10 into three different sections: § 175.8, 175.9, and 175.10. Each section will cover a category of exceptions. Section 175.8 will cover operator equipment and supplies (including COMAT); § 175.9 will cover special aircraft operations (crop-dusting, parachuting, etc.); and § 175.10 will cover exceptions for passengers and crewmembers. We believe that categorizing these exceptions will make the regulations easier to use and minimize confusion concerning the applicability of certain paragraphs.

The proposed new § 175.8 incorporates the exceptions for operators covering:

—Aviation fuel and oil.
—Hazardous materials required for airworthiness and spares.
—Oxygen supplied by the operator.
—Dry ice used by the operator in food service.
—Alcohol, perfume, and lighters carried for use or sale by the operator.
—Aircraft equipment spares (COMAT).

The proposed § 175.8 also clarifies that the exceptions for aircraft spares (COMAT) are applicable only to an operator transporting its own equipment. The proposed paragraph on COMAT deletes the references to tires as this exception already exists in § 173.307(a)(2), which is also being revised.

We are proposing to revise § 173.307(a)(2) to reference Special Provision A59 for tires transported by aircraft. Special Provision A59 is added to § 172.102 and is aligned with the requirements in ICAO TI. Special Provision A59 deals with serviceable and undamaged tires versus unserviceable and damaged tires. It also requires tires and their valve assemblies to be protected from damage during air transport.

The proposed new § 175.9 incorporates exceptions for the following special aircraft operations:

—Aerial seeding, crop dusting, spraying, etc.
—Smoke grenades, flares, release devices, lights, and life-jackets for parachuting operations.
—Smoke grenades, flares, pyrotechnics, affixed to aircraft during air shows.
—Weather control, environmental protection, forest preservation, avalanche control.

Also added to this proposed section are exceptions for operations dedicated to firefighting and prevention; air ambulance and search and rescue operations. References to FAA approvals throughout this section have been edited to reflect either the FAA Flight Standards District Office or the FAA Principal Operations Inspector, whichever is more appropriate.

In the new § 175.10, we are proposing that this section only contain exceptions for hazardous materials carried by passengers and crewmembers. As many paragraphs from § 175.10 have been reassigned to §§ 175.8 and 175.9, the remaining sub-paragraphs are renumbered, as indicated in the following table. Many of the remaining paragraphs in § 175.10(a) have been edited for clarification only. The most common edit was to put the name of the

excepted article at the beginning of the sentence so that it is easy to find (as opposed to having a sentence start out with "With the approval of the operator * * * "). Sections and paragraphs that have significant changes are listed below—*by their new section and paragraph number.*

Old paragraph 175.10(a)	New paragraph
(a)(1) aviation fuel and oil in tanks	175.8(a).
(a)(2) operator equipment, spares	175.8(a)&(b), 173.307(a)(2), 172.102 A59.
(a)(3) aerial seeding, crop dusting, etc.	175.9(a).
(a)(4) medicinal/toilet articles, 2.2. aerosols	175.10(a)(1)—self defense spray (a)(9).
(a)(5) small arms ammunition	175.10(a)(8).
(a)(7) oxygen furnished by operator	175.8(c).
(a)(8) implanted medical devices	175.10(a)(3).
(a)(9) parachuting devices	175.9(b).
(a)(10) safety matches/lighters	175.10(a)(2).
(a)(11) pyrotechnics affixed to aircraft	175.9(c).
(a)(12) hazmat dispensed, environmental	175.9(e).
(a)(13) dry ice	175.10(a)(10), 175.8(d).
(a)(14) transport incubator	175.10(a)(13).
(a)(15) alcohol, etc., carried by operator	175.8(e).
(a)(16) duty free perfume, etc.	175.10(a)(5).
(a)(17) alcoholic beverages	175.10(a)(4).
(a)(18) gas cylinders for mechanical limbs	175.10(a)(12).
(a)(19) wheelchair, nonspillable battery	175.10(a)(16).
(a)(20) wheelchair, spillable battery	175.10(a)(17).
(a)(21) hair curlers, butane	175.10(a)(6).
(a)(22) mercurial barometer/thermometer	175.10(a)(14).
(a)(23) heat-producing articles	175.10(a)(15).
(a)(25) lifejacket with gas cartridges	175.10(a)(11).
(a)(26) small mercury thermometer	175.10(a)(7).

Section 175.10(a)(1) is edited to change the maximum net quantity of inner packaging for medicinal/toilet articles from 473 ml to 500 ml for consistency with other even metric quantities. Self-defense spray has been reassigned to its own paragraph since it has little in common with medicinal and toilet articles.

Section 175.10(a)(2) allows safety matches and approved lighters to be carried in carry-on baggage as well as on one's person. This is based on a recent RSPA clarification letter.

Section 175.10(a)(6) is clarified by including the North American term "curling iron" to describe hair curlers and by citing "butane" as an example of a hydrocarbon gas.

Section 175.10(a)(8) is modified to limit the amount of small arms ammunition allowed in checked baggage to 5 kg per person. Previously the only limiting term was "personal use". This had the potential of allowing several hundred pounds of ammunition to be carried in checked baggage, which is an unreasonable risk. Based on comments from Southwest Airlines, this sub-paragraph is also clarified to indicate that ammunition clips and magazines must be securely boxed.

Section 175.10(a)(9) puts self-defense spray in its own sub-paragraph where it can be seen more easily. It had previously been included in the quantity limits for medicinal and toilet articles.

Section 175.10(a)(10) currently includes two different net quantities allowed for dry ice—2 kg (4.4 pounds) and 2.3 kg (5.0 pounds)—depending on how it was being carried. It has also been unclear if the marking requirements applied only to cargo or dry ice in checked baggage. This proposed new subparagraph allows 2 kg (4.4 pounds) to be carried in checked or carry-on baggage and clarifies that the marking requirements are for checked baggage only. The exception for dry ice used in food service by the operator is moved to § 175.8. The 2.3 kg (5.0 pounds) exception for dry ice transported as cargo is now incorporated in § 173.217.

Section 175.10(a)(11) is modified to provide that self-inflating life jackets may be carried with two cartridges of CO_2 (or other suitable div. 2.2 gas), as adopted in the HM–215E final rule (68 FR 44991).

Section 175.10(a)(15) is clarified by replacing the term "underwater torch" with the North American term "diving lamp".

The current § 175.10(b) paragraph dealing with the stowage of oxygen cylinders is moved to the new section § 175.510.

New § 175.10(b) would include the provisions adopted in HM–215E authorizing the carriage of these excepted hazardous materials in passenger baggage that has unintentionally been separated from the flight carrying the passenger (misrouted).

Section 175.20 Training

Section 175.20 requires aircraft operators to comply with all applicable requirements in parts 106, 171, 172, and 175. In addition, hazmat employers must ensure all hazmat employees receive training in accordance with part 172. Initial training under the HMR must be conducted within 90 days after employment begins or a change in the employee's job function. Recurrent training must be conducted at least every three years. Section 175.20 also refers to the training requirements of the FAA under 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327, and 135.333, which additionally address training for air carriers.

A "hazmat employee" is defined in § 171.8 to include "all persons who in the course of employment perform functions that directly affect hazardous materials transportation safety." This does not include every person who works around an area where, for example, hazardous materials are loaded, unloaded, handled, and stored. The employee's functional relationship to hazardous materials transportation safety, rather than incidental contact with hazardous materials in the workplace, is the primary factor in determining whether an individual is a "hazmat employee."

In its comments to the ANPRM, ALPA stated, "the requirements as outlined in part 172, subpart H are adequate. However, it would be helpful if the hazardous materials training requirements listed in parts 121 and 135 were reproduced in § 175.20." ALPA indicated that cargo departments of air carriers are often expected to provide hazardous materials training and do not normally have copies of parts 121 or 135.

ALPA also indicated that it should be clarified that persons responsible for screening for unacceptable hazardous materials must be trained. ALPA suggested that training be required for baggage handling, sorting, security, and other carrier personnel to enable them to identify undeclared hazardous materials in cargo. ALPA indicated that the air carriers they deal with do understand the applicability of training requirements to their personnel regarding 49 CFR versus 14 CFR.

Airborne Express stated, "We do not believe that further training on undeclared hazardous materials is necessary. Baggage handling, sorting, security, and other carrier personnel are already trained to recognize hazardous materials shipments in their job specific environment. We already have established procedures in place for specifically trained individuals to repackage or clean up leaking shipments. These procedures take the responsibility out of the hands of our sorter personnel." They also commented that aircraft carriers do understand what training requirements apply to their personnel (14 CFR versus HMR.).

FedEx commented that the training requirements applicable to aircraft operators and hazardous materials employees are clear and understandable as currently written.

ATA expressed satisfaction in understanding the training applicable to an aircraft operator. However, ATA indicated that § 175.1 is applicable only to aircraft operators, so it will be necessary to rewrite and clarify its application to entities that are not direct air carriers, but perform air carrier functions, *e.g.*, indirect air carriers.

ATA further stated, "there are other relationships, aside from indirect air carriers, that perform functions on behalf of a carrier, for instance, that of an air freight pick up and delivery contractor (trucker) or a handling agent which typically performs certain handling functions on behalf of an airline. DOT needs to clearly establish that the training liability and responsibility apply to these entities in the same manner as they apply to a direct air carrier."

ATA further stated, "Baggage and sorting personnel report to their supervisors when a bag or package is leaking, report the presence of an unfamiliar source of heat or report the omission of an unfamiliar and/or noxious odor. Other than warning signs such as these, how possibly could one be trained to question what is in a closed bag or package?"

ATA indicated that its member airlines understand how training requirements apply to their personnel (*e.g.*,14 CFR verses 49 CFR) and that each individual air carriers's training program is approved by the airlines' Principal Operating Inspector (POI). ATA further stated, "the POI has, by necessity, been dependent on the Dangerous Goods/Cargo Security Coordinators, whose working knowledge of dangerous goods should qualify them to review and recommend approval of a carrier's Training Program. However, with the re-organization of the U.S. FAA regions, these approvals may now be the responsibility of headquarters TSA/FAA Dangerous Goods. A move to a central location for approval of training programs would provide assistance in the standardization of such programs."

Most commenters to the ANPRM indicated they understand the applicability of training under the HMR and 14 CFR. Some commenters expressed confusion regarding the definition of a "hazmat employee". We believe the revision of § 175.1 as proposed in this rulemaking will clarify that the HMR (including training) applies to any person who performs, attempts to perform, or is required to perform any function subject to this subchapter, including air carriers, indirect air carriers and freight forwarders and their flight and non-flight employees, agents, subsidiary and contract personnel.

However, these regulations are an integral part of the certification requirements and operating rules for part 121 and 135 certificate holders. Under DOT's regulations, training requirements are not placed upon employers or employees who are not "hazmat employers" or "hazmat employees". Under 14 CFR, the FAA requires even a will-not-carry certificate holder that does not handle or transport hazardous material to provide recognition training to specific employees. We are proposing to revise this section for clarity and to more specifically reference the training requirements of 14 CFR parts 121 and 135.

Sections 175.25 and 175.26 Notification at Air Passenger and Cargo Facilities of Hazardous Materials Restrictions

The HMR currently require notices to be posted at air passenger facilities and cargo facilities. The notices contain specific language warning passengers and offerors of cargo of the requirements applicable to carrying or offering hazardous materials and the penalties for failure to comply with those requirements. Section 175.25 requires aircraft operators to display notices warning passengers against carrying undeclared hazardous materials aboard aircraft in either their checked or carry-on luggage or on their persons, and prescribes the information to be contained in each notice. Section 175.26 requires each person who engages in the acceptance of, or the transportation of, cargo by aircraft, to display notices in prominent locations at each facility where cargo is accepted. These notices are intended to inform their customers of what a hazardous material is, the requirement to comply with the HMR, and the penalties for failure to comply with the HMR. Therefore, signs must be in prominent view of passengers and persons who accept or offer cargo. Sections 175.25 and 175.26 also list the minimum information that must be contained on the notice.

In some cases, cargo terminals are co-located with passenger terminals. To make it easier for the industry to comply with signage requirements, FAA and RSPA stated in a final rule published September 27, 1993 (58 FR 50496) that display of separate passenger and cargo notices is not required at these passenger terminals. Notices are not required to be displayed at unattended locations if there is a general notice prominently displayed advising customers that shipments of hazardous materials at that location are prohibited. In addition, notices are not required to be displayed at a shipper's facility where packages of hazardous materials are accepted. In a final rule published July 10, 1998 (63 FR 37454), we revised §§ 175.25 and 175.26 to reflect changes in the statutory citations and penalties, and to provide carriers greater flexibility.

Internationally, the ICAO TI require each operator to warn passengers of the types of goods they are prohibited from transporting aboard aircraft. Although the ICAO TI do not specify the wording or information to be provided in the warning, ICAO Technical Instruction Part 7;5.1 does require each operator to ensure the information is promulgated in such a manner to alert its passengers.

The information must accompany the passenger ticket and be "prominently displayed" in sufficient numbers at each of the places in an airport where tickets are issued, passengers and baggage check in, aircraft boarding areas are maintained, and at any other location where passengers may check in. In addition, the ICAO TI require operators to ensure that notices sufficient in number and prominence are displayed in baggage claim areas.

Commenters offered many suggestions for improving signage. ATA stated that inconsistencies and reluctance that exist among airport authorities throughout the country is one major reason the message is not effectively communicated to passengers. Most commenters believe that the term "prominently displayed" needs clarification. At some airports, signage has been noted as being wholly inadequate. For example, some carriers place signage required by the HMR in the baggage well where it would be difficult for a passenger to see. Most commenters agreed that simple, internationally recognized, pictorial designs would aid immensely in communicating to passengers what hazardous materials may be taken onboard or checked.

In this NPRM we are not proposing any amendments to the signage requirements in §§ 175.25 and 175.26. However, in an effort to further clarify these requirements and provide consistency with § 175.26, we are proposing that the terminology in § 175.25 refer to "each person" instead of "each aircraft operator." We will also continue to work with the airlines and the airports to ensure that the passengers and shippers of cargo aboard aircraft are aware of the dangers and the regulations for shipping hazardous materials.

Section 175.30 Accepting and Inspecting Shipments

Section 175.30, prohibits any person from carrying a hazardous material aboard an aircraft unless the package is inspected by the aircraft operator to ensure that the integrity of the package has not been compromised. In response to a request from an airline to clarify its hazardous material acceptance responsibility, we issued a formal interpretation on the acceptance of hazardous materials on June 4, 1998 (63 FR 30411). In that interpretation, we stated a carrier's acceptance and transportation of hazardous materials can involve several different situations. For example, a shipment may be "declared" by the shipper to contain hazardous materials by shipping documentation, marking, labeling, or other means. In such cases, the shipment must comply with all applicable HMR requirements, including the use of an authorized packaging. Conversely, an "undeclared" or "hidden" shipment is a shipment of hazardous materials that, intentionally or unintentionally, is not declared by the offeror to contain hazardous materials, and there is no attempt to comply with the HMR.

The importance of rejecting any shipment of hazardous materials that does not comply with the HMR is highlighted by the mandate in 49 U.S.C. 5123 to assess a civil penalty against any person who "knowingly violates" any requirement in the HMR, including the provisions of § 175.30. Section 5123(a) provides that a person "acts knowingly" when: (A) The person has actual knowledge of the facts giving rise to the violation; or (B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. A carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material not properly packaged, marked, labeled, or described on a shipping paper as required by the HMR. This means a carrier may not ignore readily apparent facts indicating that either: (1) A shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper; or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.

Internationally, part 7 of the ICAO TI contains hazardous materials acceptance procedures for aircraft operators. ICAO part 7;1.3 requires operators to develop and use a checklist that includes all reasonable steps to assure packages are properly prepared for transportation by aircraft, and all regulatory requirements have been satisfied.

ALPA favors revising § 175.30 to include the formal interpretation language issued on June 4, 1998, while the ACC states that the requirements of § 175.30 should not apply to undeclared shipments.

One commenter stated that RSPA should mandate a checklist for acceptance of hazardous materials. However, UPS stated that RSPA needs to justify any checklist requirement. Fisher Scientific stated that any checklist adopted should allow a carrier some degree of flexibility, while Airborne Express opposed a checklist requirement for pick-up and delivery drivers. Finally, both FedEx and the ATA suggested that any checklist adopted should mirror the current checklist suggested by ICAO and required by IATA.

Based on comments received from the ANPRM, we are not proposing to require a checklist suggested by ICAO and required by IATA. We believe that air carriers are familiar with the suggested ICAO and IATA checklist, and may or may not choose to use that checklist. We believe that requiring a checklist under the HMR would be duplicative, as well as burdensome.

We are proposing to remove the exception in § 175.30(d) for materials classed as ORM-D. Section 175.30(d) excepts materials classed as ORM-D from the inspection requirements in paragraphs (b) and (c) of this section. We believe that materials reclassed as ORM-D material should be subject to the inspection requirements of § 175.30(b) and (c) to insure all packages containing hazardous materials are in proper condition for transportation aboard aircraft.

Section 175.31 Reports of Discrepancies

Section 175.31 requires a person who discovers a discrepancy after acceptance of a package of hazardous materials (as defined by § 175.31(b)) to notify the nearest FAA Civil Aviation Security Field Office (CASFO) by telephone "as soon as practicable," and provide certain information. This requirement permits early investigation and intervention to determine the cause for failure to either properly declare or prepare a hazardous materials shipment. A May 27, 1980, final rule under Docket HM–168 (45 FR 35329), adopted requirements in 49 CFR 175.31 for reporting discrepancies. In the preamble to the final rule, we stated:

> A shipment containing a hazardous material must be offered to the carrier in accordance with the regulations. An offering occurs when (1) the package is presented, (2) the shipping paper is presented, (3) the certification is executed, and (4) the transfer of the package and shipping paper is completed with no further exchange (written or verbal) between the shipper and aircraft operator, as usually evidenced by the departure of the shipper. At this point, it is clear that the operator has accepted the shipment and the shipper has removed himself from a final opportunity to take corrective action that would preclude a violation of the HMR relative to transportation of hazardous materials aboard aircraft * * * the requirement which has been adopted [in this final rule] limits

required reporting to shipment discrepancies which are discovered [subsequent to] acceptance of the shipment for transportation and limits 'reportable' discrepancies to those discrepancies which are not detectable as a result of proper examination by a person accepting shipment under the acceptance criteria of § 175.30. This notification requirement will facilitate the timely investigation by FAA personnel of shipment discrepancies involving situations where inside containers do not meet prescribed packaging or quantity limitation requirements and where packages or baggage are found to contain hazardous materials after having been offered and accepted as other than hazardous materials.

Internationally, ICAO TI part 7; 4.5 contains provisions under which operators must report undeclared or misdeclared dangerous goods found in cargo, or dangerous goods not permitted to be carried by passengers, found in baggage. This report must be given to the appropriate authorities in the country in which the incident occurs.

The Association of Hazmat Shippers (AHS) stated that, "* * * the Federal Aviation Administration has been using discrepancy reports under § 175.31 as a vehicle through which to impose civil penalties upon air carriers bringing the agency's attention to undeclared hazardous materials. We understand the serious risks associated with improperly declared hazardous cargo, but we do not think the practice of the FAA to penalize reporting parties, by construing 'knowledge' on their part and subjecting them to civil penalties, is either prudent or appropriate. Especially in the current security environment, all agencies in DOT have been and should continue to encourage full reporting of problem hazmat shipments. Punishing the reporting person for initially accepting inadequately declared hazardous materials chills the incentive to report, and is counterproductive." AHS recommends consideration to immunity for reports submitted under §§ 171.15, 171.16, 175.31, and any other hazmat reporting programs that might be developed.

Airborne Express (ABX Air, Inc.) also favors a formalized amnesty feature be considered for reporting discrepancies.

ACC stated that discrepancies involving a shipment of "declared" hazardous materials that has been accepted by an airline should be reported while the package is still in the airline's possession. ACC stated that "* * * airlines reporting a discrepancy (not caused by that airline) after the acceptance of a hazardous materials package should not be under threat of citation or prosecution if the non-compliance was not readily evident at the point of acceptance." ACC also supports the idea of a "safe haven" for incident and discrepancy reporting and stated it will provide DOT with better data. ACC also indicated that they believe the regulations, including the ICAO Technical Instructions should clearly indicate that indirect air carriers are subject to the HMR and ICAO TI.

Southwest Airlines stated that the person discovering the discrepancy should be given sufficient time to investigate to verify the discrepancy. Southwest also supports an amnesty program and stated it will enhance safety.

UPS stated that RSPA should not revise or clarify when discrepancy reports are required, *e.g.*, "as soon as practicable" under § 175.31, since some flexibility in the reporting period is needed. UPS stated, "Rather than require 'immediate' reporting, § 175.31(a) tacitly acknowledges that inquiring into the circumstances surrounding a reportable discrepancy is necessarily a fact-specific determination that varies in each case." UPS indicated that, at times, "FAA has not consistently conducted inspections of packages that are located away from a major airport * * * FAA agents also have been too busy to inspect packages held even at airports. If RSPA considers the possible unavailability of packages for inspection an issue, then it must provide evidence of its concerns in any subsequent notice in this rulemaking and balance those concerns with the consequences for the carriers on whom they may impose any new requirements."

UPS indicated that RSPA should propose a formalized amnesty feature for persons who report discrepancies under § 175.31. It also stated, "A compliance and training program resulting in required or voluntary reporting to DOT is an appropriate standard of 'reasonable care.' For companies with effective compliance programs, the point in time that a noncompliance package is actually detected and reported by the carrier through these programs should be presumptively considered to be the point in time that it should have been detected "by a reasonable person acting under the circumstances."

According to UPS, "RSPA has clarified that the requirement to report discrepancies does not apply to indirect air carriers and other shipping facilities after their acceptance of cargo, and there is no need for RSPA to clarify § 175.31. Nevertheless, if RSPA proposes to apply § 175.31 to indirect air carriers and other shipping facilities, RSPA must consider the resource issues associated with expanding the universe of persons reporting discrepancies to the FAA. Consideration of such issues is especially critical given that any revisions to § 175.31 will affect FAA resources over which RSPA exercises no control. FAA may lack the personnel and other resources to address discrepancy reports from sources other than air carriers."

ALPA stated that, "ALPA believes that the wording 'as soon as possible' would be a better alternative to 'immediately' or the present wording, 'as soon as practicable.' The reason is that 'immediately' implies that an employee could not take the necessary time to properly neutralize a leaking package, but would have to "immediately call the nearest FAA field office. On the other hand 'as soon as practicable' could have the opposite effect—an employee might wait until tomorrow as it wasn't 'practicable' to do it today."

ALPA indicated that amnesty encourages reporting, while no amnesty discourages it. ALPA stated that, "One comparison worth mentioning is the Aviation Safety Awareness Program (ASAP), which grants amnesty to pilots who self report certain situations. This program has greatly increased the number of reports, thereby allowing the FAA to establish a data bank to start to correct the situation that caused the discrepancy." Regarding the requirement to report discrepancies to apply to indirect air carriers and other shipping facilities after acceptance of cargo, ALPA indicated that the reporting program should apply to all facilities involved in transporting hazardous materials by air.

FedEx stated that the current discrepancy reporting process is sufficient. However, FedEx also suggested that a time limit requiring the carrier to hold the shipment should be established so that proper disposition takes place if an inspector cannot inspect the shipment in question. FedEx also indicated that couriers are not and should not be trained to the level of being qualified to determine whether a discrepancy has been made with the shipment.

FedEx does not support a time limit in hours for carriers reporting undeclared dangerous goods is advisable. According to FedEx, "we often conduct a preliminary investigation to verify whether a shipment actually contains dangerous goods. This investigation may take varying lengths of time, but it is necessary and useful to the FAA/TSA not to be bothered when an undeclared dangerous goods does not exist. We do not consider the dangerous goods shipment accepted until inspection by a

trained FedEx Express dangerous goods specialist. Hidden discrepancies are currently reported to the TSA/FAA. If additional discrepancies were required to be reported, it is reasonable to believe that TSA/FAA could not keep up with the reports and this would cause a significant burden on shippers, carriers, and regulatory inspectors."

FedEx indicated that it favors an amnesty program. FedEx stated, "Granting immunity to carriers that report any discrepancies to the inspectors is in the best interest of all involved and will improve the safe transportation of dangerous goods shipments by air." FedEx also suggested that reporting requirements should apply to indirect air carriers and other shipping facilities after acceptance of cargo.

The Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) stated that an amnesty feature for those who report discrepancies has merit, and may enhance awareness and compliance with the HMR. COSTHA also stated "it would be inappropriate to include such a provision in part 175 that would only be applicable and available to air carriers." COSTHA stated, "if such an amnesty feature is established, COSTHA proposes that it should be equally applicable and available to offerors of hazardous materials for transport by air and other persons subject to the HMR."

Fisher Scientific indicated that the current system of reporting discrepancies as soon as practicable is sufficient, and a time period for reporting discrepancies would not improve safety. Fisher Scientific suggested that imposing a time frame would only lead to less compliance and reporting and lead to more enforcement actions against carriers. Fisher Scientific supports some form of penalty for non-reporting of discrepancies. However, Fisher Scientific suggested that proving that a party did not report a discrepancy might be difficult. Fisher Scientific suggested that rewarding compliance rather than punishing non-compliance would be more productive.

In addition, Fisher Scientific stated that there is some merit in a formal amnesty program for those who report discrepancies, if applied equally to all involved with air shipments, *e.g.*, carriers, shippers, forwarders, non-air operations, etc. Fisher Scientific stated, "the main issue with amnesty is how to deal with repeat offenders. Perhaps a time limit for amnesty coupled with some form of three strikes and you are out policy would work. Once again, the issue is compliance and safety rather than punishment and incidents."

Regarding the applicability of reporting, Fisher Scientific stated, "Each person who discovers a discrepancy should be required to report, or no person should be required to report. * * * While carriers do have the requirement to ensure compliance when received, they should not bear the entire burden for compliance reporting, nor be the sole beneficiaries of any amnesty provisions."

ATA expressed concern regarding the requirement to report discrepancies "as soon as practicable" and the time period that carriers have to hold packages for inspection. ATA indicated that it often takes a significant amount of time to get a shipper to supply needed information about a particular shipment, and that air carriers are not in a position to store packages awaiting inspection. ATA stated, "good common sense is needed in the development of new requirements and a time limit or not more than three (3) business days needs to be established as the bounds of a carrier's responsibility for holding a shipment." ATA further stated that, "a delay in an inspection prolongs the exposure of our employees to potentially dangerous materials and opens the possibility of a conflict between DOT requirements and OSHA or local fire code requirements. We feel it necessary to make the point that if the TSA agent does not have time or resources in inspecting a shipment, this needs to be said to the air carrier so that the carrier can get on with the disposal."

Regarding an amnesty provision, ATA supports a "safe harbor" for those entities that report regulatory discrepancies and undeclared shipments to the government. ATA further stated, "We believe that the agency's current practice of aggressively prosecuting air carriers who bring shipper violations to the agency's attention, while at the same time not prosecuting the responsible shipper as vigorously is unfair and inappropriate."

In this NPRM, we are proposing the addition of § 175.31(a)(6) to require the address of the shipper or person responsible for the discrepancy, if known, by the air carrier. Currently, § 175.31(b)(2) requires air operators to notify FAA, in part, when baggage subsequent to its offering and acceptance, is found to contain undeclared hazardous materials. When security screeners suspect that checked baggage may contain an unauthorized hazardous material, they bring the item to the attention of the air carrier that accepted the baggage so the air carrier can make a determination if the item is authorized to be in the baggage. If the air carrier determines that the item constitutes a discrepancy, it must notify the FAA. Since January, 2002, the FAA has received more than 9,000 discrepancy reports from air carriers in accordance with the § 175.31 reporting requirements.

FAA and RSPA have implemented numerous outreach initiatives intended to educate the public about the hazardous materials regulations. For example, RSPA and FAA have: (a) Issued safety notices in the **Federal Register**; (b) deployed informational kiosks at major airports to alert passengers about the types of items that may not be transported in luggage; and (c) conducted over 1,000 outreach presentations each year. Despite these outreach efforts, the number of hazmat discrepancies reported by air carriers from checked baggage continue to grow. Therefore, RSPA and FAA believe a more targeted outreach and education campaign is necessary. FAA has developed a Web site that air carriers could voluntarily choose to use to electronically report discrepancies. (FAA's Web site is *http://ash.faa.gov.*) The Web site will prioritize the types of hazardous materials into two categories: Those that FAA will individually investigate, and those for which an automated public outreach notice will be generated. RSPA and FAA anticipate that the vast majority of the discrepancies reported via the Web site will result in an automated public notice to the responsible party. While use of the Web site will be optional, RSPA and FAA anticipate a reduction in transaction cost as compared to the current telephonic reporting system. Under this proposal, air operators that choose to use FAA's electronic reporting Web-site or those who continue to report telephonically would also be required to provide the address of the shipper or passenger if it is known to the operator. FAA staff would key the reported information into the Web site when air operators choose to report discrepancies telephonically.

We agree with those commenters that stated that no amendments should be made to the requirement that discrepancy reports should be submitted "as soon as practicable." We are not proposing an amnesty provision for carriers that self-report. However, this topic may be addressed by the Department in a future action.

Sections 175.33 and 175.35 Shipping Papers and Notification of Pilot-in-Command

On March 25, 2003, we published a final rule that amended the HMR by requiring aircraft operators transporting hazardous material to: (1) Place a

telephone number on the notification of pilot-in-command or in the cockpit of the aircraft that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; (2) retain and provide upon request a copy of the notification of pilot-in-command, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and (3) make readily accessible, and provide upon request, a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed.

In this NPRM, we are proposing to consolidate all the requirements related to shipping papers (§ 175.35), their retention for 375 days (§ 175.30(a)(2), and the notification to pilot-in-command into one section, § 175.33, entitled "Shipping papers and notification of pilot-in-command". Otherwise, we are not proposing any revision to the requirements related to shipping papers or the preparation and delivery of a notification to the pilot-in-command.

Section 175.40 Keeping and Replacement of Labels

This section requires aircraft operators to maintain an adequate supply of labels in case they become lost or destroyed. Consistent with the removal of this section from the other modal parts of the HMR, we are proposing to remove this section.

Sections 175.75 and 175.85 Quantity Limitations and Cargo Location

Sections 175.75 and 175.85 prescribe limitations on the quantity of hazardous materials that may be carried aboard passenger-carrying or cargo-only aircraft, and the location of those materials, respectively. The quantity limitations for hazardous materials permitted aboard passenger-carrying aircraft are specified in § 175.75(a)(2). This section states that no more than 25 kg of hazardous materials and, in addition, 75 kg net weight of Division 2.2 (non-flammable compressed gas) may be carried aboard a passenger-carrying or cargo-only aircraft:

(1) In an accessible cargo compartment;

(2) In any freight container within an accessible cargo compartment; or

(3) In any accessible cargo compartment of a cargo-only aircraft if the hazardous materials are loaded as to be inaccessible unless in a freight container.

Class 9 materials and consumer commodities are excepted from the quantity limitations of § 175.75(a)(2). Section 175.85(b) requires hazardous materials packages acceptable for cargo-aircraft only to be loaded in a manner that allows access to the package by crew members.

Section 175.85(a) prohibits the carriage of a hazardous material in the passenger cabin or on the flight deck of any aircraft, and specifies conditions under which hazardous materials may be carried on main-deck cargo compartments. Section 175.85(c)(1)(i) through (v) provides exceptions for cargo-only operations from the quantity limitations of § 175.75(a)(2), and accessibility requirements of § 175.85(b) for those hazardous materials listed. Section 175.85(c)(2) provides exceptions, when other means of transportation are impracticable, to the accessibility requirement of § 175.85(b) and the quantity limitation requirements of § 175.75(a)(2) for hazardous materials acceptable by both cargo-only and passenger-carrying aircraft. These exceptions require that packages are carried in accordance with procedures approved in writing by the nearest FAA Civil Aviation Security Field Office (CASFO). Columns 9A and 9B of the § 172.101 Hazardous Materials Table (HMT) specify limitations on individual package quantities, or list packages that are forbidden from transportation by aircraft. Section 173.27 specifies inner receptacle limits for combination packages.

Sections 175.85(c)(3)(i) through (iii) provide exceptions for small, single-pilot cargo-only aircraft from the accessibility requirements of § 175.85(b) and the quantity limits of § 175.75. These exceptions apply when small aircraft are the only means of transporting hazardous materials to a particular destination. This applies to airports and locations incapable of supporting larger aircraft operations, where the only means of access is by smaller aircraft. The provisions of § 175.85(c)(3) do not require approval by the FAA.

Most commenters agree that §§ 175.75 and 175.85 can be confusing, but carriers stated that they fully understand the requirements as written. COSTHA stated, "COSTHA believes that many users of the HMR find §§ 175.75 and 175.85 quite difficult to understand and properly interpret, as currently written. Combining and streamlining the two sections would improve the ability of users to understand the requirements and would eliminate the need for cross referrals between the two sections, and in that way improve compliance." Most-commenters suggest that accessibility versus inaccessibility when assessing safety is an outdated concept. ALPA stated that "accessibility" should be further defined, *e.g.*, number of crew members, walkways, positioning of shipments. However, AHS indicated that the requirements as written may be outdated and should be eliminated since the international regulations have no such limitations. AHS stated, "The quantity limitations of Secs. 175.75 and 175.85, to the extent that they are unique to the United States, should be examined critically. It is our understanding that these limits entered the aviation regulations in the 1940s, when it was deemed practical to open a flying aircraft door to eject freight. Hence the concern with having the cargo accessible to a crewmember in flight." AHS further stated, "We are aware of no technical basis for the adoption of this requirement at the time, or any technical basis for having maintained it in the U.S. rules. It does not exist in the ICAO Technical Instructions nor, to our knowledge, in any nation but the U.S. We are unaware of it having been a problem in other nations, and we think DOT should carry the burden of maintaining it uniquely in our airspace and aboard U.S.-registered aircraft in any airspace. We urge the agency to give more substantial weight to the practical experience and recommendations of international carriers and shippers familiar with operations under the ICAO TI, that do not include such restrictions." ALPA stated, "* * * the current regulatory differences between inaccessible and accessible cargo compartments are appropriate, but that the accessibility of cargo compartments should be addressed. Factors such as the number of crewmembers, type of walkways, and positioning of shipments should all be included in the determination of whether a compartment is truly accessible." All but one commenter, ALPA, stated that there should be no reduction in the unlimited quantity exception for consumer commodities and Class 9 materials. ALPA stated "ALPA firmly believes that consumer commodities and Class 9 substances do pose a significant risk and should be limited to 25 kgs. in any inaccessible compartment." AHS stated, "We do not support the current restrictions of the U.S. in Secs. 175.75 and 175.85. In particular, we recommend that no additional consideration be given to expanding these restrictions to encompass consumer commodities and Class 9 materials. We are unaware of

anything in the experience with consumer commodities, since the inception of the concept in the mid-1970s, to warrant changing the rules to regulate them more severely in any mode of transportation."

Most commenters agree that the term "impracticable" should be better defined. FedEx stated, "Yes, with the addition of specific guidelines and examples. Without a definition, this term is vague and subject to varying interpretations. Additional examples should be added as they come to light. Any definition should be a "living" definition." Commenters generally agree that cross referencing relevant sections (*e.g.*, footnotes) would be of some value to shippers. ALPA stated, "ALPA also believes that this would help eliminate errors." Most commenters believe that DOT-E11110, which exempts certain classes of materials from the limitations in § 175.75 should be incorporated into the HMR, and also be expanded to include other hazardous materials.

To make these requirements easier to understand, we are proposing to merge the requirements of §§ 175.75 and 175.85 into one section and remove any unnecessary paragraphs. We are also proposing to eliminate the 25 kg cargo compartment restriction from cargo aircraft. We believe that such a restriction, which, for cargo aircraft, only applies to those materials authorized aboard a passenger-carrying aircraft, is unnecessary for transportation aboard cargo aircraft. We believe that the limitations for passenger aircraft reduce the overall risks in the use of passenger aircraft. Therefore, we have not proposed to increase or eliminate the limitation on the amount of hazardous materials that may be transported in an inaccessible cargo compartment of a passenger aircraft. Consistent with the proposal to eliminate the cargo compartment limitation on cargo aircraft shipments, we are also proposing to eliminate from § 175.85(c)(3) the requirement that shipment by other means of transportation is impractical. We have not proposed to eliminate or modify the exception from the 25 kilogram limitation that is currently afforded Class 9 and ORM-D materials. The following table identifies the existing paragraphs in §§ 175.75 and 175.85 and where we are proposing to move them:

Current section and paragraph	Proposed new section and paragraph
175.75(a)(1)	Removed as unnecessary.
175.75(a)(2)	175.75(b).
175.75(a)(3)	175.700.
175.75(b)	175.75(b).
175.85(a)	175.75(a).
175.85(b)	175.75(c).
175.85(c)(1)	175.75(c)(1).
175.85(c)(2)	175.75(c)(2).
175.85(c)(3)	175.75(c)(3).
175.85(d)	Removed as unnecessary.
175.85(e)	175.75(a).
175.85(f)	175.310.
175.85(g)	Removed as unnecessary.
175.85(h)	175.501.
175.85(i)	175.501.

In an effort to enhance compliance and further clarify the cargo loading requirements, we are proposing to add a chart at the end of § 175.75 to summarize these requirements.

Section 175.78 Stowage Compatibility of Cargo

For stowage of hazardous materials on an aircraft, in a cargo facility, or in any other area at an airport designated for the stowage of hazardous materials, packages containing hazardous materials which might react dangerously with one another may not be placed next to each other in a position that would allow a dangerous interaction in the event of leakage. At a minimum, segregation instructions prescribed in the segregation table in § 175.78 must be followed to maintain acceptable segregation between packages containing hazardous materials with different hazards.

ALPA commented that there are some areas of the regulations (both in part 175 and ICAO TI) that pose serious safety concerns for any aircraft involved in the transport of hazardous materials by air. One of these areas is the segregation requirements on board aircraft as regulated by § 175.78 and the ICAO TI concerning Class 8 materials in particular, segregation of acids and bases. According to ALPA, "these two commodities require segregation under virtually all regulations except the air mode." ALPA stated that its research indicates that an inadvertent commingling of these two commodities could be extremely thermal, up to explosive, resulting in a total loss of controlled flight and a subsequent hull loss. ALPA suggests that a change in the regulations requiring segregation of these Class 8 commodities could avert a potential disaster. According to ALPA, the UN has ignored this warning, stating on numerous occasions that the more stringent packaging requirements of the air mode would prevent commodities from leaking. According to ALPA, this position has been proven wrong, "particularly since the inception of performance oriented packaging (POP)."

We understand the concern expressed by ALPA regarding the possible commingling of strong acids and strong bases on aircraft due to lack of proper segregation. However, this issue would require extensive rulemaking changes regarding hazard classification and hazard communication requirements. In addition, this issue relates to storage issues in all modes of transport, not just aviation. Therefore, we are not proposing any revisions or changes based on these recommendations.

Sections 175.79, 175.81; and 175.88 Inspection, Orientation and Securing of Packages of Hazardous Materials

We are proposing to merge the requirements of §§ 175.79 (Orientation of cargo); 175.81 (Securing of packages containing hazardous materials); and 175.88 (Inspection of unit load devices) into one section, 175.88, entitled "Inspection, orientation and securing of packages of hazardous materials." This is solely an editorial proposal.

Section 175.90 Damaged Shipments

No amendments are proposed for this section.

Section 175.305 Self Propelled Vehicles

We are proposing to move the requirements of this section to § 173.220.

Sections 175.310 and 175.320 Transportation of Flammable Liquid Fuel Within Alaska or Into Other Remote Locations and Cargo Aircraft, Only Means of Transportation

Section 175.310, Transportation of flammable liquid fuel within Alaska or into other remote locations, provides exceptions for the shipment of flammable liquid fuels in the State of Alaska and other remote locations. Section 175.320 provides an exception from the quantity limitations in §§ 175.75 and 172.101, when certain conditions are met. Section 175.320 authorizes the transportation of certain hazardous materials by cargo-only aircraft in inaccessible cargo locations when means of transportation other than air are impracticable or not available (*i.e.*, air transport is the only means of transportation), subject to the conditions specified in § 175.320.

In this NPRM, we are proposing to remove the authorization to transport Class 1 (explosive) materials in accordance with § 175.320. In our view, because of security concerns and requirements, the carriage of explosives

outside of the normal requirements of the HMR should be handled by exemption. The removal of the authorization to transport Class 1 materials also allows the deletion of some of the operator restrictions dealing with advance notices, airports, loading areas, etc. under the provisions. We are interested in comments regarding our proposal to remove the authorization to transport Class 1 materials in accordance with § 175.320 without an exemption. In particular, is the normal time frame to obtain an exemption too burdensome, and, if so, why?

We are also proposing to remove the reference to flammable liquids mentioned by name and proposing a new combined section that is limited to fuels, similar to existing § 175.310. Oil, toluene, and methyl alcohol would no longer be covered under this section unless they are being used as a fuel. We are proposing to remove the chart since there is only one commodity being covered (combustible liquids are mentioned in the paragraph covering bulk tanks). Fuels permitted would also now be limited to those in Packing Group II or III (Packing Group I fuels, which have a boiling point of 35C/95F or higher, would be allowed in aircraft tanks designed to hold such liquids).

We are proposing that the passenger-carrying aircraft operations of the current § 175.310 and the cargo aircraft operations of the current § 175.320 be merged into one section. However, similar loading and operating requirements have been broken out of each and combined into paragraphs that will apply to both types of operations. This results in some additional operator requirements for the passenger-aircraft operations (the 14 CFR references to operating manuals and FAA approval) that do not exist in the current § 175.310. However these requirements always applied to the operator via 14 CFR even though they were not specifically mentioned in the HMR. References to a FAA Civil Aviation Security Field Office have been changed to the FAA Principal Operations Inspector as this is more appropriate.

Section 175.501 Special Requirements for Oxidizers and Compressed Oxygen

We are proposing to move the stowage requirements applicable to the transportation of compressed oxygen that are currently found in §§ 175.10(b), and 175.85(h) and (I), to a new section, § 175.501, entitled "Special requirements for oxidizers and compressed oxygen". However, we are not proposing any amendments to the requirements for the stowage of oxygen aboard aircraft.

Section 175.630 Special Requirements for Division 6.1 and Division 6.2 Material

No amendments are proposed for this section.

Sections 175.700; 175.701; 175.702; 175.703; 175.704; 175.705 Transportation of Radioactive Materials Aboard Aircraft

Sections 175.700, 175.701, 175.702, 175.703, 175.704, and 175.705 of part 175 contain numerous provisions related to the transportation of radioactive materials aboard aircraft. In this NPRM, we have attempted to rewrite many of these provisions to facilitate understanding of these requirements. We are also proposing to remove requirements related to the carriage of radioactive materials with undeveloped film from these sections. However, except in the case of shipments with undeveloped film and separation distances for cargo aircraft, is not our intent to make any substantive revisions to §§ 175.700, 175.701, 175.702, 175.703, 175.704, or 175.705. With regard to the separation distances from undeveloped film, we are proposing to remove them from the HMR. It is RSPA's belief that such requirements should not be part of a Federal regulations, but instead should be addressed by part contractual agreement between the shipper and the airline. We are also proposing to adopt the separation distances in the ICAO TI for shipments aboard cargo aircraft of greater than 50 TI. The following table identifies the existing requirements and where we are proposing to move them:

Existing requirement	Proposed new section
175.75(a)(3)	175.700(b).
175.700(a)	175.700(b) and (c).
175.700(b)	175.705(b) and (c).
175.700(c)	175.700(a).
175.700(d)	175.700(a).
175.701(a)	Removed, unnecessary.
175.701(b)(1)	175.701(c).
175.701(b)(2)	175.701(a).
175.701(b)(3)	175.701(b).
175.701(c)	175.701(d).
175.702(a)	175.702(b).
175.702(b) and (b)(1)	175.702(a).
175.702(b)(2)(i)	175.702(a).
175.702(b)(2)(ii)	175.702(b).
175.702(b)(2)(iii)	175.702(c).
175.702(b)(2)(iv)	175.700(b)(2).
175.703(a)	Removed.
175.703(b)	175.703(a).
175.703(c)	175.703(b).
175.703(d)	175.700(a).
175.703(e)	Removed, already covered by § 173.441.
175.704	Only editorial changes made to this section.
175.705(a)	175.705(a).
175.705(b)	175.705(a).

The Federal hazardous materials transportation law addresses ionizing radiation material transportation. (49 U.S.C. 5114.) That section states that the material may be transported on a passenger-carrying aircraft in air commerce only if the material is intended for use in, or incident to, research or medical diagnosis or treatment; and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation. Section 175.700 prohibits, in addition to other requirements, any person from carrying in a passenger-carrying aircraft any package required to be labeled in accordance with § 172.403 with a Radioactive Yellow II or III label, unless certain provisions are met. In addition, § 175.700 (c) states that (except for limited quantities) no person shall carry any class 7 material aboard a passenger-carrying aircraft unless that material is intended for use in research, medical diagnosis, or treatment.

In its comments to the ANPRM, ALPA indicated that the term "research" as used in § 175.700 should be clarified and stated, "ALPA strongly agrees with RSPA that 'research' should be clarified to exclude 'application of existing technology.'" However, Airborne Express, ATA, and FedEx informed RSPA that they had no problems understanding or interpreting the term "research" as currently used in § 175.700.

It appears some persons have misused the definition of "research" to avoid the restrictions in § 175.700. We do not consider research to include the application of existing technology to industrial endeavors. For example, the use of radioactive material (*e.g.*, iridium–192) to detect cracks in oil field pipelines is not research, but the application of existing scientific knowledge. Therefore, we are proposing to revise the definition of research in § 171.8 to clearly indicate that it does not include the application of existing technology to industrial endeavors.

III. Miscellaneous Proposals to the HMR

1. Quantity Limits in Column (9) of the Hazardous Materials Table (HMT)

Columns 9A and 9B of the § 172.101 Hazardous Materials Table (HMT)

specify limitations on individual package quantities, or list packages that are forbidden from transportation by aircraft. Section 173.27 specifies inner receptacle limits for combination packages. In an effort to enhance compliance, we are proposing to amend the heading for column 9 of the HMT to reference §§ 173.27 and 175.75 as a reminder to comply with both section requirements for quantity limitations for transportation by aircraft.

2. Small Quantities, Limited Quantities and Consumer Commodities

The HMR contain hazardous materials exceptions for small quantities, limited quantities, and consumer commodities. These exceptions allow materials to be transported at reduced levels of regulation. Small quantities of hazardous materials are excepted from all other requirements of the HMR, provided certain criteria in § 173.4 are met. Limited quantity exceptions in the HMR are based on the class of the hazardous material, and contain additional requirements for air transportation. Materials that meet the limited quantity exception and also meet the definition of a consumer commodity as provided by § 171.8, may be renamed "Consumer Commodity" and reclassed as ORM–D. Consumer commodities are excepted from specification packaging, labeling, placarding and quantity limitations applicable to air transportation. As currently written, these exceptions allow small quantities and consumer commodities to be transported by aircraft even though they may contain hazardous materials otherwise forbidden aboard aircraft. These exceptions are inconsistent with the ICAO TI, which require that, before a hazardous material may be transported as an excepted quantity (*i.e.*, small quantity or a limited quantity), it must be suitable for transportation aboard passenger aircraft. The ICAO TI also forbid the transportation of small quantities in checked and carry-on luggage.

Based on the lack of supporting incident data, most commenters opposed the harmonization of the small quantity, limited quantity, and consumer commodity exceptions of the HMR with the much more stringent exceptions in ICAO. Three commenters support across-the-board harmonization of the HMR with ICAO. ATA stated while a majority of their members support harmonization with ICAO, some want dual authority for domestic shipments. The Dangerous Goods Advisory Council (DGAC) and Fisher Scientific stated that they would like to see RSPA petition ICAO to harmonize with the HMR.

Fisher Scientific expressed concern regarding the possibility of changing the small quantity exception in the HMR to align it with the ICAO TI. According to Fisher Scientific, it has made substantial investments to upgrade its computer classification program for shipment of hazardous materials using this small quantity exception. Fisher Scientific stated, "* * * to arbitrarily change the regulations merely to perform some form of 'alignment' with another organization's regulations, even the ICAO TI, when such an alignment will neither improve safety nor facilitate commerce, we find unacceptable."

We concur with those commenters who stated that the limited quantity authorizations in the HMR should not be revised across-the-board to be consistent with the ICAO TI. However, we are proposing to eliminate an inadvertent provision of the HMR that allows the transportation of hazardous materials forbidden aboard aircraft to be transported aboard aircraft as either ORM–D material or small quantity material. In addition, we are proposing, for transportation by aircraft only, to adopt the ICAO TI provision that requires shipments of limited quantities to comply with the passenger aircraft net quantity limitation in the HMT. In this rulemaking we are proposing to amend all of the limited quantity sections of the HMR (*e.g.*, § 173.150) by stating that, for transportation by aircraft, only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, we are proposing to amend § 173.4 (small quantities) to limit those small quantity materials that can be transported aboard aircraft to those that are allowed aboard passenger-carrying aircraft. We are also proposing, consistent with the ICAO Technical Instructions, to forbid the transportation of small quantities of hazardous materials in carry-on or checked baggage.

3. Section 173.7

We are proposing to move the exception that currently appears in § 175.5(a)(2), related to an aircraft under the exclusive direction and control of a government, and move it to § 173.7. We are also proposing to modify the exception by making it an exception from the "subchapter" and not solely an exception from part 175.

4. Section 173.217

In the proposed revision of § 175.10, we would maintain the exception for dry ice in checked and carry-on baggage and move into the new proposed § 175.8 the exception for dry ice in airline food service. However, in order to retain the 2.3 kg (5.0 pounds) exception for the shipment of dry ice as cargo/freight, we are proposing to move this exception from § 175.10 to a new paragraph (f) in § 173.217.

IV. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule, if adopted, would not be considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Due to the minimal economic impact of this proposed rulemaking, preparation of a regulatory evaluation is not warranted.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses subject areas 2, 3, and 4 above. If adopted as final, this rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" as the Federal requirements. This rule is necessary to update and clarify the hazardous materials transportation requirements by aircraft which will enhance future compliance.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA proposes that the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. The provisions of this proposal would apply to aircraft operators. The Small Business Administration criterion specifies an aircraft operator/carrier is "small" if it has 1,500 or fewer employees. For this rule, small entities are part 121 and part 135 aircraft operators/carriers approved to carry hazardous materials, with 1,500 or fewer employees. We identified 729 aircraft operators/carriers meeting this standard. We estimated that the cost to the airline industry under this rule will be nominal. While maintaining safety, this proposed rule would relax certain requirements applicable to aircraft operators and would clarify existing provisions. Therefore, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not, if adopted, result in costs of $120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

RSPA believes that this proposed rule will not impose any new information collection burden. Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. We currently have approved information collections under OMB No. 2137–0034, "Hazardous Materials Shipping Papers and Emergency Response Information" which expires April 30, 2006, and OMB No. 2137–0557, "Approvals for Hazardous Materials" which expires December 31, 2005. This notice identifies only editorial revisions proposed as section designation changes, to these approved information collections. RSPA will submit the revised information collection requests for editorial revisions as proposed changes in section designations to OMB for approval based on the requirements in this proposed rule.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of the information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Docket Management System as identified in the **ADDRESSES** section of this rulemaking. Comments should be received prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the RSPA Desk Officer, Office of management and Budget (OMB) at fax number, (202) 395–6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to or comply with an information collection requirement unless it displays a valid OMB control number.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. RSPA proposes changes to the requirements in the HMR on the transportation of hazardous materials by aircraft. The purpose of this rulemaking is to modify or clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand. Interested parties are invited to review the Preliminary Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

I. Privacy Act

Anyone is able to search the electronic form all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference,

Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2641 note); Pub. L. 104–134, section 31001.

2. In § 171.8, the definition of "research" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Research means investigation or experimentation aimed at the discovery of new theories or laws and the discovery and interpretation of facts or revision of accepted theories or laws in the light of new facts. Research does not include the application of existing technology to industrial endeavors.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

4. In § 172.101, in the Hazardous Materials Table, the heading for column (9) is revised to read "(9) Quantity limitations (*see* §§ 173.27 and 175.75)".

5. In § 172.101, the Hazardous Materials Table, the entry in column (7) for Air, compressed is revised by adding "A59", and, the entry in column (8A) is revised by adding "307".

6. In § 172.101, the Hazardous Materials Table, the entry in column (7) for Nitrogen, compressed is revised by adding "A59", and, the entry in column (8A) is revised by adding "307".

7. In § 172.101, the Hazardous Materials Table, the column (2) is revised by adding the entry "Tires and tire assemblies, see Air, compressed or Nitrogen, compressed".

8. In § 172.102, in paragraph (c)(2), special provision "A59" is added to read as follows:

§ 172.102 Special Provisions

* * * * *

(c) * * *

(2) * * *

Code/Special Provisions

* * * * *

A59 A tire assembly with a serviceable tire is not subject to the requirements of this subchapter provided the tire is not inflated to a gauge pressure exceeding the maximum rated pressure for that tire, and the tire (including valve assemblies) is protected from damage during transport. A tire or tire assembly which is unserviceable or damaged is forbidden from air transport; however, a damaged tire is not subject to the requirements of this subchapter if it is completely deflated.

* * * * *

PART 173–SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

10. In § 173.4, paragraph (a)(9) and (a)(10) are redesignated as paragraphs (a)(10) and (a)(11) respectively and new paragraph (a)(9) is added to read as follows:

§ 173.4 Small quantity exceptions.

(a) * * *

(9) For transportation by aircraft:

(i) The hazardous material must be authorized to be carried aboard passenger-carrying aircraft;

(ii) The hazardous material is not authorized to be carried in checked or carry-on baggage.

* * * * *

11. In § 173.7, the section heading is revised and a new paragraph (f) is added to read as follows:

§ 173.7 Government operations and materials.

* * * * *

(f) The requirements of this subchapter do not apply to shipments of hazardous materials carried aboard an aircraft that is not owned by a government or engaged in carrying persons or property for commercial purposes, but is under the exclusive direction and control of the government for a period of not less than 90 days as specified in a written contract or lease. An aircraft is under the exclusive direction and control of a government when the government exercises responsibility for:

(i) Approving crew members and determining that they are qualified to operate the aircraft;

(ii) Determining the airworthiness and directing maintenance of the aircraft; and

(iii) Dispatching the aircraft, including the times of departure, airports to be used, and type and amount of cargo to be carried.

12. In § 173.27, in paragraph (a), the second sentence is revised to read as follows:

§ 173.27 General requirements for transportation by aircraft.

(a) * * * Unless the material is otherwise excepted from the performance packaging requirements in subpart E of this part, a packaging containing a Packing Group III material that has a subsidiary risk of Division 4.1, 4.2, 4.3, 5.1 or Class 8 must meet the Packing Group II performance level when offered or intended for transportation by aircraft.

* * * * *

13. In § 173.63, the introductory text in paragraph (b)(1), is revised to read as follows:

§ 173.63 Packaging exceptions.

* * * * *

(b) * * *

(1) Cartridges, small arms, and cartridges power devices (which are used to project fastening devices) which have been classed as a Division 1.4S explosive may be reclassed, offered for transportation, and transported as ORM-D material when packaged in accordance with paragraph (b)(2) of this section. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter. Such transportation is excepted from the requirements of subparts E (Labeling) and F (Placarding) of part 172 of this subchapter. Cartridges, small arms, and cartridges

power devices that may be shipped as ORM-D material is limited to:

* * * * *

14. In § 173.150, the introductory text in paragraph (b) is revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(b) *Limited quantities.* Limited quantities of flammable liquids (Class 3) and combustible liquids are excepted from labeling requirements, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

15. In § 173.151, the introductory text in paragraphs (b) and (d) is revised to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(b) *Limited quantities of Division 4.1 flammable solids.* Limited quantities of flammable solids (Division 4.1) in Packing Groups II and III are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

(d) *Limited quantities of Division 4.3 (dangerous when wet) material.* Limited quantities of Division 4.3 (dangerous when wet) solids in Packing Groups II and III are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

16. In § 173.152, the introductory text in paragraph (b) is revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) *Limited quantities.* Limited quantities of oxidizers (Division 5.1) in Packing Groups II and III and organic peroxides (Division 5.2) are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaging in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F of part 172 (Placarding) of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized.

17. In § 173.153, the introductory text in paragraph (b) is revised to read as follows:

§ 173.153 Exceptions for Division Class 6.1 (poisonous materials).

* * * * *

(b) *Limited quantities of Division 6.1 materials.* The exceptions in this paragraph do not apply to poison-by-inhalation materials limited quantities of poisonous materials (Division 6.1) in Packing Group III are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F of part 172 (Placarding) of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

18. In § 173.154, the introductory text in paragraph (b) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(b) *Limited quantities.* Limited quantities of corrosive materials (Class 8) in Packing Groups II and III are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to

subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

19. In § 173.155, the introductory text in paragraph (b) is revised to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

* * * * *

(b) *Limited quantities.* Limited quantities of miscellaneous hazardous materials (Class 9) are excepted from labeling, unless offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

20. In § 173.217, a new paragraph (f) is added to read as follows:

§ 173.217 Carbon dioxide, solid (dry ice).

* * * * *

(f) Carbon dioxide, solid (dry ice), when offered or transported by aircraft, in quantities not exceeding 2.3 kg (5.07 pounds) per package and used as a refrigerant for the contents of the package is excepted from all other requirements of this subchapter if the requirements of paragraphs (a) and (d) of this section are complied with and the package is marked "Carbon dioxide, sold" or "Dry ice", marked with the name of the contents being cooled, and marked with the net weight of the dry ice or an indication that the net weight is 2.3 kg (5.0 pounds) or less.

21. In § 173.220, paragraph (b)(4)(iii) is revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

* * * * *

(b) * * *

(4) * * *

(iii) For transportation by aircraft, when carried in aircraft designed or modified for vehicle ferry operations and when all of the following conditions are met:

(A) Authorization for this type of operation has been given by the appropriate authority in the government of the country in which the aircraft is registered;

(B) Each vehicle is secured in an upright position;

(C) Each fuel tank is filled in a manner and only to a degree that will preclude spillage of fuel during loading, unloading, and transportation; and

(D) Each area or compartment in which a self-propelled vehicle is being transported is suitably ventilated to prevent the accumulation of fuel vapors.

22. In § 173.306, the introductory text in paragraphs (a), (b), and (h) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(a) Limited quantities of compressed gases for which exceptions are permitted as noted by reference to this section in § 172.101 of this subchapter are excepted from labeling, except when offered for transportation or transported by air, and, unless required as a condition of the exception, and specification packaging requirements of this subchapter when packaged in accordance with the following paragraphs. For transportation by aircraft, the package must also comply with the applicable requirements of §§ 172.402(c) and 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter except § 174.24 and to part 177 of this subchapter except § 177.817. Each package may not exceed 30 kg (66 pounds) gross weight.

The following is authorized:

* * * * *

(b) *Exceptions for foodstuffs, soap, biologicals, electronic tubes, and audible fire alarm systems.* Limited quantities of compressed gases, (except Division 2.3 gases) for which exceptions are provided as indicated by reference to this section in § 172.101 of this subchapter, when accordance with one of the following paragraphs are excepted from labeling, except when offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter. For transportation by aircraft, the package must comply with the applicable requirements of §§ 172.402(c) and 173.27 of this subchapter; the net quantity per package may not exceed the quantity specified in column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter; and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter, except § 174.24 and to part 177 of this subchapter, except § 177.817. Special exceptions for shipment of certain compressed gases in the ORM–D class are provided in paragraph (h) of this section.

The following are authorized:

* * * * *

(h) A limited quantity which conforms to the provisions of paragraphs (a)(1), (a)(3), or (b) of this section and is a "Consumer Commodity" as defined in § 171.8 of this subchapter, may be renamed "Consumer Commodity" and reclassed as "ORM–D" material. For transportation by aircraft, only hazardous materials authorized aboard passenger-carrying aircraft may be renamed "Consumer Commodity" and reclassed "ORM–D." Each package may not exceed 30 kg (66 pounds) gross weight. In addition to the exceptions provided by paragraphs (a) and (b) of this section:

23. In § 173.307, paragraph (a)(2) is revised to read as follows:

§ 173.307 Exceptions for compressed gases.

* * * * *

(a) * * *

(2) Tires when inflated to pressures not greater than their rated inflation pressures. For transportation by air, tires and tire assemblies must meet the conditions in special provision A59 of § 172.102 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

24. Part 175 is revised to read as follows:

PART 175—CARRIAGE BY AIRCRAFT

Subpart A—General Information and Regulations

Subpart B—Loading, Unloading and Handling

Subpart C—Specific Regulations Applicable According to Classification of Material

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53.

Subpart A—General Information and Regulations

§ 175.1 Purpose, scope and applicability.

(a) This part prescribes requirements that apply to the transportation of hazardous materials in commerce aboard (including attached to or suspended from) aircraft. The requirements in this part are in addition to other requirements contained in parts 171, 172, 173, 178, and 180 of this subchapter.

(b) This part applies to the offering, acceptance, and transportation of hazardous materials in commerce by aircraft to, from, or within the United States, and to any aircraft of United States registry anywhere in air commerce. This subchapter applies to any person who performs, attempts to perform, or is required to perform any function subject to this subchapter, including—

(1) Air carriers, indirect air carriers, and freight forwarders and their flight and non-fight employees, agents, subsidiary and contract personnel (including cargo, passenger and baggage acceptance, handling, loading and unloading personnel); and

(2) Air passengers that carry any hazardous material on their person or in their carry-on or checked baggage.

(c) The requirements of this subchapter do not apply to shipments of hazardous materials carried aboard an aircraft that is not owned by a government or engaged in carrying persons or property for commercial purposes, but is under the exclusive direction and control of the government for a period of not less than 90 days as specified in a written contract or lease. An aircraft is under the exclusive direction and control of a government when the government exercises responsibility for:

(i) Approving crew members and determining that they are qualified to operate the aircraft;

(ii) Determining the airworthiness and directing maintenance of the aircraft; and

(iii) Dispatching the aircraft, including the times of departure, airports to be used, and type and amount of cargo to be carried.

§ 175.3 Unacceptable hazardous materials shipments.

A hazardous material that is not prepared for shipment in accordance with this subchapter may not be offered or accepted for transportation or transported aboard an aircraft.

§ 175.8 Exceptions for operator equipment and supplies.

(a) This subchapter does not apply to hazardous materials that are required for the propulsion of the aircraft, required for the operation of aircraft equipment, or required aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations.

(b) Items of replacement (spares, company material (COMAT) for hazardous materials described in paragraph (a) of this section must be transported in accordance with this subchapter. When an operator transports its own replacement items, the following exceptions apply:

(1) In place of required packagings, packagings specifically designed for the transport of aircraft spares and supplies may be used, provided such packagings provide at least an equivalent level of protection to those that would be required by this subchapter.

(2) Aircraft batteries are not subject to quantity limitations such as those provided in § 172.101 or § 175.75(a) of this subchapter.

(c) This subchapter does not apply to oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with 14 CFR 121.574 or 135.91. For the purposes of this paragraph, an aircraft operator that does not hold a certificate under 14 CFR parts 121 or 135 may apply this exception in conformance with 14 CFR 121.574 or 135.91 in the same manner as required for a certificate holder.

(d) This subchapter does not apply to dry ice (carbon dioxide, solid) intended for use by the operator in food and beverage service aboard the aircraft.

(e) This subchapter does not apply to alcoholic beverages, perfumes, colognes, and liquefied gas lighters carried aboard a passenger-carrying aircraft by the operator for use or sale on the aircraft. Liquefied gas lighters must be examined by the Bureau of Explosives and approved by the Associate Administrator.

§ 175.9 Exceptions for special aircraft operations.

This subchapter does not apply to the following materials used for special aircraft operations when applicable FAA operator requirements have been met, including training operator personnel on the proper handling and stowage of the hazardous materials carried:

(a) Hazardous materials loaded and carried in hoppers or tanks of aircraft certificated for use in aerial seeding, dusting spraying, fertilizing, crop improvement, or pest control, to be dispensed during such an operation.

(b) Parachute activation devices, lighting equipment, oxygen cylinders, flotation devices, smoke grenades, flares, or similar devices carried during a parachute operation.

(c) Smoke grenades, flares, and pyrotechnic devices affixed to aircraft during any flight conducted as part of a scheduled air show or exhibition of aeronautical skill. The aircraft may not carry any persons other than required flight crewmembers. The affixed

installation accommodating the smoke grenades, flares, or pyrotechnic devices on the aircraft must be approved for its intended use by the FAA Flight Standards District Office having responsibility for that aircraft.

(d) Hazardous materials that are carried and used during dedicated air ambulance, fire fighting, or search and rescue operations.

(e) A transport incubator unit necessary to protect life or an organ preservation unit necessary to protect human organs, carried in the aircraft cabin, provided:

(i) The compressed gas used to operate the unit is in an authorized DOT specification cylinder and is marked, labeled, filled, and maintained as prescribed by this subchapter;

(ii) Each battery used is of the nonspillable type;

(iii) The unit is constructed so that valves, fittings, and gauges are protected from damage;

(iv) The pilot-in-command is advised when the unit is on board, and when it is intended for use;

(v) The unit is accompanied by a person qualified to operate it;

(vi) The unit is secured in the aircraft in a manner that does not to restrict access to or use of any required emergency or regular exit or of the aisle in the passenger compartment; and,

(vii) Smoking within 3 m (10 feet) of the unit is prohibited.

(f) Hazardous materials which are loaded and carried on or in cargo only aircraft, and which are to be dispensed or expended during flight for weather control, environmental restoration or protection, forest preservation and protection, fire fighting and prevention, flood control, or avalanche control purposes, when the following requirements are met:

(1) Operations may not be conducted over densely populated areas, in a congested airway, or near any airport where carrier passenger operations are conducted.

(2) Each operator shall prepare and keep current a manual containing operational guidelines and handling procedures, for the use and guidance of flight, maintenance, and ground personnel concerned in the dispensing or expending of hazardous materials. The manual must be approved by the FAA Principal Operations Inspector assigned to the operator.

(3) No person other than a required flight crewmember, FAA inspector, or person necessary for handling or dispensing the hazardous material may be carried on the aircraft.

(4) The operator of the aircraft must have advance permission from the owner of any airport to be used for the dispensing or expending operation.

(5) When dynamite and blasting caps are carried for avalanche control flights, the explosives must be handled by, and at all times be under the control of, a qualified blaster. When required by a State or local authority, the blaster must be licensed and the State or local authority must be identified in writing to the FAA Principal Operations Inspector assigned to the operator.

§ 175.10 Exceptions for passengers and crewmembers.

(a) This subchapter does not apply to the following hazardous materials when carried by aircraft passengers or crewmembers provided the requirements of this section are met:

(1)(i) Non-radioactive medicinal and toilet articles for personal use (including aerosols) carried in carry-on and checked baggage;

(ii) Other aerosols in Div. 2.2 (nonflammable gas) with no subsidiary risk carried in checked baggage only; and

(iii) The aggregate quantity of these hazardous materials carried by each person may not exceed 2 kg (70 ounces) by mass or 2 L (68 fluid ounces) by volume and the capacity of each container may not exceed 0.5 kg (18 ounces) by mass or 500 ml (17 fluid ounces) by volume.

(2) Safety matches or a lighter intended for use by an individual when carried on one's person or in carry-on baggage only. Lighter fuel, lighter refills, and lighters containing unabsorbed liquid fuel (other than liquefied gas) are not permitted on one's person or in carry-on or checked baggage.

(3) Implanted medical devices in humans or animals that contain hazardous materials, such as a heart pacemaker containing Class 7 (radioactive) material or lithium batteries; and radiopharmaceuticals that have been injected or ingested.

(4) Alcoholic beverages containing:

(i) Not more than 24% alcohol by volume; or

(ii) More than 24% and not more than 70% alcohol by volume when in unopened retail packagings not exceeding 5 liters (1.3 gallons) carried in carry-on or checked baggage, with a total net quantity per person of 5 liters (1.3) gallons for such beverages.

(5) Perfumes and colognes purchased through duty-free sales and carried in carry-on baggage.

(6) Hair curlers (curling irons) containing a hydrocarbon gas such as butane, no more than one per person, in carry-on or checked baggage. The safety cover must be securely fitted over the heating element. Gas refills for such curlers are not permitted in carry-on or checked baggage.

(7) A small medical or clinical mercury thermometer for personal use, when carried in a protective case in carry-on or checked baggage.

(8) Small arms ammunition for personal use, up to 5 kg (11 pounds) per person in checked baggage only, if securely packed in boxes or other packagings specifically designed to carry small amounts of ammunition. Ammunition clips and magazines must also be securely boxed. This paragraph does not apply to persons traveling under the provisions of 49 CFR 1544.219.

(9) One self-defense spray (see § 171.8 of this subchapter), not exceeding 118 mL (4 fluid ounces) by volume, that incorporates a positive means to prevent accidental discharge may be carried in checked baggage only.

(10) Dry ice (carbon dioxide, solid), not to exceed 2 kg (4.4 pounds) per person, in carry-on or checked baggage, when used to protect perishables. The packaging must permit the release of carbon dioxide gas. For checked baggage, the package must be marked "DRY ICE" or "CARBON DIOXIDE, SOLID" and must be marked with the net weight of dry ice or an indication that the net weight is 2 kg (4.4 pounds) or less.

(11) A self-inflating life jacket fitted with no more than two small gas cartridges (containing no hazardous material other than a Div. 2.2 gas) for inflation purposes plus no more than two spare cartridges. The lifejacket and spare cartridges may be carried in carry-on or checked baggage, with the approval of the aircraft operator.

(12) Small gas cylinders (containing no hazardous material other than a Div. 2.2 gas) worn for the operation of mechanical limbs and, in carry-on and checked baggage, spare cylinders of a similar size for the same purpose in sufficient quantities to ensure an adequate supply for the duration of the journey.

(13) A mercury barometer or thermometer carried as carry-on baggage, by a representative of a government weather bureau or similar official agency, provided that individual advises the operator of the presence of the barometer or thermometer in his baggage. The barometer or thermometer must be packaged in a strong packaging having a sealed inner liner or bag of strong, leak proof and puncture-resistant material impervious to mercury, which will prevent the escape of mercury from the package in any position.

(14) Electrically powered heat-producing articles (*e.g.*, battery-operated equipment such as diving lamps and soldering equipment), which, if accidentally activated, will generate extreme heat and can cause fire, as carry-on baggage only and with the approval of the operator of the aircraft. The heat-producing component, or the energy source, must be removed to prevent unintentional functioning during transport.

(15) A wheelchair or other battery-powered mobility aid equipped with a nonspillable battery, when carried as checked baggage, provided that—

(i) The battery meets the provisions of § 173.159(d) for nonspillable batteries;

(ii) Visual inspection including removal of the battery, where necessary, reveals no obvious defects (removal of the battery from the housing should be performed by qualified airline personnel only);

(iii) The battery is disconnected and terminals are insulated to prevent short circuits; and

(iv) The battery is securely attached to the wheelchair or mobility aid, is removed and placed in a strong, rigid packaging that is marked "NONSPILLABLE BATTERY" (unless fully enclosed in a rigid housing that is properly marked), or is handled in accordance with paragraph (a)(17)(iv) of this section.

(16) A wheelchair or other battery-powered mobility aid equipped with a spillable battery, when carried as checked baggage, provided that—

(i) Visual inspection including removal of the battery, where necessary, reveals no obvious defects (however, removal of the battery from the housing should be performed by qualified airline personnel only);

(ii) The battery is disconnected and terminals are insulated to prevent short circuits;

(iii) The pilot-in-command is advised, either orally or in writing, prior to departure, as to the location of the battery aboard the aircraft; and

(iv) The wheelchair or mobility aid is loaded, stowed, secured and unloaded in an upright position or the battery is removed, the wheelchair or mobility aid is carried as checked baggage without further restriction, and the removed battery is carried in a strong, rigid packaging under the following conditions:

(A) The packaging must be leak-tight and impervious to battery fluid. An inner liner may be used to satisfy this requirement if there is absorbent material placed inside of the liner and the liner has a leakproof closure;

(B) The battery must be protected against short circuits, secured upright in the packaging, and be packaged with enough compatible absorbent material to completely absorb liquid contents in the event of rupture of the battery; and

(C) The packaging must be labeled with a CORROSIVE label, marked to indicate proper orientation, and marked with the words "Battery, wet, with wheelchair."

(b) The exceptions provided in paragraph (a) of this section also apply to aircraft operators when transporting passenger or crewmember baggage that has been separated from the passenger or crewmember, including transfer to another carrier for transport to its final destination.

§ 175.20 Compliance and training.

An air carrier may not transport a hazardous material by aircraft unless each of its hazmat employees involved in that transportation is trained as required by subpart H of part 172 of this subchapter. In addition, air carriers must comply with all applicable requirements in 14 CFR part 121 and 135.

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

Each person who engages in for-hire transportation of passengers shall display notices of the requirements applicable to the carriage of hazardous materials aboard aircraft, and the penalties for failure to comply with those requirements. Each notice must be legible, and be prominently displayed so that it can be seen by passengers in locations where the aircraft operator issues tickets, checks baggage, and maintains aircraft boarding areas.

(a) At a minimum, each notice must communicate the following information:

(1) Federal law forbids the carriage of hazardous materials aboard aircraft in your luggage or on your person. A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124). Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials. Examples: Paints, lighter fluid, fireworks, tear gases, oxygen bottles, and radio-pharmaceuticals.

(2) There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person. For further information contact your airline representative.

(b) The information contained in paragraph (a)(1) of this section must be printed:

(1) In legible English and may, in addition to English, be displayed in other languages;

(2) In lettering of at least 1 cm (0.4 inch) in height for the first paragraph and 4.0 mm (0.16 inch) in height for the other paragraphs; and

(3) On a background of contrasting color.

(c) Size and color of the notice are optional. Additional information, examples, or illustrations, if not inconsistent with the required information, may be included.

§ 175.26 Notification at cargo facilities of hazardous materials requirements.

(a) Each person who engages in the acceptance or transport of cargo for transportation by aircraft shall display notices to persons offering such cargo of the requirements applicable to the carriage of hazardous materials aboard aircraft, and the penalties for failure to comply with those requirements, at each facility where cargo is accepted. Each notice must be legible, and be prominently displayed so that it can be seen. At a minimum, each notice must communicate the following information:

(1) Cargo containing hazardous materials for transportation by aircraft must be offered in accordance with the Federal Hazardous Materials Regulations (49 CFR parts 171–180).

(2) A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124).

(3) Hazardous materials (dangerous goods) include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials.

(b) The information contained in paragraph (a) of this section must be printed:

(1) Legibly in English, and, where cargo is accepted outside of the United States, in the language of the host country; and

(2) On a background of contrasting color.

(c) Size and color of the notice are optional. Additional information, examples, or illustrations, if not inconsistent with required information, may be included.

(d) Exceptions: Display of a notice required by paragraph (a) of this section is not required at:

(1) An unattended location (*e.g.*, a drop box) provided a general notice advising customers of a prohibition on shipments of hazardous materials through that location is prominently displayed; or

(2) A customer's facility where hazardous materials packages are accepted by a carrier.

§ 175.30 Inspecting shipments.

(a) No person may accept a hazardous material for transportation aboard an aircraft unless the aircraft operator ensures that the hazardous material is:

(1) Authorized, and is within the quantity limitations specified for carriage aboard aircraft according to § 172.101 of this subchapter or as otherwise specifically provided by this subchapter.

(2) Described and certified on a shipping paper prepared in duplicate in accordance with subpart C of part 172 or as authorized by § 171.11 of this subchapter. *See* § 175.33 for shipping paper retention requirements;

(3) Labeled and marked in accordance with subparts D and E of part 172 or as authorized in § 171.11 of this subchapter, and placarded (when required) in accordance with subpart F of part 172 of this subchapter; and,

(4) Labeled with a "CARGO AIRCRAFT ONLY" label (*see* § 172.448 of this subchapter) if the material as presented is not permitted aboard passenger-carrying aircraft.

(b) Except as provided in paragraph (d) of this section, no person may carry a hazardous material in a package, outside container, or overpack aboard an aircraft unless the package, outside container, or overpack is inspected by the operator of the aircraft immediately before placing it:

(1) Aboard the aircraft; or

(2) In a unit load device or on a pallet prior to loading aboard the aircraft.

(c) A hazardous material may be carried aboard an aircraft only if, based on the inspection by the operator, the package, outside container, or overpack containing the hazardous material:

(1) Has no holes, leakage or other indication that its integrity has been compromised; and

(2) For Class 7 (radioactive) materials, does not have a broken seal, except that packages contained in overpacks need not be inspected for seal integrity.

(d) The requirements of paragraphs (b) and (c) of this section do not apply to Dry ice (carbon dioxide, solid).

(e) An overpack containing packages of hazardous materials may be accepted only if the operator has taken all reasonable steps to establish that:

(1) The overpack does not contain a package bearing the "CARGO AIRCRAFT ONLY" label unless—

(i) The overpack affords clear visibility of and easy access to the package; or

(ii) Not more than one package is overpacked.

(2) The proper shipping names, identification numbers, labels and special handling instructions appearing on the inside packages are clearly visible or reproduced on the outside of the overpack, and

(3) Has determined that a statement to the effect that the inside packages comply with the prescribed specifications appears on the outside of the overpack, when specification packagings are prescribed.

§ 175.31 Reports of discrepancies.

(a) Each person who discovers a discrepancy, as defined in paragraph (b) of this section, relative to the shipment of a hazardous material following its acceptance for transportation aboard an aircraft shall, as soon as practicable, notify the nearest FAA Regional or Field Security Office by telephone or electronically and shall provide the following information:

(1) Name and telephone number of the person reporting the discrepancy.

(2) Name of the aircraft operator.

(3) Specific location of the shipment concerned.

(4) Name of the shipper.

(5) Nature of discrepancy.

(6) Address of the shipper or person responsible for the discrepancy, if known, by the air carrier.

(b) Discrepancies which must be reported under paragraph (a) of this section are those involving hazardous materials which are improperly described, certified, labeled, marked, or packaged, in a manner not ascertainable when accepted under the provisions of § 175.30(a) of this subchapter including packages or baggage which are found to contain hazardous materials subsequent to their being offered and accepted as other than hazardous materials.

§ 175.33 Shipping paper and notification of pilot-in-command.

(a) A copy of the shipping paper required by § 175.30(a)(2) must accompany the shipment it covers during transportation aboard an aircraft.

(b) When a hazardous material subject to the provisions of this subchapter is carried in an aircraft, the operator of the aircraft must provide the pilot-in-command with accurate and legible written information as early as practicable before departure of the aircraft, which specifies at least the following:

(1) The proper shipping name, hazard class and identification number of the material, including any remaining aboard from prior stops, as specified in § 172.101 of this subchapter or the ICAO Technical Instructions. In the case of Class 1 materials, the compatibility group letter also must be shown. If a hazardous material is described by the proper shipping name, hazard class, and identification number appearing in:

(i) Section 172.101 of this subchapter, any additional description requirements provided in §§ 172.202 and 172.203 of this subchapter must also be shown in the notification.

(ii) The ICAO Technical Instructions, any additional information required to be shown on shipping papers by § 171.11 of this subchapter must also be shown in the notification.

(2) The total number of packages;

(3) The net quantity or gross weight, as applicable, for each package except those containing Class 7 (radioactive) materials. For a shipment consisting of multiple packages containing hazardous materials bearing the same proper shipping name and identification number, only the total quantity and an indication of the quantity of the largest and smallest package at each loading location need to be provided;

(4) The location of the packages aboard the aircraft;

(5) Confirmation that no damaged or leaking packages have been loaded on the aircraft;

(6) For Class 7 (radioactive) materials, the number of packages, overpacks or freight containers their category, transport index (if applicable), and their location aboard the aircraft;

(7) The date of the flight;

(8) The telephone number of a person not aboard the aircraft from whom the information contained in the notification of pilot-in-command can be obtained. The aircraft operator must ensure the telephone number is monitored at all times the aircraft is in flight. The telephone number is not required to be placed on the notification of pilot-in-command if the phone number is in a location in the cockpit available and known to the flight crew.

(9) Confirmation that the package must be carried only on cargo aircraft if its transportation aboard passenger-carrying aircraft is forbidden; and

(10) An indication, when applicable, that a hazardous material is being carried under terms of an exemption.

(c) A copy of the written notification to pilot-in-command shall be readily available to the pilot-in-command during flight. Emergency response information required by subpart G of part 172 of this subchapter must be maintained in the same manner as the written notification to pilot-in-command during transport of the hazardous material aboard the aircraft.

(d) Each person receiving a shipping paper required by this section must retain a copy or an electronic image

thereof that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. The date on the shipping paper may be the date a shipper notifies the air carrier that a shipment is ready for transportation, as indicated on the air bill or bill of lading, as an alternative to the date the shipment is picked up or accepted by the carrier. Only an initial carrier must receive and retain a copy of the shipper's certification, as required by § 172.204 of this subchapter.

(e) The aircraft operator must retain at the airport of departure or the operator's principal place of business a copy of each notification of pilot-in-command, an electronic image thereof, or the information contained therein for 90 days. Except as provided in paragraph (f) of this section, the aircraft operator must make this information available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations.

(f) The aircraft operator must have the information required to be retained under paragraph (e) readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight leg and, upon request, must make the information immediately available, in an accurate and legible format, to any representative of a Federal, State, or local government agency (including an emergency responder) who is responding to an incident involving the flight.

(g) The documents required by paragraphs (a) and (b) this section may be combined into one document if it is given to the pilot-in-command before departure of the aircraft.

Subpart B—Loading, Unloading and Handling

§ 175.75 Quantity limitations and cargo location.

(a) Except as otherwise provided in this subchapter, no person may carry a hazardous material in the cabin of a passenger-carrying aircraft or on the flight deck of any aircraft, and the hazardous material must be located in a place that is inaccessible to persons other than crew-members. Hazardous materials may be carried in a main deck cargo compartment of a passenger aircraft provided that the compartment is inaccessible to passengers and that it meets all certification requirements for a Class B aircraft cargo compartment in 14 CFR 25.857(b) or for a Class C aircraft cargo compartment in 14 CFR 25.857(c).

(b) Except for ORM–D and Class 9 materials and as otherwise provided in this subchapter, no person may carry on a passenger-carrying aircraft more than 25 kg (55 pounds) net weight of hazardous material (and in addition thereto, 75 kg (165 pounds) net weight of Division 2.2) in an inaccessible cargo compartment or in any accessible cargo compartment when the hazardous material is loaded in a manner that makes it inaccessible to flight crew.

(c) Each package containing a hazardous material acceptable only for cargo aircraft must be loaded in such a manner that a crew member or other authorized person can see, handle and when size and weight permit, separate such packages from other cargo during flight. The requirements of this paragraph (c) do not apply to the following hazardous materials:

(1) Class 7, Division 6.1 (except those labeled FLAMMABLE), Division 6.2, Class 3, Packing Group III, that do not meet the definition of another hazard class), Class 9 or ORM–D;

(2) Packages of hazardous materials transported aboard a cargo aircraft, when other means of transportation are impracticable or not available, in accordance with procedures approved in writing by the *FAA Regional or Field Security Office* in the region where the operator is located; or

(3) Packages of hazardous materials carried on small, single pilot, cargo aircraft if:

(i) No person other than the pilot, an FAA inspector, the shipper or consignee of the material or a representative of the shipper or consignee so designated in writing, or a person necessary for handling the material is carried on the aircraft;

(ii) The pilot is provided with written instructions on the characteristics and proper handling of the materials; and

(iii) Whenever a change of pilots occurs while the material is on board, the new pilot is briefed under a hand-to-hand signature service provided by the operator of the aircraft.

(4) As a minimum, quantity limits and loading instructions in the following Quantity and Loading Tables must be followed to maintain acceptable quantity and loading between packages containing hazardous materials. The Quantity and Loading Tables are as follows:

SECTION 175.75 QUANTITY AND LOADING TABLES [1]

	Accessible compartment [2]		Inaccessible compartment [2]
	Packages accessible	Packages inaccessible	Regardless of whether or not in a freight container
Passenger Aircraft:			
Net weight of hazardous materials allowed	No limit	25 kg per compartment [3]	25 kg per compartment.[3]
Cargo Aircraft:			
Net weight of hazardous materials packages in manner authorized for passenger aircraft.	No limit	No limit	No limit.
Net weight of hazardous materials that are authorized for cargo aircraft only.	No limit	Forbidden [4]	Forbidden.[4]

[1] Class 9 and ORM–D materials are excepted from the limits in these tables. Further limits for packages of Class 7 materials are found in § 175.700.

[2] A compartment means a space formed by solid walls or bulkheads with a solid floor and ceiling.

[3] An additional 75 kg net weight of Division 2.2 material is allowed.

[4] The following materials may be carried in an inaccessible location on cargo-only aircraft:
—Class 3, PG III (except those that meet the definition of another hazard class).
—Class 6 (except those that are labeled "Flammable Liquid").
—Class 7 (except those that meet another hazard class).
—Class 9.

—ORM–D.

§ 175.78 Stowage compatibility of cargo.

(a) For stowage on an aircraft, in a cargo facility, or in any other area at an airport designated for the stowage of hazardous materials, packages containing hazardous materials which might react dangerously with one another may not be placed next to each other or in a position that would allow a dangerous interaction in the event of leakage.

(b) As a minimum, the segregation instructions prescribed in the following Segregation Table must be followed to maintain acceptable segregation between packages containing hazardous materials with different hazards. The Segregation Table instructions apply whether or not the class or division is the primary or subsidiary risk. The Segregation Table follows:

SEGREGATION TABLE

Hazard label	Class or division							
	1	2	3	4.2	4.3	5.1	5.2	8
1	Note 1	Note 2	Note 2	Note 2	Note 2	Note 2	Note 2	Note 2
2	Note 2	.....	.....	.....	.....	.....	.....	.....
3	Note 2	.....	.....	.....	.....	X	.....	.....
4.2	Note 2	.....	.....	.....	.....	X	.....	.....
4.3	Note 2	.....	.....	.....	.....	.....	.....	X
5.1	Note 2	.....	X	X	.....	.....	.....	.....
5.2	Note 2	.....	.....	.....	.....	.....	.....	.....
8	Note 2	.....	.....	.....	X	.....	.....	.....

(c) Instructions for using the Segregation Table are as follows:

(1) Hazard labels, classes or divisions not shown in the table are not subject to segregation requirements.

(2) Dots at the intersection of a row and column indicate that no restrictions apply.

(3) The letter "X" at the intersection of a row and column indicates that packages containing these classes of hazardous materials may not be stowed next to or in contact with each other, or in a position which would allow interaction in the event of leakage of the contents.

(4) Note 1. "Note 1" at the intersection of a row and column means the following:

(i) For explosives in compatibility groups A through K and N—

(A) Packages bearing the same compatibility group letter and the same division number may be stowed together.

(B) Explosives of the same compatibility group, but different divisions may be stowed together provided the whole shipment is treated as belonging to the division having the smaller number. However, when explosives of Division 1.5 Compatibility Group D are stowed together with explosives of Division 1.2 Compatibility Group D, the whole shipment must be treated as Division 1.1, Compatibility Group D.

(C) Packages bearing different compatibility group letters may not be stowed together whether or not they belong to the same division, except as provided in paragraphs (c)(3)(ii) and (iii) of this section.

(ii) Explosives in Compatibility Group L may not be stowed with explosives in other compatibility groups. They may only be stowed with the same type of explosives in Compatibility Group L.

(iii) Explosives of Division 1.4, Compatibility Group S, may be stowed with explosives of all compatibility groups except for Compatibility Groups A and L.

(iv) Other than explosives of Division 1.4, Compatibility Group S (see paragraph (c)(3)(iii) of this section), and Compatibility Groups C, D and E that may be stowed together, explosives that do not belong in the same compatibility group may not be stowed together.

(A) Any combination of substances in Compatibility Groups C and D must be assigned to the most appropriate compatibility group shown in the § 172.101 Table of this subchapter.

(B) Explosives in Compatibility Group N may be stowed together with explosives in Compatibility Groups C, D or E when the combination is assigned Compatibility Group D.

(5) Note 2. "Note 2" at the intersection of a row and column means that other than explosives of Division 1.4, Compatibility Group S, explosives may not be stowed together with that class.

(6) Packages containing hazardous materials with multiple hazards in the class or divisions, which require segregation in accordance with the Segregation Table, need not be segregated from other packages bearing the same UN number.

(7) A package labeled "BLASTING AGENT" may not be stowed next to or in a position that will allow contact with a package of special fireworks or railway torpedoes.

§ 175.88 Inspection, orientation and securing packages of hazardous materials.

(a) A unit load device may not be loaded on an aircraft unless the device has been inspected and found to be free from any evidence of leakage from, or damage to, any package containing hazardous materials.

(b) A package containing hazardous materials marked "THIS SIDE UP" or "THIS END UP", or with arrows to indicate the proper orientation of the package, must be stored and loaded aboard an aircraft in accordance with such markings. A package without orientation markings containing liquid hazardous materials must be stored and loaded with closures up (other than side closures in addition to top closures).

(c) Packages containing hazardous materials must be secured in an aircraft in a manner that will prevent any movement in flight which would result in damage to or change in the orientation of the packages. Packages containing Class 7 (radioactive) materials must be secured in a manner that ensures that the separation requirements of §§ 175.701 and 175.702 will be maintained at all times during flight.

§ 175.90 Damaged shipments.

(a) Packages or overpacks containing hazardous materials must be inspected for damage or leakage after being unloaded from an aircraft. When packages or overpacks containing hazardous materials are carried in a unit load device, the area where the unit load device was stowed must be

inspected for evidence of leakage or contamination immediately upon removal of the unit load device from the aircraft, and the packages or overpacks inspected for evidence of damage or leakage when the unit load device is unloaded. In the event of leakage or suspected leakage, the compartment in which the package, overpack, or unit load device was carried must be inspected for contamination and decontaminated, if applicable.

(b) Except as provided in § 175.700, the operator of an aircraft must remove from the aircraft any package, baggage or cargo that appears to be leaking or contaminated by a hazardous material. In the case of a package, baggage or cargo that appears to be leaking, the operator must enure that other packages, baggage or cargo in the same shipment are in proper condition for transport aboard the aircraft and that no other package, baggage or cargo has been contaminated or is leaking. If an operator becomes aware that a package, baggage or cargo not identified as containing a hazardous material has been contaminated, or the operator has cause to believe that a hazardous material maybe the cause of the contamination, the operator must take reasonable steps to identify the nature and source of contamination before proceeding with the loading of the contaminated baggage or cargo. If the contaminating substance is found or suspected to be hazardous material, the operator must isolate the package, baggage or cargo and take appropriate steps to eliminate any identified hazard before continuing the transportation of the item by aircraft.

(c) No person may place aboard an aircraft a package, baggage or cargo that is contaminated with a hazardous material or appears to be leaking.

(d) If a package containing a material in Division 6.2 (infectious substance) is found to be damaged or leaking, the person finding the package must:

(1) Avoid handling the package or keep handling to a minimum;

(2) Inspect packages adjacent to the leaking package for contamination and withhold from further transportation any contaminated packages until it is ascertained that they can be safely transported;

(3) Comply with the reporting requirement of § 171.15 of this subchapter; and

(4) Notify the consignor or consignee.

Subpart C—Specific Regulations Applicable According to Classification of Material

§ 175.310 Transportation of flammable liquid fuel; aircraft only means of transportation.

(a) When other means of transportation are impracticable, flammable liquid fuels may be carried on certain passenger and cargo aircraft as provided in this section, without regard to the packaging references and quantity limits listed in Columns 7, 8 and 9 of the § 172.101 Hazardous Materials Table. All requirements of this subchapter that are not specifically covered in this section continue to apply to shipments made under the provisions of this section. For purposes of this section "impracticable" means transportation is not physically possible or cannot be performed by routine and frequent means of other transportation, due to extenuating circumstances. Extenuating circumstances include: conditions precluding highway or water transportation, such as a frozen vessel route; road closures due to catastrophic weather or volcanic activity; or a declared state of emergency. The desire for expedience of a shipper, carrier, or consignor, is not relevant in determining whether other means of transportation are impracticable. The stowage requirements of § 175.75(a) do not apply to a person operating an aircraft under the provisions of this section which, because of its size and configuration, makes it impossible to comply.

(b) A small passenger-carrying aircraft operated entirely within the State of Alaska or into a remote area, in other than scheduled passenger operations, may carry up to 76 L (20 gallons) of flammable liquid fuel (in Packing Group II or Packing Group III), when:

(1) The flight is necessary to meet the needs of a passenger; and

(2) The fuel is carried in one of the following types of containers:

(i) Strong tight metal containers of not more than 20 L (5.3 gallons) capacity, each packed inside a UN 4G fiberboard box, at the Packing Group II performance level, or each packed inside a UN 4C1 wooden box, at the Packing Group II performance level;

(ii) Airtight, leakproof, inside containers of not more than 40 L (11 gallons) capacity and of at least 28-gauge metal, each packed inside a UN 4C1 wooden box, at the Packing Group II performance level;

(iii) UN 1A1 steel drums, at the Packing Group I or II performance level, of not more than 20 L (5.3 gallons) capacity; or

(iv) In fuel tanks attached to flammable liquid fuel powered equipment under the following conditions:

(A) Each piece of equipment is secured in an upright position;

(B) Each fuel tank is filled in a manner that will preclude spillage of fuel during loading, unloading, and transportation; and

(C) Fueling and refueling of the equipment is prohibited in or on the aircraft.

(3) In the case of a passenger-carrying helicopter, the fuel or fueled equipment must be carried on external cargo racks or slings.

(c) Flammable liquid fuels may be carried on a cargo aircraft, subject to the following conditions:

(1)(i) The flammable liquid fuel is in Packing Group II or Packing Group III except as indicated in paragraph (c)(1)(iv) of this section;

(ii) The fuel is carried in packagings authorized in paragraph (b) of this section;

(iii) The fuel is carried in metal drums (UN 1A1, 1B1, 1N1) authorized for Packing Group I or Packing Group II liquid hazardous materials and having rated capacities of 220 L (58 gallons) or less. These single packagings may not be transported in the same aircraft with Class 1, Class 5, or Class 8 materials.

(iv) Combustible and flammable liquid fuels (including those in Packing Group I) may be carried in installed aircraft tanks each having a capacity of more than 450 L (118.9 gallons), subject to the following additional conditions:

(A) The tanks and their associated piping and equipment and the installation thereof must have been approved for the material to be transported by the appropriate FAA Flight Standards District Office.

(B) In the case of an aircraft being operated by a certificate holder, the operator shall list the aircraft and the approval information in its operating specifications. If the aircraft is being operated by other than a certificate holder, a copy of the FAA Flight Standards District Office approval required by this section must be carried on the aircraft.

(C) The crew of the aircraft must be thoroughly briefed on the operation of the particular bulk tank system being used.

(D) During loading and unloading and thereafter until any remaining fumes within the aircraft are dissipated:

(*1*) Only those electrically operated bulk tank shutoff valves that have been approved under a supplemental type certificate may be electrically operated.

(2) No engine or electrical equipment, avionic equipment, or auxiliary power units may be operated, except position lights in the steady position and equipment required by approved loading or unloading procedures, as set forth in the operator's operations manual, or for operators that are not certificate holders, as set forth in a written statement.

(3) Static ground wires must be connected between the storage tank or fueler and the aircraft, and between the aircraft and a positive ground device.

(d) The following restrictions apply to loading, handling, or carrying fuel under the provisions of this section:

(1) During loading and unloading, no person may smoke, carry a lighted cigarette, cigar, or pipe, or operate any device capable of causing an open flame or spark within 15 m (50 feet) of the aircraft.

(2) No person may fill a container, other than an approved bulk tank, with a Class 3 material or combustible liquid or discharge a Class 3 material or combustible liquid from a container, other than an approved bulk tank, while that container is inside or within 15 m (50 feet) of the aircraft.

(3) When filling an approved bulk tank by hose from inside the aircraft, the doors and hatches of the aircraft must be fully open to insure proper ventilation.

(4) Each area or compartment in which the fuel is loaded is suitably ventilated to prevent the accumulation of fuel vapors.

(5) Fuel is transferred to the aircraft fuel tanks only while the aircraft is on the ground.

(6) Before each flight, the pilot-in-command:

(i) Prohibits smoking, lighting matches, the carrying of any lighted cigar, pipe, cigarette or flame, and the use of anything that might cause an open flame or spark, while in flight; and

(ii) For passenger aircraft, informs each passenger of the location of the fuel and the hazards involved.

(e) Operators must comply with the following:

(1) If the aircraft is being operated by a holder of a certificate issued under 14 CFR part 121, part 127 or part 133, operations must be conducted in accordance with conditions and limitations specified in the certificate holder's operations specifications or operations manual accepted by the FAA. If the aircraft is being operated under 14 CFR part 91, operations must be conducted in accordance with an operations plan accepted and acknowledged in writing by the FAA Principal Operations Inspector assigned to the operator.

(2) The aircraft and the loading arrangement to be used must be approved for the safe carriage of the particular materials concerned by the FAA Principal Operations Inspector assigned to the operator.

§ 175.501 Special requirements for oxidizers and compressed oxygen.

(a) Compressed oxygen, when properly labeled Oxidizer or Oxygen, may be loaded and transported as provided in paragraph (b) of this section. No person may load or transport any other package containing a hazardous material for which an OXIDIZER label is required under this subchapter in an inaccessible cargo compartment that does not have a fire or smoke detection system and a fire suppression system.

(b) In addition to the quantity limitations prescribed in § 175.75, cylinders of compressed oxygen must be stowed in accordance with the following:

(1) No more than a combined total of six cylinders of compressed oxygen may be stowed on an aircraft in the inaccessible aircraft cargo compartment(s) that do not have fire or smoke detection systems and fire suppression systems.

(2) When loaded into a passenger-carrying aircraft or in an inaccessible cargo location on a cargo-only aircraft, cylinders of compressed oxygen must be stowed horizontally on the floor or as close as practicable to the floor of the cargo compartment or unit load device. This provision does not apply to cylinders stowed in the cabin of the aircraft in accordance with paragraph (c) of this section.

(3) When transported in a Class B aircraft cargo compartment (*see* 14 CFR 25.857(b)) or its equivalent (*i.e.*, an accessible cargo compartment equipped with a fire or smoke detection system but not a fire suppression system), cylinders of compressed oxygen must be loaded in a manner that a crew member can see, handle and, when size and weight permit, separate the cylinders from other cargo during flight. No more than six cylinders of compressed oxygen and, in addition, one cylinder of medical-use compressed oxygen per passenger needing oxygen at destination—with a rated capacity of 850 L (30 cubic feet) or less of oxygen—may be carried in a Class B aircraft cargo compartment or its equivalent.

(c) A cylinder containing medical-use compressed oxygen, owned or leased by an aircraft operator or offered for transportation by a passenger needing it for personal medical use at destination, may be carried in the cabin of a passenger-carrying aircraft in accordance with the following provisions:

(1) No more than six cylinders belonging to the aircraft operator and, in addition, no more than one cylinder per passenger needing the oxygen at destination, may be transported in the cabin of the aircraft under the provisions of this paragraph (c);

(2) The rated capacity of each cylinder may not exceed 850 L (30 cubic feet);

(3) Each cylinder and its overpack or outer packaging must conform to the provisions of this subchapter (*see* Special Provision A52 in § 172.102 of this subchapter);

(4) The aircraft operator shall securely stow the cylinder in its overpack or outer packaging in the cabin of the aircraft and shall notify the pilot-in-command as specified in § 175.33 of this part; and

(5) Shipments under this paragraph (c) are not subject to—

(i) Subpart C and, for passengers only, subpart H of part 172 of this subchapter;

(ii) Section 173.25(a)(4) of this subchapter; and

(iii) Paragraph (b) of this section.

§ 175.630 Special requirements for Division 6.1 and Division 6.2 material.

(a) A package required to bear a POISON, POISON INHALATION HAZARD, or INFECTIOUS SUBSTANCE label may not be carried in the same compartment of an aircraft with material which is marked as or known to be a foodstuff, feed, or any other edible material intended for consumption by humans or animals unless:

(1) the Division 6.1 or Division 6.2 material and the foodstuff, feed, or other edible material are loaded in separate unit load devices which, when stowed on the aircraft, are not adjacent to each other; or

(2) the Division 6.1 or Division 6.2 material are loaded in one closed unit load device and the foodstuff, feed or other material is loaded in another closed unit load device.

(b) No person may operate an aircraft that has been used to transport any package required to bear a POISON or POISON INHALATION HAZARD label unless, upon removal of such package, the area in the aircraft in which it was carried is visually inspected for evidence of leakage, spillage, or other contamination. All contamination discovered must be either isolated or removed from the aircraft. The operation of an aircraft contaminated with such Division 6.1 materials is considered to be the carriage of poisonous materials under paragraph (a) of this section.

§ 175.700 Special limitations and requirements for Class 7 materials.

(a) Except as provided in §§ 173.4, 173.422 and 173.423 of this subchapter, no person may carry any Class 7 materials aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to research (*See* § 171.8 of this subchapter), medical diagnosis or treatment. Regardless of its intended use, no person may carry a Type B(M) package aboard a passenger-carrying aircraft, a vented Type B(M) package aboard any aircraft, or a liquid pyrophoric Class 7 material aboard any aircraft.

(b) No person may carry aboard an aircraft a combined transport index (determined by adding together the transport index numbers shown on the labels of the individual packages and/or overpacks) or a single package with a transport index greater than:

(1) On a passenger-carrying aircraft, a combined transport index of 50 or a single package with a transport index greater than 3.0.

(2) On a cargo aircraft, a combined transport index of 200, or a single package with a transport index greater than 10.0.

(c) No person may carry aboard an aircraft a combined criticality safety index or a single package with a criticality safety index greater than:

(1) On a passenger-carrying aircraft, a combined criticality safety index of 50 or a single package with a criticality safety index greater than 3.0.

(2) On a cargo aircraft, a combined criticality safety index of 50, or a single package with a criticality safety index greater than 10.0. A cargo aircraft which has been assigned for the exclusive use of the shipper for the specific shipment of fissile Class 7 material may transport a combined criticality safety index of 100. Instructions for the exclusive use must be developed by the shipper and carrier, and the instructions must be issued with the shipping papers.

(d) No person may carry in a passenger-carrying aircraft any package required to be labeled RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III label unless the package is carried on the floor of the cargo compartment or freight container.

§ 175.701 Separation distance requirements for packages containing Class 7 (radioactive) materials in passenger-carrying aircraft.

(a) The following table prescribes the minimum separation distances that must be maintained in a passenger-carrying aircraft between Class 7 (radioactive) materials labeled RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III and passengers and crew:

Transport index or sum of transport indexes of all packages in the aircraft or distances predesignated area	Minimum separation distances	
	Centimeters	Inches
0.1 to 1.0	30	12
1.1 to 2.0	50	20
2.1 to 3.0	70	28
3.1 to 4.0	85	34
4.1 to 5.0	100	40
5.1 to 6.0	115	46
6.1 to 7.0	130	52
7.1 to 8.0	145	57
8.1 to 9.0	155	61
9.1 to 10.0	165	65
10.1 to 11.0	175	69
11.1 to 12.0	185	73
12.1 to 13.0	195	77
13.1 to 14.0	205	81
14.1 to 15.0	215	85
15.1 to 16.0	225	89
16.1 to 17.0	235	93
17.1 to 18.0	245	97
18.1 to 20.0	260	102
20.1 to 25.0	290	114
25.1 to 30.0	320	126
30.1 to 35.0	350	138
35.1 to 40.0	375	148
40.1 to 45.0	400	157
45.1 to 50.0	425	167

(b) When transported aboard passenger-carrying aircraft packages, overpacks or freight containers labeled Radioactive Yellow–II or Radioactive Yellow–III must be separated from live animals by a distance of at least 0.5 m (20 inches) for journeys not exceeding 24 hours, and by a distance of at least 1.0 m (39 inches) for journeys longer than 24 hours.

(c) Except as provided in paragraph (d) of this section, the minimum separation distances prescribed in paragraphs (a) and (b) of this section are determined by measuring the shortest distance between the surfaces of the Class 7 (radioactive) materials package and the surfaces bounding the space occupied by passengers or animals. If more than one package of Class 7 (radioactive) materials is placed in a passenger-carrying aircraft, the minimum separation distance for these packages shall be determined in accordance with paragraphs (a) and (b) of this section on the basis of the sum of the transport index numbers of the individual packages or overpacks.

(d) *Predesignated areas.* A package labeled RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III may be carried in a passenger-carrying aircraft in accordance with a system of predesignated areas established by the aircraft operator. Each aircraft operator that elects to use a system of predesignated areas shall submit a detailed description of the proposed system to the Associate Administrator for approval prior to implementation of the system. A proposed system of predesignated areas is approved if the Associate Administrator determines that it is designed to assure that:

(1) The packages can be placed in each predesignated area in accordance with the minimum separation distances prescribed in paragraph (a) of this section; and

(2) The predesignated areas are separated from each other by minimum distance equal to at least four times the distances required by paragraphs (a) and (b) of this section for the predesignated area containing packages with the largest sum of transport indexes.

§ 175.702 Separation distance requirements for packages containing Class 7 (radioactive) materials in cargo aircraft.

(a) No person may carry in a cargo aircraft any package required by § 172.403 of this subchapter to be labeled Radioactive Yellow–II or Radioactive Yellow–III unless:

(1) The total transport index does not exceed 50.0 and the packages are carried in accordance with § 175.701(a); or

(2) The total transport index for all packages exceeds 50.0; and

(i) The separation distance between the surfaces of the radioactive materials packages, overpacks or freight containers and any space occupied by live animals is at least 0.5 m (20 inches) for journeys not exceeding 24 hours and at least 1.0 m (39 inches) for journeys longer than 24 hours; and

(ii) The minimum separation distances between the radioactive material and any areas occupied by persons that are specified in the following table are maintained:

Transport Index or sum of transport indexes of all packages in the aircraft or predesignated area	Minimum separation distances	
	Centimeters	Inches
50.1 to 60.0	465	183
60.1 to 70.0	505	199
70.1 to 80.0	545	215
80.1 to 90.0	580	228
90.1 to 100.0	610	240
100.1 to 110.0	645	254
110.1 to 120.0	670	264
120.1 to 130.0	700	276
131.1 to 140.0	730	287
140.1 to 150.0	755	297
151.1 to 160.0	780	307
160.1 to 170.0	805	317
170.1 to 180.0	830	327
180.1 to 190.0	855	337
190.1 to 200.0	875	344
200.1 to 210.0	900	354
210.1 to 220.0	920	362
220.1 to 230.0	940	370
230.1 to 240.0	965	380
240.1 to 250.0	985	388
250.1 to 260.0	1005	396
260.1 to 270.0	1025	404
270.1 to 280.0	1040	409
280.1 to 290.0	1060	417
290.1 to 300.0	1080	425

(b) The transport index and the criticality safety index of any single group of packages must not exceed 50.0 (as used in this section, the term "group of packages" means packages that are separated from each other in an aircraft by a distance of 6 m (20 feet) or less); and

(c) Each group of packages must be separated from every other group in the aircraft by not less than 6 m (20 feet), measured from the outer surface of each group.

§ 175.703 Other special requirements for the acceptance and carriage of packages containing Class 7 materials.

(a) No person may accept for carriage in an aircraft packages of Class 7 materials, other than limited quantities, contained in a rigid or non-rigid overpack, including a fiberboard box or plastic bag, unless they have been prepared for shipment in accordance with § 172.403(h) of this subchapter.

§ 175.704 Plutonium shipments.

Shipments of plutonium which are subject to 10 CFR 71.88(a)(4) must comply with the following:

(a) Each package containing plutonium must be secured and restrained to prevent shifting under normal conditions.

(b) A package of plutonium having a gross mass less than 40 kg (88 pounds) and both its height and diameter less than 50 cm (19.7 inches)—

(1) May not be transported aboard an aircraft carrying other cargo required to bear a Division 1.1 label; and

(2) Must be stowed aboard the aircraft on the main deck or the lower cargo compartment in the aft-most location that is possible for cargo of its size and weight, and no other cargo may be stowed aft of packages containing plutonium.

(c) A package of plutonium exceeding the size and weight limitations in paragraph (b)—

(1) May not be transported aboard an aircraft carrying other cargo required to bear any of the following labels: Class 1 (all Divisions), Class 2 (all Divisions), Class 3, Class 4 (all Divisions), Class 5 (all Divisions), or Class 8; and

(2) Must be securely cradled and tied down to the main deck of the aircraft in a manner that restrains the package against the following internal forces acting separately relative to the deck of the aircraft: Upward, 2g; Forward, 9g; Sideward, 1.5g; Downward, 4.5g.

§ 175.705 Radioactive contamination.

(a) A carrier shall take care to avoid possible inhalation, ingestion, or contact by any person with Class 7 (radioactive) materials that may have been released from their packagings.

(b) When contamination is present or suspected, the package containing a Class 7 material, any loose Class 7 material, associated packaging material, and any other materials that have been contaminated must be segregated as far

as practicable from personnel contact until radiological advice or assistance is obtained from the U.S. Department of Energy or appropriate State or local radiological authorities.

(c) An aircraft in which Class 7 material has been released must be taken out of service and may not be returned to service or routinely occupied until the aircraft is checked for radioactive contamination and it is determined in accordance with § 173.443 of this subchapter that the dose rate at every accessible surface is less than 0.005 mSv per hour (0.5 mrem per hour) and there is no significant removable surface contamination.

(d) Each aircraft used routinely for transporting Class 7 materials shall be periodically checked for radioactive contamination, and an aircraft must be taken out of service if contamination exceeds the level specified in paragraph (c) of this section. The frequency of these checks shall be related to the likelihood of contamination and the extent to which Class 7 materials are transported.

(e) In addition to the reporting requirements of §§ 171.15 and 171.16 of this subchapter, an aircraft operator shall notify the offeror at the earliest practicable moment following any incident in which there has been breakage, spillage, or suspected radioactive contamination involving Class 7 (radioactive) materials shipments.

Issued in Washington, DC on October 27, 2004 under the authority delegated in 49 CFR part 106.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

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Part IV

Department of Housing and Urban Development

24 CFR Part 203

Revisions to the Single Family Mortgage Insurance Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4831–P–01; HUD–2004–0007]

RIN 2502–AI03

Revisions to the Single Family Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: To reflect recent statutory changes, this proposed rule revises certain regulations under the single family mortgage insurance program that govern actions by mortgagees with respect to mortgages in default. The rule also amends other regulations under the program to make them consistent with industry practices. The Department believes that these changes will help to increase the administrative efficiency of the single family mortgage insurance program.

DATES: *Comment Due Date:* January 10, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *www.epa.gov/feddocket.* Follow the link entitled View Open HUD Dockets. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (fax) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Office of the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, Room 9172, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's regulations governing the procedures, rights, and servicing responsibilities, among other things, arising out of a mortgage insured under the single family mortgage insurance program of the Federal Housing Administration (FHA) generally are codified at 24 CFR part 203. Statutory amendments enacted by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) (FY1999 Appropriations Act), and other changes in practices and procedures require changes to the regulations at 24 CFR 203.23, 203.24, 203.359, 203.370, 203.371, 203.389, 203.402, 203.604, and 203.605.

II. This Proposed Rule

This rule would amend 24 CFR 203.23(a) to require a provision in the mortgage for the payment of homeowner or condominium association fees among the other payments that the mortgagor is required to make under the mortgage. Several states have enacted legislation that gives condominium and homeowners' associations the right to file a lien for non-payment of association fees by a mortgagor, resulting in a lien that has priority over the FHA-insured mortgage. HUD has performed a study on the various state laws applicable to the priority of the homeowners' and condominium association fees and charges. There is great variance among the states with respect to how they treat the lien status of condominium association fees and charges. Some states have established a priority or "super lien" for six months, but the time that the six-month period begins to run varies. Also, the time that the lien for the fees and charges is perfected varies by state. As a result, HUD has experienced difficulty in several jurisdictions where the condominium or homeowners' association has started foreclosure proceedings under its lien. In addition, even where the lien for fees and assessments is not senior to the mortgage, there are many questions raised as to whether the mortgagee should pay the unpaid fees before conveying the property to the Secretary. HUD has been apprised that other states are contemplating legislation that would make these assessments prior liens.

Further, HUD desires to protect the viability of homeowners' and condominium associations by providing a method whereby there would be greater assurance of these associations' collecting their fees. HUD also wants to protect those homeowners who do pay their fees from being assessed for maintenance and other expenses that cannot be paid because other homeowners do not pay their fees. It is also a costly process to have attorneys handle redemption of the property, if the homeowners' or condominium association forecloses on its lien. Therefore, the amendment to § 203.23 would require mortgagees of FHA-insured mortgages endorsed on or after the effective date of this rule to collect as part of the monthly mortgage payment an escrow of the amounts necessary for the payment of these fees when they become due.

A corresponding amendment is made to 24 CFR 203.24(a)(1) to provide for the application by the mortgagee of that part of the monthly payment received from the mortgagor for condominium or homeowners' association fees.

This rule also would amend 24 CFR 203.359(b)(2). After reviewing its experience with the application of this regulation, HUD has concluded that amendment of this regulation is warranted to better protect the insurance fund. HUD's experience has shown that too many mortgagees have not pursued conveying the foreclosed property to the Secretary with the diligence that the regulation contemplated. Consequently, the Department has been forced to pay additional interest on the outstanding debt pending recordation of the deed to the Secretary by the mortgagee. The amended regulation would provide that the deed to the Secretary must be recorded within 30 days after the later of the acquisition of possession of the property by the mortgagee or the expiration of the redemption period.

The rule would amend § 203.370 by removing the existing language in paragraph (c)(4) and substituting therefor the amendatory language in section 601(a) of the FY1999 HUD Appropriations Act, which amended section 204 of the National Housing Act (12 U. S. C. 1710). Section 204 now provides for the payment of insurance benefits by the Secretary in a preforeclosure sale of the property if, among other things, "the mortgagor has received an appropriate disclosure, as determined by the Secretary." Formerly, section 204 required counseling. The revised language of 24 CFR 203.370(c)(4) reflects the cited language

from section 601(a) of the FY1999 HUD Appropriations Act.

HUD proposes in this rule to add a new paragraph 6 to 24 CFR 203.371(b) to provide that, along with the existing requirements that must be satisfied for payment of a partial claim, the mortgagor must have made a minimum number of monthly payments as prescribed by the Secretary.

In § 203.371, paragraph (d) would be revised to provide that HUD must receive the original of the note and security instrument no later than 60 days after the date of the execution of the note and the security instrument. Section 203.371(d) would allow submission by the mortgagee of a copy of the security instrument with the date and time of the recording stamped by the recorder's office, if the original document is not available. A certification from the recorder's office that the security instrument has been recorded and stating the date of recordation also would be acceptable. If the mortgagee does not provide the original of the note and the security agreement (or the stamped copy or certification as provided above) to HUD by the 60-day deadline, HUD will require reimbursement of the amount of the partial claim paid to the mortgagee, including the incentive. If the mortgagee meets the 60-day requirement by providing HUD with the original note and a copy of the security instrument with a stamp or certification as described above, the mortgagee will have six months from the date of the execution of the security instrument to provide HUD with the original of the security instrument. If the security instrument is not provided to HUD by the six-month deadline, then HUD will require reimbursement of the claim, including the incentive.

This proposed rule also would amend 24 CFR 203.389 to add "aviation easements" approved by the Secretary at the time of the mortgage origination to the list of easements in paragraph (b)(1) to which the Commissioner may not raise objection in taking title to property covered by an insured mortgage in default. This amendment recognizes that, since the regulation was last updated in 1976, aviation easements have become fairly common with the growth in the number of airports.

In 24 CFR 203.402, paragraphs (a) and (j) are revised to incorporate new items that would be included in insurance benefits paid by HUD with respect to conveyed and non-conveyed properties. In paragraph (a), language is added that provides for an amount to be included in the claim payment of a utility fee, if it is a lien prior to the mortgage. HUD also has added language to paragraph (a) that would permit HUD to reimburse mortgagees for payments of homeowners' association and condominium fees if, because of a default of a mortgagor, in making escrow payments, the mortgagee has to pay these fees. This amendment would affect only mortgages endorsed on or after the effective date of this rule. The revision to paragraph (j) will eliminate the need for approval by the Secretary, prior to the issuance of a mortgage, of a covenant that provides for charges and fees for the administration, operation, and maintenance of community-owned property. The requirement for Secretary approval has not been in effect for some time. Section 203.604(c)(2) would be revised to eliminate the requirement of a face-to-face meeting if the mortgaged property is within 200 miles of the mortgagee or a branch office thereof. Even if the mortgagee does have an office, or a branch office, within 200 miles, a face-to-face meeting would not be necessary if the servicer does not have an office or a branch within 200 miles. The revision is being made since servicers, rather than holding mortgagees, take the necessary actions required when a mortgagor is delinquent. As revised, § 203.604(c)(2) would provide that a face-to-face meeting is no longer required if "The mortgaged property is not within 200 miles of the servicer [the reference to mortgagee has been removed] or a branch office of the servicer."

The revision to 24 CFR 203.605 clarifies the existing language regarding the deadline for the mortgagee to complete its loss mitigation evaluation. HUD has always considered 90 days of delinquency to be the appropriate amount of time required to ensure that a borrower would have an opportunity to respond to requests from the mortgagee and for the mortgagee to complete its review for loss mitigation. The existing language ("no later than when three full monthly installments * * * are unpaid") was intended to allow the mortgagee to the end of the third month of delinquency to complete the loss mitigation evaluation, *i.e.*, while three payments were still unpaid, but before four payments had become unpaid. However, this language created an ambiguity, causing some mortgagees to believe that they were required to complete the loss mitigation review by the day the account became three full payments due and unpaid. To remove any ambiguity and to make clear the intent of the rule, the revision to 24 CFR 203.605 provides in part that: "Before the account becomes four payments due and unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided in § 203.501 to determine which, if any, is appropriate, and shall reevaluate monthly thereafter."

Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small

entities. The rule revises certain regulations under the Single Family Mortgage Insurance program to improve the efficiency of the program. Although HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 203 as follows:

PART 203–SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Amend § 203.23 by removing the word "and" at the end of paragraph (a)(4), by redesignating existing paragraph (a)(5) as (a)(6) and revising it, and by adding a new paragraph (a)(5) to read as follows:

§ 203.23 Mortgagor's payments to include other charges.

(a) * * *

(5) For mortgages endorsed for insurance on or after the effective date of this rule, homeowner association or condominium association fees, as appropriate; and

(6) Fire and other hazard insurance premiums, if any. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner for the purpose of paying such ground rents, taxes, assessments, insurance premiums, and (for mortgages endorsed on or after the effective date of this rule), homeowners' or condominium association fees before the same become delinquent, for the benefit and account of the mortgagor. The mortgage also must make provisions for adjustments in case the estimated amount of such taxes, assessments, insurance premiums, and fees shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor. Such payments shall be held in an escrow subject to § 203.550.

* * * * *

3. Amend § 203.24 by revising paragraph (a)(1) to read as follows:

§ 203.24 Application of payments.

(a) * * *

(1) Premium charges under the contract of insurance (other than a one-time or up-front mortgage insurance premium paid in accordance with §§ 203.280, 203.284, and 203.285), charges for ground rents, taxes, special assessments, flood insurance premiums, if required, fire and other hazard insurance premiums, and (for mortgages endorsed on or after the effective date of this rule), homeowners' and condominium association fees and charges, if applicable.

* * * * *

4. Amend § 203.359 by revising paragraph (b)(2) to read as follows:

§ 203.359 Time of conveyance to the Secretary.

* * * * *

(b) * * *

(2) *Direct conveyance.* In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, the mortgagee must ensure that the property is transferred to the Secretary within 30 days of the later of acquiring possession of the property or the expiration of the redemption period.

5. Amend § 203.370 by revising paragraph (c)(4) to read as follows:

§ 203.370 Pre-foreclosure sales.

* * * * *

(c) * * *

(4) Must have received an appropriate disclosure, as prescribed by the Secretary.

6. Amend § 203.371 by revising paragraphs (b)(4) and (b)(5), by adding a new paragraph (b)(6), and by revising paragraph (d), to read as follows:

§ 203.371 Partial claim.

* * * * *

(b) * * *

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time frame specified by HUD;

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included; and

(6) The mortgagor must have made a minimum number of monthly payments as prescribed by the Secretary.

* * * * *

(d) *Application for insurance benefits.* The mortgagee shall provide HUD with the original credit instrument and the original security instrument no later than 60 days following the date of their execution. If the original security instrument is not yet available, the mortgagee shall provide HUD with a copy of the security instrument on which the date and time of the recording of the original is stamped by the recorder's office. If the recorder's office cannot stamp the copy, HUD will accept a certification from the recorder's office that the original has been recorded and the date of the recordation. If the mortgagee does not provide the original of the note and security instrument (or the stamped copy or certification as provided above) within the 60-day deadline, the mortgagee shall be required to reimburse the amount of the claim paid, including the incentive. If the mortgagee meets the 60-day requirement with the original note and a stamped or certified copy of the security instrument, the mortgagee shall have 6 months from the date of the execution of the security instrument to provide HUD with the original of the security instrument. If the security instrument is not provided within 6 months, HUD will require reimbursement of the claim payment, including the incentive.

7. Amend § 203.389 by revising paragraph (b)(1) to read as follows:

§ 203.389 Waived title objections.

* * * * *

(b)(1) Aviation easements, which were approved by the Secretary at the time of the origination of the mortgage, and other customary easements for public utilities, party walls, driveways, and other purposes.

* * * * *

8. Amend § 203.402 by revising paragraphs (a) and (j) to read as follows:

§ 203.402 Items included in payment—conveyed and nonconveyed properties.

* * * * *

(a) Taxes, ground rents, water rates, and utility charges which are liens prior

to the mortgage; and homeowners' or condominium association fees when the mortgagee is required to escrow the fees under § 203.23, but the mortgagor has defaulted in the payment of the escrow and the mortgagee pays such fees for and on account of the mortgagor.

* * * * *

(j) Charges for the repair or maintenance of the mortgaged property required by and in an amount approved by the Secretary; charges for condominium and homeowners' association fees which the mortgagee advanced for and on behalf of the mortgagor for those mortgages endorsed for insurance before the effective date of the rule.

* * * * *

9. Amend § 203.604 by revising paragraph (c)(2) to read as follows:

§ 203.604 Contact with the mortgagor

* * * * *

(c) * * *

(2) The mortgaged property is not within 200 miles of the servicer, or a branch office of the servicer.

* * * * *

10. Revise § 203.605 to read as follows:

§ 203.605 Loss mitigation evaluation.

Before the account becomes four installments due and unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided in § 203.501 to determine which techniques, if any, are appropriate, and shall reevaluate monthly thereafter. The mortgagee shall maintain documentation of such evaluations. Should a claim for mortgage insurance benefits later be filed, the mortgagee shall maintain this documentation in the claim file under the requirements of § 203.365(c).

Dated: August 27, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

Sean Cassidy,

General Deputy Assistant, Secretary for Housing.

[FR Doc. 04–24989 Filed 11–9–04; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
November 10, 2004

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 23 and 52
Federal Acquisition Regulation; FAR Case 1998–020, Hazardous Material Safety Data, Notice of Public Meeting; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

Federal Acquisition Regulation; FAR Case 1998–020, Hazardous Material Safety Data, Notice of Public Meeting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are hosting a public meeting to facilitate an open dialogue between the Government and interested parties on proposed amendments to the Federal Acquisition Regulation regarding hazardous material safety data.

DATES: The meeting will be held on November 23, 2004, from 9 a.m. to 4 p.m., EST.

To facilitate discussions at the public meeting, interested parties are encouraged to provide, no later than November 15, 2004, written comments on issues they would like addressed at the public meeting.

ADDRESSES: The meeting will be held at the General Services Administration, 1800 F Street, NW, Washington, DC 20405, Room 5141A. Participants are encouraged to check the Web site prior to the public meeting to ensure the location has not changed as a result of a large number of registrants.

Interested parties may register, view the draft final rule, submit electronic comments, and obtain directions at *http://www.acq.osd.mil/dpap/dars/coming.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Craig Goral, Procurement Analyst, at (202) 501–3856.

Special Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Craig Coral, at (202) 501–3856, at least 5 days prior to the meeting date.

SUPPLEMENTARY INFORMATION:

A. Background

This FAR case proposes to revise policies and procedures for the submission of material safety data sheets (MSDS) by contractors who provide hazardous materials to the Government. An original proposed rule was published in the Federal Register at 67 FR 632, January 4, 2002. A second proposed rule was published in the Federal Register at 69 FR 10118, March 3, 2004. The comment period on the second proposed rule closed to the public on May 3, 2004. Public comments on the second proposed rule may be viewed at *http://www.acqnet.gov/far/.* The Federal Acquisition Law Team has reviewed the public comments and prepared a draft final rule for discussion at the public meeting.

B. Public Meeting

Attendees are encouraged but not required to register for the public meeting, to ensure adequate room accommodations. Interested parties may also offer additional questions for discussion at the public meeting.

Dated: November 4, 2004

Laura Auletta,

Director, Contract Policy Division.

[FR Doc 04–25044 Filed 11–9–04; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Wednesday,
November 10, 2004

Part VI

Department of Homeland Security

Transportation Security Administration

49 CFR Part 1522

Fees for Security Threat Assessments for Hazmat Drivers; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1522

[Docket No. TSA–2004–19605]

RIN 1652–AA33

Fees for Security Threat Assessments for Hazmat Drivers

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to recent statutory requirements, the Transportation Security Administration (TSA) proposes to establish a fee for security threat assessments that TSA is required to perform on individuals who apply for or renew a hazardous materials endorsement for a commercial driver's license. TSA also proposes to establish a fee for collection and transmission of fingerprints, which is necessary to perform the security threat assessments. TSA intends to use fees collected under this proposed rule to pay for the costs of the security threat assessments and the costs of collection and transmission of fingerprints.

DATES: Submit comments by December 1, 2004.

ADDRESSES: You may submit comments to this rulemaking, identified by the TSA docket number, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov*. Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov*.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket.[1] Please submit such comments separately from other comments on the rule. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual listed in **FOR FURTHER INFORMATION CONTACT**.

Reviewing Comments in the Docket: You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the NASSIF Building at the Department of Transportation address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: For technical questions: Mr. Randall Fiertz, Office of Revenue, Transportation Security Administration Headquarters, West Building, Floor 12, TSA–14, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227–2323; e-mail: *TSA–Fees@dhs.gov*.

For legal questions: Mr. Dion Casey, Office of Chief Counsel, Transportation Security Administration Headquarters, East Building, Floor 12, TSA–2, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227–2663; e-mail: *Dion.Casey@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. See **ADDRESSES** above for information on where to submit comments.

Comments that include trade secrets, confidential commercial or financial information, or SSI should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the proposed rule. Comments containing this type of information should be appropriately marked and submitted to the address specified in the **ADDRESSES** section. Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA would treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's FOIA regulation found in 6 Code of Federal Regulation (CFR) part 5.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, or by mail as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of your comments on this rulemaking, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Except for comments containing confidential information and SSI, we will file in the public docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable. We may change this rulemaking in light of the comments we receive.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html;* or

[1] *See* 49 CFR 1520.5 for a description of SSI material.

(3) Visiting TSA's Law and Policy Web page at *http://www.tsa.dot.gov/public/index.jsp.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

ATF—Bureau of Alcohol, Tobacco, Firearms, and Explosives
AAMVA—Association of American Motor Vehicle Administrators
ATSA—Aviation and Transportation Security Act
BLS—Bureau of Labor Statistics
BTS—Bureau of Transportation Statistics
CDL—commercial drivers license
CDLIS—Commercial Drivers License Information System
CFR—Code of Federal Regulations
CHRC—criminal history records check
DHS—Department of Homeland Security
DOT—Department of Transportation
FBI—Federal Bureau of Investigation
FMCSA—Federal Motor Carrier Safety Administration
HME—hazardous materials endorsement
ICE—Bureau of Immigration and Customs Enforcement
IFR—interim final rule
NPRM—notice of proposed rulemaking
PRA—Paperwork Reduction Act
SEA—Safe Explosives Act
TSA—Transportation Security Administration

I. Background

On September 11, 2001, several terrorist attacks were made against the United States. Those attacks resulted in catastrophic human casualties and property damage. In response to those attacks, Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration (TSA).[2] TSA was created as an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. As of March 1, 2003, pursuant to the Homeland Security Act of 2002, TSA became an agency of the Department of Homeland Security (DHS), and the Under Secretary is now the Assistant Secretary of Homeland Security for TSA.[3] TSA continues to possess the statutory authority that ATSA established. ATSA granted to the Assistant Secretary responsibility for security in all modes of transportation.[4]

ATSA authorizes TSA to identify individuals who pose a threat to transportation security.[5] This authority includes conducting background checks on individuals in the transportation industries. The background checks may include collecting fingerprints to determine if an individual has a criminal conviction or the use of a name and other identifying characteristics to determine whether an individual has committed international criminal offenses or immigration offenses.

Based on his functions, duties, and powers, the Assistant Secretary is situated to determine whether sufficient cause exists to believe that an individual poses a threat to transportation security.

A. USA PATRIOT Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 25, 2001.[6] Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by adding a new section 5103a titled "Limitation on issuance of hazmat licenses." Section 5103a(a)(1) provides:

> A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.

Section 5103a(a)(2) subjects license renewals to the same requirements.

Section 5103a(c) requires the Attorney General, upon the request of a State in connection with issuance of a hazardous materials endorsement (HME) for a commercial drivers license (CDL), to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary of Transportation of the results. The Secretary of Transportation then determines whether the individual poses a security threat warranting denial of the endorsement. The Secretary of Transportation delegated the authority to carry out the provisions of Section 5103a to the Under Secretary of Transportation for Security (now the Assistant Secretary of Homeland Security for TSA).[7]

The background records check must consist of: (1) a check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.[8] As explained in further detail below, TSA is performing a more comprehensive check than required by Section 5103a, including a review of pertinent databases to determine whether an individual poses a security threat. TSA has the authority to perform such comprehensive checks under ATSA.[9]

B. Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.[10] Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully "ship or transport any explosive in or affecting interstate or foreign commerce" or "receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce." Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal prosecution.[11] These incidents are investigated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives

[2] Pub. L. 107–71, November 19, 2001, 115 Stat. 597.

[3] Section 403 of Pub. L. 107–296, November 25, 2002, 116 Stat. 2135, codified at 6 U.S.C. 203.

[4] 49 U.S.C. 114(d).

[5] 49 U.S.C. 114(f)(2).

[6] Pub. L. 107–56, October 25, 2001, 115 Stat. 272.

[7] 68 FR 10988, March 7, 2003.

[8] The National Crime Prevention and Privacy Compact (Compact) is authorized under 42 U.S.C. 14616 to establish legal criteria governing criminal history record checks for non-criminal justice purposes. The Compact Council is composed of 15 members, appointed by the Attorney General. As a general rule, the Compact Council requires the submission of fingerprints for purposes of gaining access to criminal history databases for non-criminal justice purposes.

[9] *See* 49 U.S.C. 114(f).

[10] Pub. L. 107–296, November 25, 2002, 116 Stat. 2280, codified at 18 U.S.C. 842.

[11] The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to $250,000.

(ATF) of the Department of Justice and referred, as appropriate, to the United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for "any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertains to safety." Under this exception, if DOT regulations address the transportation security issues of persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce.[12]

This exception was triggered when TSA issued the May 5 Interim Final Rule, discussed below, in coordination with the Federal Motor Carrier Safety Administration (FMCSA) and Research and Special Programs Administration (RSPA), agencies within the DOT.

C. The May 5, 2003 Interim Final Rule

To comply with the mandates of the USA PATRIOT Act, and to trigger the exception in 18 U.S.C. 845(a)(1) for the transportation of explosives, TSA issued an interim final rule in coordination with FMCSA and RSPA on May 5, 2003 (the May 5 IFR).[13] The May 5 IFR established security threat assessment standards for determining whether an individual poses a security threat warranting denial of an HME. Under the May 5 IFR, TSA determines that an individual poses a security threat if he or she: (1) Is an alien (unless he or she is a lawful permanent resident) or a U.S. citizen who has renounced his or her U.S. citizenship; (2) is wanted or under indictment for certain felonies; (3) was convicted or found not guilty by reason of insanity of any of certain felonies in military or civilian court within the past 7 years or was released from incarceration for committing any of the specified felonies within the past 5 years; (4) has been adjudicated as a mental defective or involuntarily committed to a mental institution; or (5) is considered to pose a security threat based on a review of pertinent databases.

The May 5 FIR also established conditions under which an individual who has been determined to be a security threat may appeal the determination, and procedures TSA follows when considering an appeal.[14] In addition, the May 5 IFR provides a waiver process for those individuals who otherwise could not obtain an HME due to a disqualifying felony conviction or mental defect.[15] Finally, the May 5 IFR prohibits an individual from holding, and a State from issuing, renewing, or transferring an HME for a driver unless the individual has met the TSA security threat assessment standards or has been granted a waiver.[16] The May 5 IFR was to take effect in November 2003.[17]

In the May 5 IFR, TSA requested and received comments from the States, labor organizations, and representatives of the trucking industry. In addition, TSA held working group sessions with the States to discuss potential fingerprinting systems that would achieve the statutory requirements, but would not adversely impact the States. Based on the comments received and the working sessions with the States, TSA issued a technical amendment in November 2003 to extend the date on which fingerprints and applicant information must be submitted.[18] A majority of the States could not implement the program by November, and TSA did not have statutory authority to collect fees to cover TSA's implementation costs. This technical amendment required the States to either submit fingerprints and applicant information by April 1, 2004 or request an extension of time and produce a fingerprint collection plan by April 1, 2004. All States were required to have the fingerprint collection program in place as of December 1, 2004.

In response to the November 2003 technical amendment, a majority of the States asked for an extension of time because they were not ready to begin collecting applicant information or fingerprints by April 1, 2004. Therefore, on April 6, 2004, TSA published a final rule removing the April 1 date and establishing January 31, 2005 as the date on which States must begin complying with the requirements.[19]

D. Fee Authority

On October 1, 2003, legislation was enacted authorizing TSA to collect reasonable fees to cover the costs of providing credentialing and background investigations in the transportation field, including implementation of the USA PATRIOT Act requirements.[20] Section 520 of the Department of Homeland Security Appropriations Act, 2004 (2004 Appropriations Act) authorizes TSA to collect fees to pay for the following costs: Conducting or obtaining a criminal history records check (CHRC); reviewing available law enforcement databases, commercial databases, and records of other governmental and international agencies; reviewing and adjudicating requests for waivers and appeals of TSA decisions; and any other costs related to performing the background records check or providing the credential.

Section 520 of the 2004 Appropriations Act mandates that any fee collected shall be available for expenditure only to pay for the costs incurred in providing services in connection with performing the background check or providing the credential. The fee shall remain available until expended.

II. Companion Hazmat Program Rule

In a related interim final rule (IFR), titled "Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Driver's License" RIN 1652-

[12] Explosives are among the categories of substances that are defined as hazardous materials under DOT regulations. *See* 49 CFR 383.5 and 173.50.

[13] 68 FR 23852. The rule was codified at 49 CFR parts 1570 and 1572. On the same date, the FMCSA issued a companion rule prohibiting States from issuing, renewing, transferring, or upgrading a CDL with an HME unless TSA has first determined that the individual applying for the HME does not pose a security threat warranting denial of the HME. 68 FR 23844. Because the FMCSA is a part of DOT, and because the FMCSA and TSA rules regulate the transport of hazardous materials, including explosives, with regard to safety, the exception in 18 U.S.C. 845(a)(1) is triggered.

[14] An individual may appeal a determination if the individual believes that he or she does not meet the criteria warranting revocation. For example, an individual may appeal because he or she believes the criminal record to be incorrect, or if the individual's conviction for a disqualifying criminal offense was pardoned, expunged, or overturned on appeal.

[15] Such individuals are permitted to apply for a waiver if they can demonstrate that they are rehabilitated or are no longer a danger to themselves or others.

[16] In the companion Hazmat Program Rule, discussed herein, TSA is amending the May 5 IFR to permit one security threat assessment for a transfer applicant during the period of time required in the driver's original State of issuance. For instance, if the renewal period in Virginia is once every 4 years, a driver who obtains his HME in Virginia in 2005 and moves to West Virginia in 2006, where the renewal period is once every 5 years, is required to undergo a new security threat assessment in 2009 in West Virginia, rather than within 30 days of moving into West Virginia or in 2010. The Federal Motor Carrier Safety Administration's regulations require renewing the HME at least once every five years, so drivers across the country have nearly identical renewal periods. (49 CFR 383.141(d)). Thus, there is no risk that any driver will go more that five years without a security threat assessment.

[17] An exception to this effective date was a provision in the May 5 IFR that required any holder of an HME who had committed a disqualifying offense to surrender the HME to the State by September 2003.

[18] 68 FR 63033 (November 7, 2003).

[19] 69 FR 17696 (April 6, 2004).

[20] Department of Homeland Security Appropriations Act, 2004, Section 520, Pub. L. 108–90, October 1, 2003, 117 Stat. 1137 (2004 Appropriations Act).

AA17 (the Hazmat Program Rule), that is to be issued in association with this proposed fee rule (the Fee NPRM), TSA plans to require States to choose between two fingerprint and applicant information collection options. TSA intends to require each State to either: (1) collect and transmit the fingerprints and applicant information of individuals who apply for or renew an HME; or (2) allow an entity approved by TSA (TSA agent) to collect and transmit the fingerprints and applicant information of such individuals. TSA plans to require States to notify TSA in writing of their choice within 30 days of the date the Hazmat Program Rule is published in the **Federal Register**. If a State does not notify TSA in writing of its choice by that date, TSA will assume that the State has chosen the second option and will work with the State to establish a system for a TSA agent to collect fingerprints and applicant information in the State. The State will be required to operate under the option it chooses until at least February 1, 2008.

As discussed in more detail below, the State's fingerprint and applicant information collection choice under the Hazmat Program Rule affects its obligations under the Fee NPRM and affects the fee to be charged.

III. Summary of the Proposed Rule

To comply with the mandates of Section 520 of the 2004 Appropriations Act, as well as the mandates of the USA PATRIOT Act and the SEA, TSA proposes to establish user fees for individuals who apply for or renew an HME, and thus are required to undergo a security threat assessment in accordance with 49 CFR part 1572. TSA proposes to establish two new user fees in addition to the Federal Bureau of Investigation's (FBI) fee [21] for performing the CHRC on behalf of government agencies for non-governmental applicants: (1) To cover TSA's costs of performing and adjudicating security threat assessments, appeals, and waivers (Threat Assessment Fee), and (2) to cover the costs of collecting and transmitting fingerprints and applicant information (Information Collection Fee).

Under the proposed rule, if a State opts to collect fingerprints and applicant information itself under the Hazmat Program Rule, the State would be required to (1) collect and remit to TSA the Threat Assessment Fee in accordance with the requirements of the Fee NPRM and (2) collect and remit to the FBI its user fee to perform a CHRC for matches of non-governmental applicant names against certain disqualifying criminal activity (FBI Fee). Nothing in this proposed rule would prohibit the State, under its own fee authority, from collecting a fee determined by the State to cover its costs of collecting and transmitting fingerprints and applicant information. TSA notes that a State may not collect a fee under TSA's fee authority.

If a State opts to permit a TSA agent to collect and transmit fingerprints and applicant information, the State would not be required to collect and remit to TSA *any fees* under the Fee NPRM. Rather, a TSA agent would (1) collect and remit to TSA the Threat Assessment Fee; (2) collect and remit to the FBI the FBI Fee; and (3) collect and keep the Information Collection Fee. The exact amount of the Information Collection Fee will be established by TSA, in accordance with Section 520, once all the States have determined whether to collect and transmit fingerprints and applicant information or allow a TSA agent to perform these services. These State decisions will enable TSA and a TSA agent to determine the final volume, scale, and costs of these services.

Based on the information currently available to the agency, TSA proposes the following fees: Information Collection Fee $25–$45, Threat Assessment Fee $36, and FBI Fee $22 (if TSA agent collects) or $24 (if State collects).

Pursuant to the Chief Financial Officers Act of 1990, DHS/TSA is required to review these fees no less than every two years.[22] Upon review, if it is found that the fees are either too high (*i.e.*, total fees exceed the total cost to provide the services) or too low (*i.e.*, total fees do not cover the total costs to provide the services), new fees will be proposed.

IV. Hazmat Driver Population

TSA estimates that there are currently 2.7 million HME holders throughout the United States. This estimate is based on the results of the initial name-based terrorist threat assessment recently performed by TSA on the entire current population of HME holders.[23] Each State and the District of Columbia submitted to TSA the names of all current (not expired) holders of HMEs. This estimate was based on an actual head count, rather than a statistical sampling or other estimate. However, the DOT's Bureau of Transportation Statistics (BTS) and the U.S. Department of Commerce's U.S. Census Bureau have historically estimated the number of drivers carrying hazardous materials (those drivers either carrying primarily hazardous materials or carrying such on a regular basis) to be in the range of 500,000–800,000.[24] TSA believes this disparity between the total current number of HME holders and estimated "active" or "dedicated" drivers of hazardous materials suggests that a significant portion of the HME holder population transport hazardous materials rarely or infrequently.

Due to the additional cost, effort, and the prospect of disqualification for certain felony offenses resulting from this security threat assessment, TSA expects that a certain number of current HME holders who do not actively or regularly transport hazardous materials will choose not to renew their HME over the course of the five-year renewal period. TSA bases this assumption on recent discussions with various trucking industry representatives that will be affected by TSA's security threat assessment requirement, including trucking associations, union leaders and individual trucking companies.[25] Industry representatives predict at least some decrease in the HME population as a result of TSA's security threat assessment regulation. The same industry representatives further concur that current CDL driver shortages across

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[21] The FBI is authorized to establish and collect fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes that may be used for salaries and other expenses incurred in providing these services. *See* Title II of Pub. L. 101–515, November 5, 1990, 104 Stat. 2112, codified in a note to 28 U.S.C. 534.

[22] 31 U.S.C. 3512.

[23] In July 2004, TSA used HME applicant names and biographical data to conduct threat assessments on all current HME holders. The threat assessment included entering names and biographical data in the National Crime Information Center (NCIC) database, the Interstate Identification Index (III), and other databases, such as terrorism watch lists. TSA noted its intent to conduct these threat assessments in the May 5 IFR.

[24] *Transportation Statistics Annual Reports, 2001*, p.120; *Transportation Statistics Annual Reports, 2003*, p.106; *Commodity Flow Survey: Hazardous Materials*, U.S Department of Transportation, Bureau of Transportation Statistics, U.S. Census Bureau, Economic Census, 1997, p.9; *Vehicle Inventory and Use Survey*, U.S. Department of Commerce, U.S. Census Bureau, 1997. In reaching this estimate, TSA extrapolated 1997–2003 data and applied it to current hazardous materials volume, driver, and truck estimates.

[25] To estimate the volume of HME holders expected to submit to the TSA security threat assessment processes, TSA conducted phone interviews during the months of June and July 2004 with representatives from the following organizations: American Trucking Association; Estes Express Lines; International Brotherhood of Teamsters; Motor Freight Carriers' Associations; National Private Truck Council; National Tank Truck Carriers, Inc.; and the Truckload Carriers Association.

the commercial trucking industry, coupled with the fact that drivers are not typically paid any wage premium specifically for carrying hazardous materials, further support TSA's rationale for some reduction of total HME holders due to TSA's security threat assessment process.

Empirical data suggest that there has been a decline in total HME holders over the past year. A recent TSA survey of state motor vehicle administrators, representing approximately 20 percent of the 2.7 million total HME records from the States, revealed a one-year weighted average decline of 17 percent from early 2003 to early 2004.[26] TSA believes this decline over the past year is due, at least in part, to TSA's security threat assessment regulation (announced publicly in the May 5 IFR). With the imposition of the new fees requirement, TSA estimates that there will be a 20 percent decline in the HME holder population resulting from the first year of operations after the Hazmat Program Rule takes effect on January 31, 2005, when the fingerprint and application submission and fees will be newly required of HME holders when their State-issued CDL must be renewed.

Therefore, TSA expects to receive approximately 432,000 new and renewal applications in the first year after January 31, 2005.[27] In the second and third years, TSA estimates a 5 percent annual HME population decline, for a total of approximately 410,000 and 390,000 total new and renewal applicants, respectively. After the third year, TSA estimates that the regulatory-induced adjustment on the HME holder population will have been realized. Thus, in the fourth and fifth years, TSA estimates a modest annual growth in renewals and new applications, in line with that of overall estimated domestic non-farm employment growth, at 1 percent annually. Thus, TSA expects approximately 394,000 and 398,000 total new applicants and renewals, respectively, in the fourth and fifth years. The total five-year new and renewal applicants for whom TSA expects to perform security threat assessments will thus be approximately 2.024 million. TSA requests comment on these assumptions and estimates.

FIGURE 1.—TSA'S FIVE-YEAR ESTIMATES FOR HAZMAT ENDORSEMENT HOLDER POPULATION, GROWTH AND TOTAL NEW APPLICANTS AND RENEWALS

Year	HME holder base population	Annual percentage growth	Total new applicants and renewals
	2,700,000	(1)	(1)
1	2,160,000	−20	432,000
2	2,052,000	−5	410,000
3	1,949,000	−5	390,000
4	1,969,000	1	394,000
5	1,989,000	1	398,000
Totals	(1)	(1)	2,024,000

(1) Not applicable.

V. Fee Program Overview

The fee program for the security threat assessment consists of three parts, discussed below: (A) The Information Collection Fee for the collection and transmission of fingerprints and applicant information; (B) the Threat Assessment Fee for the security threat assessment and associated notification, adjudication, appeal, and waiver processes; and (C) the FBI Fee for checking applicants' fingerprints against the FBI's CHRC database to identify past criminal offenses as reported to FBI. Each of these fees is structured to recover the Federal Government's cost of performing these functions.

TSA notes that some States may opt to collect and transmit fingerprints and applicant information under their own user fee authority. In those States, HME applicants will be required under the Fee NPRM to remit to the Federal Government only the Threat Assessment Fee and FBI Fee. Nothing in this proposed rule would prohibit the State from collecting a fee determined by the State under the State's own fee authority to cover its costs of collecting and transmitting fingerprints and applicant information. TSA notes that a State may not collect a fee pursuant to TSA's fee authority to reimburse the State's costs.

A discussion of the three fees summarized above follows.

A. Information Collection Fee

As set forth in the Hazmat Program Rule, the security threat assessment process requires all drivers who apply for or renew an HME to submit fingerprints and other biographical information. The Hazmat Program Rule is expected to require States to choose one of the following two options for collection and transmission of fingerprints and applicant information:

(1) A State may choose to collect and transmit fingerprints and applicant information itself, either through a State agency, such as the State DMV or State law enforcement agencies, or by contracting with a third party; or

(2) A State may choose to allow a TSA agent to collect and transmit fingerprints and applicant information.

1. Cost of Information Collection

As noted above, in those States that choose to allow a TSA agent to collect and transmit fingerprints and applicant information, TSA will hire a contractor agent to provide those services. Based on TSA's informal research of both commercial and government fingerprint and information collection services, TSA estimates that the per applicant fee to collect and transmit fingerprints and other required applicant data electronically will range from $25 to $45 per applicant. This range will vary based on economies of scale which depend primarily on the number of States (and thus number of annual HME

[26] This sample survey decline in total HME holders from 2003 to 2004 is also supported by the decrease in total HME records in the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Drivers License Information System (CDLIS) database. In early 2003, FMCSA reported to TSA that the CDLIS contained approximately 3.5 million total HME holders. TSA published this earlier estimate of 3.5 million total HME holders in the May 5 IFR.

[27] 432,000 is calculated by reducing 2.7 million HMEs by 20 percent, for a total of 2,160,000, and then dividing by 5 to calculate an even distribution of TSA's five-year renewal cycle requirement. HME estimates for subsequent recurring years are calculated accordingly.

new applicants and renewals) that can be serviced by one or more agents (*i.e.*, TSA's agent(s) and any agents that the States may assign on their behalf to perform such services), as well as the existing infrastructure that States currently have to process fingerprint-based background checks.[28] Also included in this estimated fee range are the costs for required administrative support such as providing application status to applicants. TSA requests comment on these estimates.

2. Information Collection Fee

Based on the above cost estimate, TSA anticipates a per applicant fee for information collection and transmission to range from $25 to $45. This fee will only apply to those HME applicants in States that have chosen to have a TSA agent perform information collection and transmission, as well as related administrative support. States that choose to perform the information collection and transmission functions themselves and charge a fee under their own user fee authority are responsible for establishing their own State fee, in accordance with their user fee criteria and requirements, to recover the costs of performing these services. TSA's final Information Collection Fee may not be the same as the fees States may establish for performing these services. The Information Collection Fee will not include the fee charged by FBI to process fingerprint identification records.

B. Threat Assessment Fee

For the TSA security threat assessment process, each applicant's information will be checked against multiple databases and other information sources so TSA can determine whether the applicant poses a security threat that warrants denial of the HME. This check searches for potential security threats, immigration status, past criminal activity and mental incompetence. The threat assessment includes an appeal process for individuals who believe the records on which TSA bases its determination are incorrect. TSA will perform all of the threat assessment functions. In addition, TSA will administer a waiver process for applicants who seek a waiver of disqualification. Individuals whom TSA has determined to pose a security threat based on reviews of pertinent databases, or who are not in the U.S. lawfully, are not eligible for a waiver.[29]

TSA requests comments on the estimated costs discussed below.

1. Start-Up Costs

TSA's effort to conduct security threat assessments on drivers with an HME will require "start-up" costs that TSA will incur before January 31, 2005, when the Hazmat Program Rule will take effect, as well as annual "recurring," costs for checks conducted in years after January 31, 2005. The start-up costs will consist of all the costs associated with start-up activities necessary to implement the program, including costs associated with the initial name-based background checks performed on the entire population of drivers that currently hold an HME. The start-up costs also will include the systems, personnel, and resources TSA will be required to bring on-line to conduct security threat assessments on applicants renewing or newly applying for a CDL with an HME.

Regardless of whether a State or a TSA agent collects and transmits fingerprints and applicant information, TSA must implement and maintain the appropriate systems, resources, and personnel to ensure that fingerprints and applicant information are "linked," and that TSA can receive and act on the results of the security threat assessment. TSA will be required to have the necessary resources to perform the security threat assessments and process appeals, requests for waivers, and notification (to the driver and the appropriate State) of all results. In addition, TSA must also be capable of archiving the results of these actions for the purpose of drivers newly applying or renewing their HME application in future years (in the case of drivers who successfully appealed a TSA background check or were granted a waiver).

TSA estimates that the total start-up cost for the Hazmat Program will be $4.76 million. This estimate includes: (i) $2.67 million for all information systems costs, including the development and deployment of TSA's Hazardous Materials Endorsement Screening Gateway (HMESG)—an information system platform that allows TSA to submit, receive, and integrate security threat assessment information from a variety of Federal, State and other sources in order to help make security threat assessment determinations, and related network and communication support costs, including access to information systems from the Association of American Motor Vehicle Administrators (AAMVA), the Law Enforcement Management System (LEMS), Interpol and required disaster recovery infrastructure; (ii) $1.89 million for Federal and contract personnel to perform various program management functions in support of program operations, including support and compliance assurance teams for the States; and (iii) $197,000 for office costs, including mailing costs and program travel. See Figure 2 below for additional details.

2. Recurring Costs

This section summarizes TSA's estimated costs of completing security threat assessments on individuals who apply for or renew an HME for each year after January 31, 2005. Recurring costs represent the resources necessary for TSA to perform ongoing security threat assessments on drivers applying for or renewing an HME as well as to maintain program infrastructure (*e.g.* technical systems). As previously stated, TSA estimates that the population of drivers who apply for or renew an HME will be 432,000 drivers for the first year. Pursuant to the Hazmat Program Rule, State DMVs will be prohibited from issuing or renewing an HME until TSA has notified the State that the driver (based on a security threat assessment) does not pose a security threat.

TSA estimates that the total annual recurring costs will be $14.19 million for the first year (*i.e.*, from January 31, 2005 to January 30, 2006) and between $13.23 million and $13.58 million per year for the second through fifth years.[30] Recurring costs will include the costs of: continued development and lifecycle maintenance of information systems; digitization of applicant biographical data; the use of databases containing citizenship, international criminal history, and other data necessary to perform a security threat assessment; Federal and contractor personnel to perform all program office functions, including support of State's activities in the program along with compliance assurance; Federal and contractor support to perform security threat assessments, and to administer and document adjudications, appeals, waivers, and compliance assurance;[31]

[28] For example, if 40 States choose to allow a TSA agent to collect fingerprints and applicant information, the TSA agent's economies of scale would be greater, and thus the Information Collection Fee would be less, than if 15 States choose this option.

[29] These threat assessment standards are contained at 49 CFR part 1572.

[30] All cost and fee estimates in recurring years are not adjusted for inflation.

[31] TSA notes that as the Hazmat Program matures, and TSA gains experience with the appeals and waiver processes, the agency may need to adjust these processes. If TSA adjusts the appeals or waiver process, the agency's costs may increase, which would necessitate an increase in the Threat Assessment Fee.

and office costs, including office space, notification mailing costs, and required program travel. See Figure 2 below for additional cost details.

3. Threat Assessment Total Costs

Based on its population and cost estimates assumptions, TSA estimates that the sum total of the start-up and first five-years' recurring costs will be $72.42 million. TSA notes that these are preliminary estimates that will continue to be refined. TSA requests comment on these estimates. Recurring years' costs are not adjusted for inflation. All figures rounded to the nearest thousand.

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Figure 2: TSA Security Threat Assessment Start-Up and Recurring Cost Estimates

All figures in thousands (000)

	Start-Up Year	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total
Estimated Annual Renewals, and New Applicants	**NA**	**432**	**410**	**390**	**394**	**398**	**2,024**
COST COMPONENTS							
Personnel-Federal & Contractor							
Personnel to staff program office	$1,858	$3,348	$3,348	$3,348	$3,348	$3,348	**$18,598**
Personnel to staff compliance teams	NA	$1,248	$1,248	$1,248	$1,248	$1,248	**$6,240**
Personnel to complete threat assessments	NA	$1,602	$1,522	$1,446	$1,461	$1,475	**$7,506**
Personnel to complete waivers & appeals processes	NA	$2,422	$2,302	$2,187	$2,209	$2,231	**$11,351**
Fee processing & analysis	NA	$132	$132	$132	$132	$132	**$660**
Legal support	NA	$132	$132	$132	$132	$132	**$660**
Interpol liaison	$33	$66	$66	$66	$66	$66	**$363**
Personnel - Federal & Contractor Subtotal	**$1,891**	**$8,950**	**$8,750**	**$8,559**	**$8,596**	**$8,632**	**$45,378**
Information Systems							
Hazardous Materials Endorsement Gateway (HMESG) Development	$1,685	$421	$169	$169	$169	$169	**$2,782**
Disaster recovery site	$600	$500	$500	$500	$500	$500	**$3,100**
HMESG operations & maintenance	NA	$421	$421	$421	$421	$421	**$2,105**
Digitization of applicant data	NA	$324	$308	$292	$295	$298	**$1,517**
Law Enforcement Mgmt. System (LEMS) access and support	$80	$80	$80	$80	$80	$80	**$480**
AAMVA system access, connectivity & maintenance	$29	$44	$44	$44	$44	$44	**$249**
Systems testing environment	$150	$15	$15	$15	$15	$15	**$225**
Access to Interpol	$125	$13	$13	$13	$13	$13	**$190**
TSA network hardware and software operational support	NA	$25	$25	$25	$25	$25	**$125**
Information Systems Subtotal	**$2,669**	**$1,843**	**$1,575**	**$1,559**	**$1,562**	**$1,565**	**$10,773**
Terrorist & Intel Analyses							
Terrorist threat analysis databases	NA	$1,836	$1,744	$1,657	$1,674	$1,690	**$8,601**
Intelligence analysis services	NA	$393	$373	$355	$358	$362	**$1,841**
Terrorist & Intel Analyses Subtotal	**NA**	**$2,229**	**$2,117**	**$2,012**	**$2,032**	**$2,052**	**$10,442**
Office							
Communications (mailings)	NA	$714	$678	$644	$650	$657	**$3,343**
Office facilities (space)	$137	$273	$273	$273	$273	$273	**$1,502**
Travel	$60	$184	$184	$184	$184	$184	**$980**
Office Subtotal	**$197**	**$1,171**	**$1,135**	**$1,101**	**$1,107**	**$1,114**	**$5,825**
Grand Totals	**$4,757**	**$14,193**	**$13,577**	**$13,231**	**$13,297**	**$13,363**	**$72,418**

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4. Threat Assessment Fee Calculation

TSA is proposing to charge a fee to recover its security threat assessment start-up costs as well as recurring costs. The start-up costs include costs related to the name check security threat assessments performed prior to January 31, 2005, for individuals who currently hold an HME as well as other non-recurring costs required to perform the recurring years' security threat assessments that include fingerprint submission. Because these costs cannot be recovered prior to the full implementation of the Hazmat Program, and because all HME recipients benefit from the services provided as a result of the infrastructure and capabilities that TSA must develop to implement the Hazmat Program, TSA proposes to amortize the start-up costs over a 5-year period to equitably recover these one-time costs.

This amortization period coincides with the requirement in the FMCSA companion rule [32] to the May 5 IFR [33] that States mandate a 5-year maximum renewal period for the HMEs. Thus, a 5-year amortization period would mean the start-up costs would be borne by all individuals who either currently hold an HME or who apply for an HME in that 5-year period. TSA notes that the amortization is done by totaling all start-up costs and the 5-year annual recurring costs and dividing by 2.024 million requests for a new or renewed HME—the total number expected in the first 5 years. (See Figure 1).

Based on the estimated costs in Figure 2, TSA has calculated the per applicant Threat Assessment Fee as follows: TSA's estimated start-up costs of $4.76 million, added to the estimated sum of the first five years' annual recurring costs of $67.66 million, equal a total of $72.42 million. These total costs are then divided by the 2.024 million total estimated number of applicants for a new or renewed HME over the first five years after January 31, 2005. This calculation results in an estimated cost to each applicant of $35.78, which is rounded to $36 per applicant.

As noted above, if a State chooses to collect and transmit fingerprints and applicant information under the Hazmat Program Rule, the State would still be required to collect the Threat Assessment Fee on behalf of TSA and remit it to TSA in accordance with the Fee NPRM. If a State chooses to allow a TSA agent to collect and transmit fingerprints and applicant information under the Hazmat Program Rule, the TSA agent would be required to collect this fee on behalf of TSA and remit it to TSA in accordance with the Fee NPRM.

C. FBI Fee

As part of the security threat assessment, TSA will use FBI's CHRC process. The FBI is authorized to establish and collect fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes that may be used for salaries and other expenses incurred in providing these services.[34] Pursuant to Criminal Justice Information Services (CJIS) Information Letter 93–3 (October 8, 1993), this fee is currently set at $24. CJIS Information Letter 93–3 provides that "State Identification Bureaus and other agencies that channel user-fee fingerprint cards to the FBI and account for the fees on a monthly basis will continue to retain $2 of the payment to help offset handling costs." Thus, in those States that opt to allow a TSA agent to collect and transmit fingerprints and applicant information, the FBI fingerprint processing charge (FBI Fee) will be $22. States that choose to collect and transmit fingerprints and applicant information on their own may charge $24 (the $22 FBI Fee plus the $2 handling costs), as long as it is consistent with CJIS Information Letter 93–3. The fingerprint processing user fee is set by the FBI, and the amount is subject to change.

VI. Total Fees

TSA proposes the following fees for HME applicants who submit fingerprints and applicant information to a TSA agent:

(1) Information Collection and Transmission Fee: $25–$45.

(2) Threat Assessment Fee: $36.

(3) FBI Fee: $22.

Thus, the total fees for such applicants would be $83–$103.

Under the Fee NPRM, in States that opt to collect and transmit fingerprints and applicant information on their own HME applicants would be required to pay the $36 Threat Assessment Fee and an FBI Fee of $22 or $24, depending on the amount charged by the State. TSA assumes that such applicants also would be required under State user fee authority to pay to the State a fee to cover the State's costs of collecting and transmitting fingerprints and applicant information. That fee should vary from State to State. Thus, TSA cannot estimate the total fees for such applicants.

VII. Section by Section Analysis

Section 1522.1 would establish the applicability of this part and definitions of terms used in this part. This part would apply to States that issue an HME, individuals who apply for a new or renewed HME, and entities that collect fees from such individuals on behalf of TSA.

The terms "commercial drivers license," "endorsement," and "hazardous materials" would be used as defined in FMCSA regulations.

The term "day" would be defined as a calendar day.

The term "FBI Fee" would be defined as the fee required for the cost of the FBI to process fingerprint identification records and name checks.

The term "hazardous materials endorsement" would be defined as the authorization for an individual to transport hazardous materials in commerce, which must be issued on the individual's commercial driver's license.

The term "Information Collection Fee" would be defined as the fee required for the cost of collecting and transmitting fingerprints and other applicant information under 49 CFR part 1572.

The term "State" would be defined as a U.S. State or the District of Columbia.

The term "Threat Assessment Fee" would be defined as the fee required for the cost of TSA adjudicating security threat assessments, appeals, and waivers under 49 CFR part 1572.

The term "TSA agent" would be defined as an entity approved by TSA to collect fingerprints in accordance with 49 CFR part 1572 and fees in accordance with this subpart.

Sections 1522.3 through 1522.9 would be reserved.

Section 1522.11 would require a State that collects fingerprints and applicant information under 49 CFR part 1572 to collect, handle, and remit to TSA the Threat Assessment Fee in accordance with the procedures in § 1522.13. Section 1522.11 would require a TSA agent that collects fingerprints and applicant information under 49 CFR part 1572 to collect the Information Collection Fee, Threat Assessment Fee, and FBI Fee in accordance with the procedures in § 1522.15. A TSA agent also would be required to remit to TSA the Threat Assessment Fee and remit to the FBI the FBI Fee in accordance with that section.

Section 1522.13 describes the procedures a State would be required to

[32] 68 FR 23843, May 5, 2003.

[33] 68 FR 23852, May 5, 2003.

[34] *See* Title II of Pub. L. 101–515, November 5, 1990, 104 Stat. 2112, codified in a note to 28 U.S.C. 534.

follow if the State chooses to collect and transmit fingerprints under the Hazmat Program Rule. Section 1522.13 would pertain only to the collection of Threat Assessment Fees to cover TSA's costs. Nothing in this regulation would prohibit a State from collecting additional fees, under its own user fee authority, to cover its costs of collecting and transmitting fingerprints and applicant information or the costs associated with collecting and remitting the FBI's CHRC fee at the time the State collects the TSA Threat Assessment Fee from HME applicants.

Paragraph 1522.13(a) would require States to impose the Threat Assessment Fee when an individual submits an application to the State for a new or renewed HME in compliance with 49 CFR part 1572. It also would establish the TSA Threat Assessment Fee at $36. Finally, it would require the individual applying for the HME to remit the Threat Assessment Fee to the State in which the individual is applying for the HME, in a form and manner approved by TSA and the State.

Paragraph 1522.13(b) would require each State to collect the Threat Assessment Fee from an individual at the time the individual submits an application for a new or renewed HME. TSA expects that as States become fully operational for purposes of this part, TSA will be receiving names frequently and far in advance of the States remitting the Threat Assessment Fee. Therefore, it is vital that the States collect the Threat Assessment Fee under this part from the applicant as the application is submitted. In addition, paragraph 1522.13(d)(8) provides that TSA does not envision issuing any refunds. Once the application is received by TSA, analysis of the application would commence immediately. Therefore, TSA incurs the costs of performing the analysis immediately. Paragraph 1522.13(b)(2) clarifies that once TSA receives an application from a State for a security threat assessment in accordance with 49 CFR part 1572, the State is liable for the Threat Assessment Fee.

Paragraph 1522.13(c) would establish requirements for the handling of Threat Assessment Fees collected by the States prior to remittance to TSA. Because the States are collecting the Threat Assessment Fees on behalf of TSA, the fees would be considered to be held in trust for the beneficial interest of the United States. Thus, States would be required to safeguard all Threat Assessment Fees collected until they are remitted to TSA. In addition, States would be required to account for Threat Assessment Fees separately. However States would be permitted to commingle such fees with other sources of revenue.

Paragraph 1522.13(d) would establish procedures for the remittance of Threat Assessment Fees to TSA. States would be required to remit all Threat Assessment Fees collected under this part to TSA on a monthly basis. Every month, TSA would issue an invoice to each State based on the number of HME applications the State has sent to TSA. For example, if a State sends TSA 100 HME applications during the month of February, TSA would bill the State $3600 (100 × $36). The State would be required to pay the invoice in full within 30 days of the date that TSA sends the invoice to the State.

The payments would be required to be remitted to TSA by electronic funds transfer, check, money order, wire, or draft, payable to the "Transportation Security Administration" in U.S. currency and drawn on a U.S. bank. States would be allowed to retain any interest that accrues on the principal amounts of the Threat Assessment Fees between the date of collection and the date the fees are remitted to TSA, not to exceed 30 days from the date that TSA sends the invoice to the State.

Paragraph (d) also would specify that TSA accept fees only from a State, not from an individual HME applicant. TSA would not issue any fee refunds, and, if a State does not remit the Threat Assessment Fees, TSA could decline to process any HME applications from that State. TSA would reserve the right to take any other appropriate action against delinquent States, as necessary.

TSA requests comments on all aspects of these proposed procedures for States.

Section 1522.15 describes the procedures that a TSA agent and an HME applicant would be required to follow if a State chooses to permit a TSA agent to collect fingerprints and applicant information under the Hazmat Program Rule. Paragraph 1522.15(a) would require an individual applying for an HME to remit the Threat Assessment Fee, FBI Fee, and Information Collection Fee to the TSA agent, in a form and manner approved by TSA, when the individual submits an application pursuant to part 1572 to the TSA agent. It also would establish the Threat Assessment Fee at $36, the FBI Fee at $22, and the Information Collection Fee at $25–$45.

Paragraph 1522.15(b) states that a TSA agent will collect the fees required under this section when an individual submits an application pursuant to 49 CFR part 1572.

Paragraph 1522.15(c) would require that fees remitted under this section be remitted to TSA by electronic funds transfer, check, money order, wire, or draft, payable to the "Transportation Security Administration" in U.S. currency and drawn on a U.S. bank. It also would specify that TSA will not issue any refunds of fees submitted under this section. Finally, it would specify that applications submitted under 49 CFR part 1572 would be processed only upon receipt of all applicable fees.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), as amended, requires consideration of the impact of paperwork and other information collection burdens imposed on the public. As provided by the PRA, 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 Office of Management and Budget (OMB) control number. TSA has determined that there are no new information collection requirements associated with this proposed rule.

TSA notes that the Hazmat Program Rule requires drivers to submit their fingerprints and other biographical information. Those requirements may be considered an information collection burden under the PRA. Since they are imposed under the Hazmat Program Rule, they will be discussed in that rulemaking.

Regulatory Analyses

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreement Act requires agencies to consider international standards, where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the

private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, TSA has determined:

1. This proposed rule is a "significant regulatory action" as defined in the Executive Order because there is significant public interest in security issues since September 11, 2001. However, TSA estimates that the proposed rule would not exceed the $100 million annual threshold that would cause it to be economically significant.

2. An initial Regulatory Flexibility Analysis suggests the proposed rule would not have a significant impact on a substantial number of small entities;

3. The proposed rule would impose no significant barriers to international trade; and

4. The proposed rule would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector in excess of $100 million annually.

Below is a summary of each section of the Fee NPRM and its respective cost impact.

Executive Order 12866 Assessment

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. TSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is significant public interest in security issues since September 11, 2001, as well as the background check requirements in the Hazmat Program Rule.

This proposed rule responds to the requirements of Section 520 of the 2004 Appropriations Act by establishing fees for the background checks TSA is required to perform by Section 1012 of the USA PATRIOT Act and Sections 1121–1123 of the SEA. The Fee NPRM would establish two fees: a user fee to cover the HME security threat assessment program and associated costs (Threat Assessment Fee) and a user fee to cover the costs of collecting and transmitting fingerprints and applicant information (Information Collection Fee). The amount of the proposed fees are $36 (Threat Assessment Fee) and $25–$45 (Information Collection and Transmission Fee) per HME applicant. There will also be a $22 fee to cover FBI's CHRC.

TSA has prepared a full regulatory evaluation for this notice of proposed rulemaking (NPRM), which is available for review in the docket of this matter. The regulatory evaluation examines the costs and benefits of the proposed rule to establish fees for security threat assessments that TSA is required to perform on individuals who apply for or renew an HME for a CDL. The results of the evaluation are summarized below.

Costs

The following sections summarize the estimated costs of the Fee NPRM. Under the Hazmat Program Rule, as described above, each State will be required to choose between two fingerprint and applicant information collection and transmission options. Each State will be required to either: (1) Collect and transmit the fingerprints and applicant information of individuals who apply for or renew an HME; or (2) allow an entity approved by TSA to complete these tasks. States will be required to notify TSA in writing of their choice within 30 days of the date the Hazmat Program Rule is published in the **Federal Register**. Because these different options have different cost impacts under the Fee NPRM—and because TSA cannot predict which option each State will choose—it is impossible to produce one accurate cost estimate for the Fee NPRM.

For the purposes of the regulatory evaluation, therefore, three scenarios will be evaluated: (1) All States decide to collect and transmit the fingerprints and applicant information of individuals who apply for or renew an HME; (2) twenty-five States choose to collect and transmit all required fingerprints and applicant information to TSA, while the remainder allows an approved TSA agent to complete the work; and (3) all States decide to allow an approved TSA agent to collect all required fingerprints and applicant information. The second scenario represents TSA's best estimate for what will happen once the Fee NPRM becomes effective and is based on communications with the States.

It is important to note that the figures detailed in this evaluation reflect only the estimated cost of determining, administering, and remitting fees associated with collecting and transmitting fingerprints and applicant information. A detailed discussion of the cost estimates can be found in the Regulatory Evaluation.

(1) State Option

If all States opt to collect fingerprints and applicant information to comply with the Hazmat Program Rule, the States would be required to (1) collect and remit to TSA the Threat Assessment Fee in accordance with the requirements of the Fee NPRM and (2) collect and remit to the FBI its user fee to perform a CHRC for matches of non-governmental applicant names against certain disqualifying criminal activity (FBI Fee). If this alternative is adopted, the total ten-year cost of the Fee NPRM in constant 2004 U.S. Dollars is estimated to be $5.3 million, and $4.0 million discounted.

(2) Best Estimate

In this estimate, it is assumed that twenty-five States will choose to comply with the Hazmat Program Rule by collecting fingerprints, fees, and applicant information themselves; the remainder of the States will allow an approved TSA agent to collect and transmit fingerprints and applicant information as well as all fees. Under these assumptions, the ten-year cost of the Fee NPRM is estimated to be $4.6 million, and $3.5 million discounted.

(3) TSA Option

If all States opt to permit a TSA agent to collect and transmit fingerprints, fees, and applicant information, the States would not be required to collect and remit to TSA any fees under the Fee NPRM. Rather, a TSA agent would collect and remit all required fingerprints, information, and fees. If all States choose this option, the ten-year cost of the Fee NPRM falls to $3.9 million, and $3.0 million discounted.

In all of these estimates, the costs of the Fee NPRM are well below the annual $100 million threshold established by EO 12866 that would cause the Fee NPRM to be identified as a major rule. A further discussion of these costs is contained in the Regulatory Evaluation.

Benefits

There are several qualitative benefits realized from the implementation of the Fee NPRM. Primarily, the Fee NPRM provides a funding mechanism for the Hazmat Program Rule, which regulates the population of hazardous materials drivers. In essence, the Fee NPRM would allow TSA to spread the costs associated with processing threat assessments in an equitable manner among the affected parties. TSA determined that creating a Fee NPRM was the most equitable, efficient, and cost effective way to fund the aforementioned Hazmat Program Rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities

(small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." TSA has tentatively determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposal would affect the States and individuals. However, States are not considered "small governmental jurisdictions," such as small towns or boroughs, and individuals are not considered "small entities" under the RFA.

Small businesses are identified as small entities under the RFA. For the purpose of this analysis, it will be assumed that the total fees associated with obtaining an HME would not exceed $100. Businesses transporting hazardous materials often incur high fixed and sunk costs. The approximately $100 in fees, therefore, measured as a percentage of the total operating costs of a typical small business working in the hazardous materials transportation industry, would not represent a significant economic burden.

TSA has tentatively determined that this proposed rule would not have a significant impact on a substantial number of small entities. TSA requests comment on this issue.

Unfunded Mandates Assessment

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written assessment is needed, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of the reasons that alternative was not adopted.

TSA has determined that this proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. As noted above in the Executive Order 12866 analysis, the costs of the Fee NPRM would be well below the $100 million annually in each of the three scenarios analyzed.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

TSA has assessed the potential effect of this rulemaking and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitive activity. This proposed rule would impact only individuals applying for a State-issued HME, not individuals with an HME issued by Canada or Mexico. TSA will continue to consult with Canada and Mexico to ensure that any adverse impacts on trade are minimized.

Executive Order 13132 (Federalism)

Executive Order 13132 requires TSA 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."

TSA has analyzed this proposed rule under the principles and criteria of Executive Order 13132. TSA notes that the requirements of this proposed rule are mandated by various statutes, including the USA PATRIOT Act, SEA, and section 520 of the Homeland Security Appropriations Act of 2004. Moreover, the Federal government, primarily through the Federal Motor Carrier Safety Administration, is already substantially involved in establishing conditions for the issuance of an HME. Accordingly, TSA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

TSA has reviewed this proposal for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action would not have a significant effect on the human environment. The proposed rule would only implement a fee structure for commercial drivers who transport hazardous materials, and thus would have no environmental consequences.

Energy Impact

TSA has assessed the energy impact of this proposal in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1522

Fees, Commercial drivers license, Criminal history background checks, Explosives, Hazardous materials, Motor carriers, Motor vehicle carriers, Security measures, Security threat assessment.

The Proposed Amendments

For the reasons set forth in the preamble, the Transportation Security Administration proposes to amend 49 CFR Chapter XII, Subchapter B as follows:

1. Add part 1522 to read as follows:

PART 1522—FEES FOR CREDENTIALING AND SECURITY THREAT ASSESSMENTS

Subpart A—Fees for Security Threat Assessments for Individuals

Subpart B—Fees for Security Threat Assessments for Hazmat Drivers

Authority: 49 U.S.C. 114, 5103a, 40113, and 46105; Pub. L. 108–90, 117 Stat. 1137.

Subpart A—Fees for Security Threat Assessments for Individuals

§ 1522.1 Scope and definitions.

(a) *Scope.* This part applies to States that issue a hazardous materials

endorsement for a commercial drivers license; to individuals who apply for or renew a hazardous materials endorsement for a commercial drivers license and must undergo a security threat assessment under 49 CFR part 1572; and to entities who collect fees from such individuals on behalf of TSA.

(b) *Terms.* As used in this part:

Commercial drivers license (CDL) is used as defined in 49 CFR 383.5.

Day means calendar day.

Endorsement is used as defined in 49 CFR 383.5.

FBI Fee means the fee required for the cost of the Federal Bureau of Investigation to process fingerprint identification records and name checks.

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

Hazardous materials endorsement (HME) means the authorization for an individual to transport hazardous materials in commerce, which must be issued on the individual's commercial drivers license.

Information Collection Fee means the fee required in this part for the cost of collecting and transmitting fingerprints and other applicant information under 49 CFR part 1572.

State means a State of the United States or the District of Columbia.

Threat Assessment Fee means the fee required in this part for the cost of TSA adjudicating security threat assessments, appeals, and waivers under 49 CFR part 1572.

TSA agent means an entity approved by TSA to collect and transmit fingerprints and applicant information in accordance with 49 CFR part 1572 and fees in accordance with this part.

§§ 1522.3–1522.9 [Reserved]

Subpart B—Fees for Security Threat Assessments for Hazmat Drivers

§ 1522.11 Fee collection options.

(a) *State collection and transmission.* If a State collects fingerprints and applicant information under 49 CFR part 1572, the State must collect and transmit to TSA the Threat Assessment Fee in accordance with the requirements of § 1522.13.

(b) *TSA agent collection and transmission.* If a TSA agent collects fingerprints and applicant information under 49 CFR part 1572, the agent must—

(1) Collect the Information Collection Fee, Threat Assessment Fee, and FBI Fee in accordance with the requirements of § 1522.15;

(2) Transmit to TSA the Threat Assessment Fee in accordance with the requirements of § 1522.15 and any other procedures approved by TSA; and

(3) Transmit to the Federal Bureau of Investigation the FBI Fee in accordance with procedures approved by TSA.

§ 1522.13 Fee procedures for collection by States.

This section describes the procedures that a State that collects fingerprints and applicant information under 49 CFR part 1572, and the procedures an individual who applies for or renews an HME for a CDL in that State, must follow for collection and transmission of the Threat Assessment Fee.

(a) *Imposition of fee.* (1) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment under 49 CFR part 1572 for an individual who applies for or renews an HME: $36.

(2) An individual who applies for a new or renewed HME must remit to the State the Threat Assessment Fee, in a form and manner approved by TSA and the State, when the individual submits the application for the HME to the State.

(b) *Collection of fees.* (1) A State must collect the Threat Assessment Fee when an individual submits an application to the State for a new or renewed HME.

(2) Once TSA receives an application from a State for a security threat assessment under 49 CFR part 1572, the State is liable for the Threat Assessment Fee.

(3) Nothing in this subpart prevents a State from collecting any other fees that a State may impose on an individual who applies for or renews an HME.

(c) *Handling of fees.* (1) A State must safeguard all Threat Assessment Fees from the time of collection until remittance to TSA.

(2) All Threat Assessment Fees are held in trust by a State for the beneficial interest of the United States in paying for the costs of conducting the security threat assessment required by 49 U.S.C. 5103a and 49 CFR part 1572. A State holds neither legal nor equitable interest in the Threat Assessment Fees except for the right to retain any accrued interest on the principal amounts collected pursuant to this section.

(3) A State must account for Threat Assessment Fees separately, but may commingle such fees with other sources of revenue.

(d) *Remittance of fees.* (1) TSA will generate and provide an invoice to a State on a monthly basis. The invoice will indicate the total fee dollars (number of applicants times the Threat Assessment Fee) that are due for the month.

(2) A State must remit to TSA full payment for the invoice within 30 days after TSA sends the invoice.

(3) TSA accepts Threat Assessment Fees only from a State, not from an individual applicant for an HME.

(4) A State may retain any interest that accrues on the principal amounts collected between the date of collection and the date the Threat Assessment Fee is remitted to TSA in accordance with paragraph (d)(2) of this section.

(5) A State may not retain any portion of the Threat Assessment Fee to offset the costs of collecting, handling, or remitting Threat Assessment Fees.

(6) Threat Assessment Fees remitted to TSA by a State must be payable to the "Transportation Security Administration" in United States currency and drawn on a United States bank.

(7) Threat Assessment Fees may be remitted by electronic funds transfer, check, money order, wire transfer, or draft.

(8) TSA will not issue any refunds of Threat Assessment Fees.

(9) If a State does not remit the Threat Assessment Fees for any month, TSA may decline to process any HME applications from that State.

§ 1522.15 Fee procedures for collection by TSA agents.

This section describes the procedures that a TSA agent that collects fingerprints and applicant information under 49 CFR part 1572 in a State, and the procedures an individual who applies for or renews an HME for a CDL in that State, must follow for collection and transmission of the Information Collection, Threat Assessment Fee, and FBI Fee.

(a) *Imposition of fees.* (1) The following Information Collection Fee is required for a TSA agent to collect and transmit fingerprints and applicant information in accordance with 49 CFR part 1572: $25–45.

(2) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment under 49 CFR part 1572 for an individual who applies for or renews an HME: $36.

(3) The following FBI Fee is required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572: the fee collected by the FBI under 28 U.S.C. 534.

(4) An individual who applies for a new or renewed HME must remit to the TSA agent the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in a form and manner approved by

TSA, when the individual submits the application required under 49 CFR part 1572.

(b) *Collection of fees.* A TSA agent will collect the fees required under this section when an individual submits an application to the TSA agent in accordance with 49 CFR part 1572.

(c) *Remittance of fees.* (1) Fees required under this section that are remitted to a TSA agent must be payable to the "Transportation Security Administration" in United States currency and drawn on a United States bank.

(2) Fees required under this section may be remitted by electronic funds transfer, check, money order, wire transfer, or draft.

(3) TSA will not issue any refunds of fees required under this section.

(4) Applications submitted in accordance with 49 CFR part 1572 will be processed only upon receipt of all applicable fees under this section.

Issued in Arlington, VA, on November 5, 2004.

David M. Stone,

Assistant Secretary.

[FR Doc. 04–25122 Filed 11–5–04; 4:02 pm]

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Federal Register

Wednesday,
November 10, 2004

Part VII

Department of the Interior

National Park Service

36 CFR Part 7
Special Regulations; Areas of the National Park System; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD29

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule will manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway for up to three winter seasons (*i.e.*, through the winter of 2006–2007)..This final rule is issued in conjunction with the Finding of No Significant Impact (FONSI) for the Temporary Winter Use Plans Environmental Assessment (EA), approved November 4, 2004, and will ensure that visitors to the parks have an appropriate range of winter recreational opportunities for the interim period. In addition, the final rule will ensure that these recreational activities are in an appropriate setting and that they do not impair park resources or values. The final rule is also necessary to allow time to collect additional monitoring data on the strictly limited snowmobile and snowcoach use. This rule provides a structure for winter use management in the parks for an interim period and is intended to reduce confusion and uncertainty among the public and local communities about winter use. These regulations require that recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound restrictions, that snowmobilers be accompanied by a commercial guide in Yellowstone, and institute new daily entry limits on the numbers of snowmobiles that may enter the parks. Traveling off designated oversnow routes remains prohibited.

DATES: This regulation is effective December 10, 2004.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Management Assistant's Office, Yellowstone National Park, (307) 344–2019.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway (parkway; collectively the parks) for several decades. In 1990, the NPS completed a Winter Use Plan for the parks, but by 1993, it was clear that winter visitation was increasing much more rapidly than the plan had projected, with peak day use exceeding 1,600 snowmobiles in both parks. This prompted the Greater Yellowstone Coordinating Committee (composed of the park superintendents and national forest supervisors) to begin data collection for the analysis of winter use within the entire Greater Yellowstone Area. Their work culminated in 1999 with a document entitled, *Winter Visitor Use Management: A Multi-Agency Assessment.*

However, in 1997, the Fund for Animals and other plaintiffs filed a lawsuit in the United States District Court for the District of Columbia, claiming, among other things, violations of the National Environmental Policy Act (NEPA) in developing the winter use plan for the parks. In October 1997, the Department of the Interior and the plaintiffs reached a settlement agreement wherein the NPS agreed, in part, to prepare an environmental impact statement (EIS) for a new winter use plan for the parks. The Final EIS was released in October 2000, and the Record of Decision was signed on November 22, 2000. The decision stated the intention of the NPS to eliminate both snowmobile and snowplane use of the parks, based on a finding that these uses (at historical and essentially unregulated levels) caused an impairment of the parks' resources and values. A final rule to implement this decision was published in the **Federal Register** on January 22, 2001.

In early December 2000, the International Snowmobile Manufacturers Association (ISMA) and several other plaintiffs (subsequently including the States of Wyoming and Montana) named the Secretary of the Interior, the Director of the National Park Service, and other officials in the Department of the Interior as defendants in a lawsuit filed in the United States District Court for the District of Wyoming. The lawsuit asked for the decision to prohibit snowmobiles to be set aside, alleging that the NPS violated NEPA and the Administrative Procedure Act (APA), among other things, in reaching the decision. The Interior Department and the NPS settled this lawsuit by agreeing to prepare a Supplemental Environmental Impact Statement (SEIS) in order to incorporate any new or additional information regarding cleaner and quieter snowmobile technology and to allow for additional public involvement in the process. On November 18, 2002, the NPS published a rule in the **Federal Register** delaying the snowmobile phase-out by one year, allowing time for completion of the SEIS. On February 20, 2003, the NPS issued the Final SEIS, which proposed to continue allowing snowmobile use under three strict conditions: (1) Winter visitation was to be limited to no more than 950 snowmobiles per day in Yellowstone; (2) all snowmobiles would have to use best available technology; and (3) snowmobilers would have to be led by trained guides. A Record of Decision was signed on March 25, 2003, and a final rule implementing the decision was published in the **Federal Register** on December 11, 2003. The new decision was challenged by the Fund for Animals and the Greater Yellowstone Coalition in the United States District Court for the District of Columbia. On December 16, 2003, the court vacated the new regulation and effectively reinstated the January 22, 2001, rule phasing out the recreational use of snowmobiles in the parks. Under the amended 2001 rule, approximately half the number of snowmobiles that would have been allowed under the 2003 rule were allowed into the parks for the 2003–2004 winter season, and snowmobiles were to be phased out entirely beginning with the 2004–2005 winter season.

Following the D.C. court's decision, ISMA and the State of Wyoming reopened their lawsuit against the Department and the NPS in the Wyoming court. On February 10, 2004, the Wyoming court issued a preliminary injunction preventing the NPS from continuing to implement the 2001 phase-out rule, and directing the park superintendents to issue emergency rules that would be "fair and equitable" to all parties. The parks" compendia were revised to allow a total of up to 780 snowmobiles per day into Yellowstone, and 140 for Grand Teton and the Parkway. In Yellowstone, the requirement that all snowmobilers travel with a commercial guide remained in effect. Thus, the 2003–2004 winter season was essentially split into two sub-seasons, with different rules regarding use of the parks in effect at different times. This created a highly uncertain atmosphere for park visitors, the local communities, and others with an interest in the parks, with many people not knowing how or whether they could visit the parks in winter. On October 14, 2004, the Wyoming Court vacated and remanded the 2000 EIS and ROD and the January 22, 2001, rule to the NPS.

Judicial proceedings are continuing in both Wyoming and Washington, DC.

Rationale for the Final Rule

This rule best balances winter use with protection of park resources to

ensure that adverse impacts from historical types and numbers of snowmobile uses do not occur. Winter use in the parks following the February 10, 2004, order of the Wyoming court demonstrates that—with strict limits on the numbers of snowmobiles allowed, the use of primarily BAT snowmobiles and commercial guiding—some level of both snowmobiles and snowcoaches can in fact be used in Yellowstone without impairing park resources and values. The decisions underlying the FONSI and this rule are based, in part, on the actual experiences of last winter. Our decision in this rule is also made with awareness that when asked to close Yellowstone to snowmobile use via legislation, a clear, bi-partisan majority of the U.S. House of Representatives explicitly voted this down. While this vote was not binding on the Department, it is informative and reflects the discretion afforded to the Secretary under the laws she administers.

The rule also demonstrates the NPS commitment to monitor and use those results to adjust the winter use program. Last winter, the NPS implemented the monitoring program that it committed to in the 2003 decision, and the results of that monitoring were used to help formulate the alternatives in the EA as well as guide the decisions being made. This rule applies the lessons learned in the winter of 2003–2004 relative to commercial guiding, which demonstrated, among other things, that 100% commercial guiding was very successful and offered the best opportunity to protect park resources and provide opportunities for visitor enjoyment. Law enforcement incidents were reduced well below historic numbers, even after taking into account reduced visitation. That reduction is attributed to the quality and success of the commercial guiding program. This rule uses strictly limited snowmobile numbers (at a level below the historical average use level for Yellowstone) combined with best available technology requirements for snowmobiles and 100% commercial guiding in Yellowstone to ensure that the impacts to park resources and values are not significant. This rule requires that all snowmobiles must remain on roads that automobiles use in the summer months, or in the case of Jackson Lake, lakes that motorized boats also use. With minor exceptions, all recreational snowmobiles in both parks would be required to meet Best Available Technology (BAT) requirements. The term "Best Available Technology" is specific to describing the air and sound emissions restrictions for snowmobiles that are operated in the three park units. This term is not similar to, nor should it be confused with, the term "Best Available Control Technology" used by the Environmental Protection Agency.

TOTAL DAILY SNOWMOBILE ENTRY LIMITS

Entrance	Commercially guided snowmobile limits	Unguided snowmobiles	Total
Yellowstone National Park			
West Entrance	400		400
South Entrance	220		220
East Entrance	40		40
North Entrance*	30		30
Old Faithful*	30		30
Total	720		720
Grand Teton National Park and the Parkway			
CDST	0	50	50
Grassy Lake Road (Flagg-Ashton Road)	0	50	50
Jackson Lake	0	40	40
Total	0	140	140

* **Note:** Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessionaire is the sole provider at both of these areas, this regulations allows the daily entry limits between the North Entrance and Old Faithful to be adjusted as necessary, so long as the total number of snowmobiles between the two entrances does not exceed 60. For example, the concessionaire could operate 25 snowmobiles at Old Faithful and 35 at the North Entrance if visitor demand warranted it. This will allow the concessionaire to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone.

The combination of strictly limited snowmobiles use and the availability of snowcoaches will provide park visitors with a range of appropriate winter recreational opportunities. The significant restrictions on snowmobile use also ensures that these recreational activities will not impair or irreparably harm park resources or values. Under this interim plan, NPS will continue to monitor and study the impacts of winter use in the parks. The interim plan is consistent with the Department of the Interior policies set forth in the February 17, 2004, memorandum from the Assistant Secretary for Fish and Wildlife and Parks to the Director of the NPS.

The winter of 2003–2004 was the first time the NPS had the opportunity to collect information on a strictly managed winter use program. This rule will allow the NPS to continue to collect additional monitoring data on strictly limited snowmobile and snowcoach use. The monitoring data is extremely important in helping the NPS understand the results of its management actions and for planning future actions. Prior to the winter of 2003–2004, the only monitoring information the NPS had on historical snowmobile use was at essentially unregulated levels with snowmobiles that were substantially more polluting and noisier. By contrast, the EIS, SEIS, and to a certain extent the EA, relied on modeling to forecast impacts. The modeling is useful for comparison purposes so that managers can understand the relative differences among alternatives, but it does not

replicate on-the-ground conditions. Monitoring measures actual outcomes. With only one winter's data on strictly managed snowmobile use, the ability of the NPS to fully understand the impacts of a strictly controlled management regime is limited. Implementing this plan will allow monitoring information to be collected for up to three additional winters.

Access by either snowmobile or snowcoach is the only feasible means of travel for most winter visitors wishing to see Yellowstone's most famous sites, including the Old Faithful area, and is also generally the only feasible means to travel to most interior areas of the park in order to enjoy cross-country skiing or snowshoeing. Of the 350 miles of roads in Yellowstone that are open to motorized vehicles in the summer, snowcoaches and snowmobiles share access to 180 miles in the winter, with snowcoaches alone using an additional 14 miles of roads.

This rule also helps support the communities and businesses both near and far from the parks and will encourage economically sustainable winter recreation programs. Snowmobile numbers allowed under this rule are below the historic peak averages, but the snowmobile limits should provide a viable program for winter access to the parks, and in combination with snowcoach access, provide the opportunity for achieving historic visitor use levels. This plan also provides certainty for park visitors, communities, and businesses by laying out a program for winter use for up to the next three winters.

Additionally, implementation of a temporary winter use plan is needed not only to comport with the results of the Wyoming and DC court decisions that vacated the 2000 and 2003 records of decision and the 2001 and 2003 implementing regulations, but also to address legal uncertainty about whether snowmobiling in these parks would return to the essentially unlimited levels afforded by the prior 1983 regulations as a result of the Wyoming court's October 2004 decision.

The current EA and the temporary winter use plan address only public recreational use in these three park units. Administrative use, including the packing of roads for snowmobile and snowcoach use by park, contractor, and concessioner employees is not covered by this winter use planning, but remains essential for park operations, including the protection of natural and cultural resources. More than 100 employees and their families live in developed areas within Yellowstone that are accessible in the winter only by oversnow vehicle. Oversnow access by these employees is critical for protection, maintenance, and preservation of park buildings and other facilities (including, for example, this winter's essential rehabilitation of the Old Faithful Inn, a 100 year-old National Historic Landmark), utility systems, historic resources, and employee health and safety. This administrative use takes place irrespective of public use. Oversnow access is also needed for wildlife monitoring and research projects that are continuing in the parks. Similarly, the temporary winter use plan and EA are not intended to address access to public and private lands in or adjacent to Grand Teton National Park. For clarity, and in accordance with 36 CFR 2.18, the rule includes provisions as to where these access routes are located.

The EA did not re-evaluate the issue of whether the use of snowplanes should be allowed on Jackson Lake (*see* page 6 of the EA). The decision to prohibit snowplanes was based on analysis provided in the 2000 Winter Use Plans Final Environmental Impact Statement and subsequently incorporated into the 2003 Final Supplemental Environmental Impact Statement analysis, which found that snowplane use impaired park resources and values. Although both of these documents have been vacated by the courts on procedural grounds, the court's decision did not preclude NPS from using that data. Because the use of snowplanes was discontinued following the 2001–2002 winter season, the NPS did not address the reinstatement of their use in the EA and concluded in the FONSI, that the use of snowplanes still impaired park resources. These regulations continue to prohibit snowplanes on Jackson Lake where they were used prior to 2001 and on Yellowstone Lake where they were never allowed.

Summary of and Responses to Public Comments

The NPS published a proposed rule on September 7, 2004, (69 FR 54072) and accepted public comments through October 7, 2004. Comments were accepted through mail, hand delivery, and through the Internet. A total of 36,715 people commented on the proposed rule, and 41,483 comment documents were received (some commentors chose to comment more than once). Eighty-six percent of the commentors sent form letters while 14% sent unique letters.

Adaptive Management

1. *Comment:* Adaptive management should be incorporated into the final rule.

Response: Adaptive management is not a direct part of the final rule; that is, during the three-year term of this rule, significant changes in numbers, BAT requirements, commercial guiding, or other aspects are not expected to be made. In part, this is to help provide some certainty to local communities, businesses, concessionaires, and park staff as to how winter use will be implemented for the next three winter seasons. Additionally, the Superintendents maintain the authority to open or close over-snow routes or modify the operating conditions under 36 CFR 1.5 and in various paragraphs in the regulations (for example 36 CFR 7/13(7)(ii)) to protect park visitors, resources and employees as needed. From a broader perspective, however, the knowledge gained through monitoring strictly limited snowmobile and snowcoach use during the interim period will contribute significantly to the development of a new long-term plan and to a long-term rule for which adaptive management could again be considered. Further, as noted in the EA, it would be impractical to implement adaptive management as provided for in the SEIS since changes under the adaptive management framework would have generally occurred after at least one or two years of monitoring, followed by a 6–12 month notification and waiting period. This could account for the entire interim period the rule is in effect.

2. *Comment:* NPS is proposing to allow a level of snowmobile use that violates the adaptive management thresholds identified in the SEIS. This is inconsistent with previous statements made by NPS that it would take action should the thresholds be exceeded. Instead of reducing snowmobile entries or tightening BAT requirements to meet the protective threshold, NPS is now choosing to allow levels of human-made noise it previously considered unacceptable and simply define these impacts as less problematic than it previously did. NPS provides no rationale for this change and shuns an alternative that would meet its natural soundscape thresholds.

Response: The adaptive management thresholds identified in the SEIS were vacated by the DC court along with the rest of the SEIS. Though NPS used such thresholds as guidelines for analysis in the EA, this rule does not incorporate adaptive management, as discussed in the prior response. Actions of the sort

suggested by the comment would be impractical during the interim period though they will be evaluated as part of the longer-term plan.

Air and Sound Emissions Requirements Consistent With Best Available Technology (BAT)

3. *Comment:* The Grassy Lake Road should be open to non-BAT snowmobiles regardless of whether they originate in the Targhee National Forest or at Flagg Ranch. The provision that allows non-BAT snowmobiles to travel eastbound from the national forest to Flagg Ranch and then return westbound, but prohibits non-BAT snowmobiles to originate at Flagg Ranch is confusing.

Response: The NPS believes that the use of BAT snowmobiles within the John D. Rockefeller, Jr., Memorial Parkway is necessary to mitigate the adverse impacts on natural soundscapes as described in the EA. However, the NPS recognizes that due to the remoteness of the area, access to Flagg Ranch for snowmobilers who are recreating in the Targhee National Forest may be necessary for obtaining fuel or supplies or to report an emergency. For these reasons, the BAT requirement is not imposed on snowmobiles originating in the Targhee.

4. *Comment:* The use of BAT snowmobiles should not be required on the Continental Divide Snowmobile Trail through Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway because this route is along a plowed highway which is open to vehicles. In addition, this route would provide recreationists from Wyoming the opportunity to ride from Wyoming to Idaho and on to West Yellowstone without traveling through Yellowstone National Park.

Response: The NPS believes that the use of BAT snowmobiles within Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway is necessary to mitigate the adverse impacts on natural soundscapes as described in the EA. Notwithstanding the fact that the route is immediately adjacent to the plowed roadway through the two park units, it is of sufficient length that the NPS believes the use of non-BAT snowmobiles would result in unacceptable impacts to the natural soundscapes. The CDST will continue to provide a link from Wyoming to West Yellowstone. As noted in the response to comment 6, NPS will allow an exception for one partial segment on the CDST.

5. *Comment:* Snowmobilers on Jackson Lake should not be required to use BAT snowmobiles because of the expense of acquiring a BAT snowmobile.

Response: The NPS recognizes that the cost of a new BAT snowmobile is currently higher than for a new non-BAT snowmobile. However, the NPS continues to believe that the EA as well as the data and analysis provided in the EIS and SEIS show that the use of non-BAT snowmobiles on Jackson Lake would result in unacceptable impacts to park visitors and could result in impairment of the natural soundscape. Therefore, the NPS could be in violation of the NPS Organic Act if it were to allow the recreational use of non-BAT snowmobiles on Jackson Lake.

6. *Comment:* The portion of the Continental Divide Snowmobile Trail through Grand Teton National Park that is located along U.S. Highway 26/287 from Moran Junction to the eastern park boundary should not be subject to BAT requirements in order to allow access to nearby public and private lands.

Response: The NPS agrees with this comment. This relatively short portion of the CDST is located immediately adjacent to the major U.S. highway serving northwest Wyoming, which carries a high volume of automobile and commercial truck traffic. The park boundary is such that the CDST over this segment is sometimes within the park and sometimes out of the park. This portion of the CDST provides access to nearby public and private lands. For a variety of practical reasons as well as to ensure access to public and private lands, this portion of the CDST will be treated like other access routes in Grand Teton and will not be subject to BAT requirements nor to the daily entrance limits.

7. *Comment:* BAT snowmobiles, which emit a lower frequency range of sound than two-stroke engines, might be quieter but could be potentially audible at greater distances than non-BAT snowmobiles.

Response: Modeling done for the SEIS indicates that BAT snowmobiles are somewhat quieter and are audible for shorter distances than non-BAT snowmobiles.

8. *Comment:* The proposed rule's BAT emissions requirements do not account for wear and tear or other modifications that have been made by users. Therefore increased emissions could result.

Response: The final rule requires the use of EPA's family emissions limits (FEL) in determining BAT compliance. The emissions limits incorporate the life cycle and durability of a snowmobile by requiring emissions tests after various periods of usage. Manufacturers take into account any increases in emissions during the snowmobile's life cycle when setting the FEL. Thus, the FEL accounts for the possibility that a snowmobile's emissions could increase after 1–3 years of use. The EPA also requires that snowmobile manufacturers conduct production line testing of snowmobiles to ensure that the FEL is not exceeded during production. Finally, this rule prohibits snowmobile owners from modifying snowmobiles in such a way that would increase air or sound emissions. This rule's requirement that all snowmobilers in Yellowstone travel with commercial guides will allow the NPS to further insure that snowmobiles are not modified in a manner that would adversely effect air or sound emissions.

9. *Comment:* NPS should require BAT for snowcoaches. Snowcoach emissions can easily be tested using a stationary vehicle exhaust gas analyzer.

Response: After further consideration of the implications of applying the BAT concept to snowcoaches, the NPS believes that the term "best available technology" should not be used with respect to snowcoaches for air and sound emission restrictions. Under this final rule, snowcoaches are not required to utilize the best commercially available technology to reduce air and sound emissions. Instead, they are required to have the emissions control equipment that was installed on the vehicle at the time it was manufactured. There are two mains reasons for this decision: the level of complexity associated with determining BAT for snowcoaches and the relatively small environmental gains expected from imposing further requirements on snowcoaches. There are a variety of different vehicles operating as snowcoaches, ranging from vans manufactured in the 1980s to the most recent model-year. Vehicles that were manufactured twenty years ago would be likely to yield higher emissions than vehicles manufactured today because of advances in emissions control technology. However, even vehicles manufactured in the same model year may produce different levels of emissions, and attempting to determine which particular emission limits the vehicles are meeting would be a very complex undertaking. The NPS believes that in the short term, determining how to regulate snowcoaches beyond what is required here is not the most pressing need. The EA, SEIS, and EIS air quality analyses indicate that the vast majority of air pollution generated in the parks results from snowmobile use. Little pollution is generated by snowcoaches as a whole, partly because their numbers are far fewer relative to snowmobiles, and also because modern coaches are far cleaner in both grams of

CO and particulate matter emissions per mile and have a greater passenger capacity. Because of the level of complexity associated with determining BAT for snowcoaches and the small gains in air quality expected as a result of such effort, the NPS has determined that there will be no further requirements with respect to snowcoach emission as part of this rulemaking. However, NPS will continue to study this issue and may consider more stringent alternatives as part of the new EIS.

10. *Comment:* There should be no exemptions from BAT for historic snowcoaches.

Response: The EA, SEIS, and EIS air quality analyses indicate that the vast majority of air pollution generated in the parks results from the historic use levels and types of snowmobiles. Little pollution is generated by snowcoaches as a whole, partly because their numbers are far fewer relative to snowmobiles, and also because modern coaches are far cleaner on both grams of CO and particulate matter emissions per mile and greater passenger capacity relative to snowmobiles. For sound emissions, the SEIS soundscape modeling noted that a group of 4 BAT snowmobiles, carrying up to 8 people total, has a distance to audibility of 5,810 feet in open terrain under average background conditions. A comparable snowcoach, potentially carrying even more passengers, is audible for only 2,630 feet under the same conditions. Historic snowcoaches are being initially exempted from any air or sound emission requirements because the NPS wishes to provide incentives to continue operation of these machines to maintain the character of winter touring, as they add to the overall winter experience. Further, because there are not very many of these vehicles operating in the parks (approximately 29), they are not expected to contribute significantly to air quality or other concerns and they provide additional options for visitors.

Daily Snowmobile Entry Limits

11. *Comment:* NPS should allow 950 snowmobiles/day after the 2004–05 season in Yellowstone. Additional snowmobile entries should be permitted in Grand Teton and the Parkway.

Response: As explained in the EA (and in the SEIS), such a number of snowmobiles would result in significant adverse impacts and would be inconsistent with the purpose and need of this EA.

12. *Comment:* NPS should have considered an option allowing between 950 and 1,200 snowmobiles/day in Yellowstone.

Response: The EA contained a reasonable range of alternatives. The EA analysis also indicates that alternative 5 (with 950 snowmobiles per day allowed in Yellowstone) would yield significant adverse impacts. Allowing use above this level would result in even greater impacts. However, other use levels will be evaluated in the long-term plan.

13. *Comment:* Retaining most of the proposed rule but reducing the proposed daily entries to the levels of the beginning of the 2003–2004 season (*i.e.*, 493 per day in Yellowstone) would be a far more reasonable alternative for the NPS to support. It would show a concern to the local businesses as well as a commitment for the health, safety, and welfare of the employees, visitors, and park resources.

Response: The NPS believes such a reduction in snowmobile numbers is not necessary to achieve the goals and objectives of the temporary plan and implementing rule based on the EA analysis. The NPS is attempting to balance appropriate visitor access and a range of recreational opportunities, subject to strict limitations, with the protection of park resources. This final rule accomplishes this goal.

14. *Comment:* The entry limits the NPS proposes in the proposed rule are mischaracterized as "strict limits." This level of snowmobiling is only a slight reduction from historic levels. Just three years ago, the NPS stated that in order to comply with its legal mandates, drastic reductions in winter visitors would be needed.

Response: The maximum daily snowmobile entry level allowed by this rule is less than half the historic average peak day for Yellowstone, and less than the historic average (mean) number of snowmobiles in the park. When combined with BAT requirements, 100% commercially guiding, nighttime use restrictions, speed limit reductions, and side-road closures, the numerical limits do represent "strict limits."

Side Roads

15. *Comment:* NPS should open all other historically open side roads to snowmobiles. Further, opening all side roads historically accessible to snowmobiles would provide better opportunity to collect monitoring data.

Response: The NPS would like to provide a variety of winter touring options, including the ability to tour areas exclusively by snowcoach. Very few park roads are open exclusively to snowcoaches (the side roads amount to approximately 14 miles of road); the side roads present the most feasible options for such opportunities. Keeping side roads closed to snowmobiles provides a valuable opportunity to compare roads open to snowmobile use with those closed to such use. Indeed, retaining this closure presents the only such monitoring opportunity in Yellowstone. In addition, the NPS wishes to provide for a range of opportunities for visitors, including opportunities for visitors riding a snowcoach to experience areas free of snowmobiles. An exception is made to allow snowmobile use on the Firehole Canyon drive in the afternoons because it is typically only used by snowcoaches in the morning. This temporal zoning achieves the objective of maintaining some areas of separation between snowmobile and snowcoach use.

16. *Comment:* NPS should not open the Firehole Canyon Drive to snowmobile use. This extends to more of the park the adverse impacts that violate NPS' legal obligations to protect park resources and visitor enjoyment. Expanding the territory impacted by snowmobile use utterly contradicts the concept of "very strict limits." Finally, opening the Firehole Canyon to snowmobile use ignores the preference expressed to NPS by the overwhelming majority of hundreds of thousands of citizens who have said they want snowmobile use eliminated in Yellowstone, not expanded.

Response: As stated above, this area is typically only used by snowcoaches in the morning. Allowing snowmobile use in the afternoon temporally zones snowcoach and snowmobile users, allowing snowcoach riders to visit the area without the presence of snowmobiles, while allowing snowmobilers the opportunity to also visit the area.

Guiding

17. *Comment:* NPS should develop training that would allow non-commercial guides (usually around 20% of daily entries) to lead groups through Yellowstone, and to permit 20% of daily entries to be non-commercial guides.

Response: Because of the timing of this rule and the commencement of the 2004–2005 winter season, it would be impossible to develop an adequate non-commercial guide training program for the upcoming winter season. In addition, it would be impractical during the winters of 2005–2006 and 2006–2007 due to the temporary nature of this rule. As noted by the EA, commercial guides have significant incentives to ensure that their group does not unacceptably disturb wildlife. The winter of 2003–2004 demonstrated that commercial guides significantly reduce law enforcement incidents and provide for a safer and high quality visitor

experience. Commercial guides have contractual obligations to the NPS and as such, risk losing their permit to operate guiding services in the park if they fail to perform adequately. Non-commercial guides, who are leading family and friends through the park, have no similar incentives or motivation. The NPS also experienced problems when it attempted to implement a non-commercial reservation system after the March 25, 2003, Record of Decision was signed. For example, some individuals in gateway communities purchased large blocks of non-commercial reservations (reservations every day of the season) with the apparent intent of reselling them to visitors or including them in a larger package for their clients. This was contrary to the purpose of the non-commercial guide reservation system. Unguided or non-commercially guided access to the parks will be addressed in the long-term winter use plan.

18. *Comment:* NPS should allow a portion of the daily usage on the CDST and Grassy Lake Road to be commercially guided.

Response: The NPS would consider allowing commercially guided use on these road segments as a portion of the daily entries authorized by this rule if the NPS determines there is a demand for the service and the service is economically feasible.

Road Grooming

19. *Comment:* The artificiality or unnaturalness of winter ecology attributable to bison use of the groomed road system is causing substantive and deleterious impacts to individual bison, the bison population, and bison habitat by allowing far more bison to survive and successfully reproduce than would exist if natural factors provided a natural control on bison population dynamics, movements, distribution patterns, and habitat use patterns. The interior bison population of Yellowstone faces an uncertain future.

Response: As stated previously, the science concerning the effects of road grooming on bison and elk is unclear, with significant disagreement among experts in the field. These issues are discussed on pages 143–145 of the EA. This is a subject of the long-term study. In the meantime there is no clear evidence that road grooming has adverse effects on bison distribution and abundance. Further, there is no dispute that the bison population is healthy.

20. *Comment:* The proposed rule should close park roads to grooming or at minimum, experimental road closures should be initiated during the next three years to collect data on bison or other wildlife use of previously groomed areas. It is unacceptable to wait another three years for a long-term plan to analyze these issues.

Response: The NPS considered including an alternative in the EA that closed park roads to grooming, but rejected it from detailed analysis in the EA. This discussion is on page 19 of the EA. The science surrounding the issue of the long-term effects of groomed roads on bison and elk is currently unclear. Experts disagree about how groomed roads affect, if at all, bison distribution and abundance. Given the scientific uncertainty surrounding these complex ecological issues, an end to the long-standing practice of road grooming is not warranted at this time, as it would effectively close much of the park to visitors, thereby preventing the NPS from allowing for the public to experience and enjoy many of the park's most significant resources. Although administrative use is not part of this winter use plan and these regulations, a total cessation of road grooming and packing would affect critical park operations, and the ability to protect park resources, and present considerable adverse effects on employee health and safety. The NPS is also in the midst of several important studies, which will provide further information to address these issues. The results of these studies will be available for a longer-term analysis of winter use in the parks.

Experimental closures of a portion of Yellowstone's road system (such as one or two road segments) would also be impractical at this time for similar reasons. Many of the side roads that are only open to snowcoaches closely parallel the main roads and would not appear to be useful for experimental closures. Also, the NPS believes it is more prudent to wait for the results of the road grooming study before considering any road closures, since it will provide important information about which road segments are most critical to bison distribution and abundance. It is currently uncertain which road segments may play the most important role in facilitating bison travel (if at all). Further, variables in weather could have great influence on bison distribution and their use of groomed roads. It would take several years of monitoring the effects of road closures to understand how weather conditions might affect bison movements. This would be beyond the interim period of this plan. Finally, experimental closures of some road segments could inhibit visitor access to some of Yellowstone's most world-renowned features.

Consistency With Laws, Policies, Executive Orders, Court Decisions, etc.

21. *Comment:* The NPS Organic Act requires that park resources be protected in an unimpaired condition. The NPS must err on the side of protecting park resources unimpaired. The EA, SEIS, and Final EIS have all shown that recreational snowmobiles impair park resources and values. Therefore, snowmobiles should be phased-out.

Response: The results from the 2003–2004 winter demonstrates that some level of snowmobile use may take place without impairing park resources. The EA analysis indicates that alternative 4, implemented by this final rule, does not impair park resources and values. The NPS believes this alternative is consistent with the Organic Act, because it best balances protection of park resources and values with allowing for appropriate public enjoyment and access to the parks.

22. *Comment:* NPS must adopt the snowcoach-only alternative in order to comply with NPS regulations, Executive Orders, and NPS Management Policies. The EA concludes that snowmobile use will continue to cause adverse effects previously considered unacceptable to air quality, public and employee health, natural quiet, wildlife, and visitor experience.

Response: Additional language has been added to the FONSI and final rule clarifying why the NPS believes this decision and rule are consistent with NPS regulations, Executive Orders, and NPS Management Policies.

23. *Comment:* The NPS has failed to provide a legitimate rationale for reversing its November 2000 decision to phase out snowmobile use. Further, there have been no significant changes that would justify allowing recreational snowmobiling in the parks.

Response: First, the results of the winter of 2003–2004 demonstrate that some level of snowmobile use can take place, and provide a rational basis for modifying the November 2000 decision. This rule balances winter use with protection of park resources to ensure that adverse impacts from historical types and numbers of snowmobile use will not occur. Strictly limited snowmobile numbers, combined with BAT requirements and requirements for commercial guiding, ensure that the impacts to park resources and values are not significant. Monitoring information from the winter of 2003–2004 demonstrates the important role these strict limitations play in protecting park resources and values. In addition, the NPS has discretion under the 1916 Organic Act to balance the protection of

park resources while providing for appropriate visitor enjoyment of the parks. This final rule reflects that balancing mandate. Finally, the 2000 decision and resulting 2001 rule were vacated by the Wyoming court.

Park Resource Issues

24. *Comment:* NPS needs to explain why it prefers larger groups that are audible farther away than small groups (though less frequently) over smaller groups that are less audible (but more frequently).

Response: Allowing larger groups reduces the overall number of such groups, which decrease the percent time oversnow vehicles (OSVs) are audible. The commentor is encouraged to read the soundscapes analysis in the EA on pages 102–117. Allowing larger groups also reduces the number of times that snowmobile groups encounter bison and other wildlife along the road.

25. *Comment:* Allowing continued employee exposure to toxic air pollutants violates the park's commitment to employee welfare and safety. Further, proposing to more than double the number of snowmobiles, despite documented violations of Agency for Toxic Substances and Disease Registry (ATSDR) Minimal Risk Levels (MRLs) for benzene and toluene, violates NPS management policies.

Response: Although it appears the now-vacated adaptive management thresholds (ATSDR MRLs) for benzene and toluene may have been exceeded during the winter of 2003–2004, no standards, including those of OSHA, the National Institute for Occupational Safety and Health, and the American Conference of Governmental Industrial Hygienists, were exceeded. There is also some uncertainty how the ATSDR standards are applied and interpreted in these settings. NPS will continue its efforts to ensure a safe work environment. The three-year interim period will provide NPS the opportunity to better understand the applicability of the ATSDR MRLs and continue monitoring employee exposure to toxic air pollutants. BAT requirements and limits on snowmobile numbers will help mitigate potential violations of ATSDR MRLs or other health standards.

26. *Comment:* The EA and proposed rule do not address NPS' obligation to protect the natural smells of the parks. At locations such as Old Faithful, when snowmobile numbers are high and/or weather conditions trap emissions, there is every reason to believe that the odor of snowmobile exhaust will build beyond the threshold.

Response: Most odors from snowmobile emissions are associated with 2-stroke engines and the combination of burned and unburned gasoline and oil that is emitted as hydrocarbon emissions. Current BAT snowmobiles are all 4-stroke, and 4-stroke engines eliminate the emission of unburned gas and oil. BAT snowmobiles reduce hydrocarbon emissions by a minimum of 90%, relative to conventional two-stroke snowmobiles. This will reduce the presence of snowmobile exhaust. However, on days when there are poor weather conditions (such as an inversion or little air movement), it is possible that the scent of 4-stroke snowmobile exhaust (similar to automobiles) may be noticeable. The three year interim period of this rule will provide the opportunity for the NPS to monitor conditions.

27. *Comment:* The proposed rule impairs visitor experience by creating more air and noise pollution, creating more congestion on park roadways, and disturbing wildlife. A rule that prohibited recreational snowmobiling would offer greater potential for visitor enjoyment than the proposed rule.

Response: The impacts to visitor experience are disclosed in the EA, which concludes that this final rule would not impair visitor experience. This rule balances protection of park resources while allowing appropriate visitor enjoyment and access to the parks. Under this rule, visitors will have greater choice about how they access the parks (*i.e.*, on snowmobiles or snowcoaches) than if snowmobiles were prohibited.

28. *Comment:* Snowmobile use impairs wildlife. The NPS should prohibit snowmobiling because of its impacts to wildlife.

Response: Last winter's experience demonstrates that wildlife are not necessarily impaired by snowmobile use. This rule requires that all snowmobilers travel with a commercial guide, which will mitigate impacts to wildlife. NPS has concluded that the rule will not result in impairment. Using guides that have training and expertise riding with winter wildlife, and a professional obligation to obey NPS regulations, are the most efficient means to educate riders and ensure compliance with park rules. Authorized guide companies, each responsible for the activities of their tour groups, can reduce impacts by: Keeping their groups an appropriate distance from wildlife, ensuring that all members of the group abide by snowmobile regulations including abiding by posted speed limits, preventing riders from approaching animals, and reducing noise levels and the time a group interacts with a group of animals. Professional guide services with contractual obligations also permit more effective enforcement by NPS rangers and business management personnel. One study noted in the EA found that recreationists often believed that it was acceptable to approach wildlife more closely than the data indicated the animals would tolerate. Thus, the education and supervision provided to groups by their commercial guides is key in reducing disturbance to wildlife. Effects to wildlife are further mitigated by the Superintendent's current requirement that OSVs only travel between 7 a.m. and 9 p.m.

Miscellaneous

29. *Comment:* The proposed rule, based on the EA, violates NEPA because there are significant impacts to the human environment.

Response: The NPS believes this rule is supported by the FONSI. While there will be impacts to park resources that are adverse, they are no greater than moderate in intensity. NPS training and practice supports the use of a FONSI at moderate levels of impact. Although this rule is of a temporary duration, the finding is based on the actual impacts during those three years and does not rest solely on the fact that the rule is only effective for three years.

30. *Comment:* The proposed rule on winter use is not written clearly, as required by Executive Order 12866. Specifically, the discussion on BAT and the economic analysis are highly technical.

Response: Snowmobile technology and economic analyses are inherently highly complex issues. We would encourage the reader to review the pages in the EA where broader discussions of these topics occur.

Issue: Several commentors did not agree with the requirement that only people with valid driver's licenses be allowed to operate a snowmobile in the parks. There is no evidence that children with a learner's permit cause problems driving snowmobiles.

NPS Response: In ordinary circumstances with automobiles, individuals possessing learner's permits are required to be accompanied by a fully licensed driver. Learner's permits are intended to allow student drivers the opportunity to safely learn positive driving habits while in the presence of an adult. However, operation of snowmobiles in Yellowstone is a totally different environment. In fact, past experience is that children with learner's permits often will ride on a

snowmobile by themselves, with adults on other snowmobiles that would be some distance away. The park and visitors will be safer by requiring that all snowmobile operators have driver's licenses.

31. *Comment:* Snowmobile and snowcoach contracts or permits should be offered to all qualified applicants at least through this interim rule.

Response: Concessions contracting issues are beyond the scope of this rulemaking. However, NPS regulations governing concessioners require that all businesses operating in the parks have a contract with the NPS. The number of concessions contracts issued is limited in order to provide a viable economic opportunity to authorized concession providers. Therefore, the NPS could not allow an unlimited number of concessions contracts.

32. *Comment:* Every snowmobile operating within the State of Wyoming is required to display a resident or non-resident user fee sticker and those available for rent must display a Wyoming commercial snowmobile registration. This should be required in Yellowstone and Grand Teton National Park.

Response: This State law is not applicable within Yellowstone National Park as a result of its exclusive Federal jurisdiction status. In Grand Teton National Park and the Parkway, where the NPS holds concurrent jurisdiction with the State of Wyoming, State law is assimilated so long as it does not conflict with Federal regulations. This final rule allows snowmobile owners to display a valid snowmobile registration from any State or Canadian province. Owners may choose to register their snowmobiles in Wyoming.

33. *Comment:* Publishing a proposed rule before the EA's public comment period was completed demonstrates that the NPS predetermined the outcome of this process.

Response: Publishing the proposed regulation concurrently with the public review of the EA provides the public with the opportunity to comment and potentially affect in a substantive manner both actions, since no final decisions have been made. This enhances the public's ability to participate in agency decisionmaking, while at the same time streamlining the process so that it can be completed in time to provide the public with adequate notice prior to the start of the winter use season.

34. *Comment:* The rule should re-evaluate the issue of snowplanes on Jackson Lake. The NPS has failed to supply a reasoned analysis for total elimination of snowplane use.

Response: The NPS continues to believe that the data and analysis in previous environmental analyses remain valid and again concluded in the FONSI that the use of snowplanes on Jackson Lake would result in impairment of the natural soundscape. The NPS is not aware of any new or additional information regarding snowplanes that would suggest any different conclusion. Therefore, the NPS would be in violation of the NPS Organic Act if it were to allow the recreational use of snowplanes on Jackson Lake. In addition, with their unguarded propellers and high travel speeds, snowplanes present unacceptable safety risks, even on the surface of Jackson Lake.

35. *Comment:* The NPS should allow for up to 70 snowmobiles per day on Jackson Lake on Fridays, Saturdays, and Sundays, and should allow for a 5-year phase-in period for BAT snowmobiles on the lake.

Response: The NPS will monitor the amount of use on Jackson Lake and collect data on the impacts of snowmobiles on natural soundscapes. This information will be used in the development of a long-term plan and will help to determine whether higher (or lower) daily entry limits should be established. A 5-year phase-in period for BAT snowmobiles exceeds the length of time that this rule is intended to cover and would be inconsistent with the NPS' determination that the use of non-BAT snowmobiles causes unacceptable impacts on the natural soundscape of Jackson Lake and Grand Teton National Park.

Changes to the Final Rule

After taking the public comments into consideration, and after additional internal review, four changes were made to the final rule. These changes are as follows:

First, we have added a footnote to table 1 in § 7.13 noting that entry limits at Yellowstone National Park's North Entrance and at Old Faithful may be reallocated as necessary so long as the total number of snowmobiles authorized on any single day for these two sites does not exceed 60. We are allowing this because commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. This allows the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone. It also benefits visitors using other concessioners and entering at other locations, if they choose to stay overnight at Old Faithful or Mammoth Hot Springs (near the North Entrance). These visitors will have greater options for guided snowmobile tours given this change, since the daily entry limits can be adjusted (as long as they do not exceed 60 snowmobiles) to meet changing demand.

Second, paragraph (g)(3) of § 7.22 has been modified to specify that snowmobile use on routes used to access other public lands or private property within or adjacent to Grand Teton National Park is not subject to the three-year interim period of this rule. These snowmobile routes are not used for recreational purposes and are generally not subject to the winter use planning process. Because their impacts are low, NPS we never intended to sunset these routes after three winter seasons.

Third, we are allowing the use of non-BAT snowmobiles on the section of the Continental Divide Snowmobile Trail (CDST) in Grand Teton National Park from the park's east boundary to Moran Junction. This portion of the CDST is located immediately adjacent to the major U.S. highway serving northwest Wyoming, which carries a high volume of automobile and commercial truck traffic. The park boundary is such that the CDST over this segment is sometimes within the park and sometimes out of the park. This portion of the CDST also provides access to nearby public and private lands. For a variety of practical reasons as well as to ensure access to public and private lands, this portion of the CDST will not be subject to BAT requirements nor to the daily entrance limits. This route has been identified under paragraph (g)(16) (iii) in § 7.22.

Fourth, in paragraph (g)(16) of § 7.22, we have specified that BAT requirements do not apply to snowmobiles using the routes listed in that paragraph. This was inadvertently omitted from the proposed rule. The purpose of the three access routes identified in this paragraph is to provide access to other areas outside of Grand Teton National Park, where BAT snowmobiles are not required. They are relatively short road segments through the park with relatively infrequent use. This change makes paragraph (g)(16) consistent with paragraph (g)(18), which states that BAT snowmobiles are not required to access private property within or adjacent to Grand Teton National Park.

Summary of Economic Analysis

This analysis examines five alternatives for temporary winter use plans in the Greater Yellowstone Area

(Yellowstone National Park, Grand Teton National Park, and John D. Rockefeller, Jr., Memorial Parkway). Alternative 1 would permit snowcoachs only, banning recreational snowmobile use within the parks. Alternative 1 is similar to the conditions expected under the January 2001 final rule. Alternative 2 would emphasize snowcoach access while allowing some snowmobile use with 100% commercially guided trips. That alternative is similar to the conditions experienced during the 2003–2004 winter season. Alternative 3 balances snowmobile and snowcoach access, and permits 20% unguided trips in Yellowstone. Alternative 4 allows more snowmobile use than Alternative 3, but requires 100% commercially guided trips in Yellowstone. Alternative 4 is the preferred alternative. Finally, Alternative 5 allows more snowmobile use than Alternative 4, and permits 20% non-commercially guided trips in Yellowstone. Alternative 5 is similar to the conditions expected under the December 2003 final rule.

This analysis estimates the benefits and costs associated with the 5 alternatives relative to two baselines: Alternative 1, which would ban snowmobiles, and historic snowmobile use as represented by the 1997–1998 winter season. The rationale for using these two baselines flows from two regulatory actions and three Federal district court rulings. NPS issued a special regulation on January 22, 2001, phasing in a snowmobile ban. In settling a law suit filed by the International Snowmobile Manufacturers' Association and other plaintiffs regarding that regulation, NPS agreed to re-evaluate its winter use plan alternatives, and subsequently issued a special regulation on December 11, 2003, permitting snowmobile use subject to certain management restrictions. On December 16, 2003, the Washington, DC, District Court issued a ruling overturning the December 2003 regulation and implementing the January 2001 regulation. Following that ruling on February 10, 2004, the Wyoming District Court issued a preliminary injunction against implementing the January 2001 regulation. That injunction was followed by an October 15, 2004, ruling from the same court overturning the January 2001 regulation.

These two rulings potentially imply the two baselines used in this analysis. In order to cover the potential range of analysis suggested by these rulings, NPS used Alternative 1 and historic snowmobile use as alternative baselines to estimate the benefits and costs of its proposed temporary winter use plan alternatives. NPS believes that the actual economic impacts of the proposed temporary winter use plan alternatives fall within the range of benefits and costs estimated relative to these two baselines.

The quantitative results of the benefit-cost analysis are summarized below with respect to Alternative 1 and the historical baselines, respectively. It is important to note that this analysis could not account for all costs or benefits due to limitations in available data. For example, the costs associated with adverse impacts to park resources and with law enforcement incidents are not reflected in the quantified net benefits presented in this summary. It is also important to note that the benefit-cost analysis addresses the economic efficiency of the different alternatives and not their distributive equity (*i.e.*, does not identify the specific sectors or groups on which the majority of impacts fall). Therefore, additional explanation is required when interpreting the results of this benefit-cost analysis. An explanation of the selection of the preferred alternative is given following the summaries of quantified benefits and costs.

Quantified Benefits and Costs Relative to the Alternative 1 Baseline

The primary beneficiaries of Alternatives 2, 3, 4, and 5 relative to the Alternative 1 baseline are the park visitors who ride snowmobiles in the park and the businesses that serve them such as rental shops, restaurants, gas stations, and hotels. Overall, Alternative 5 should provide greater quantified benefits to snowmobiles than Alternatives 2 through 4. The daily caps on snowmobile use vary across the four alternatives, with Alternative 5 allowing the most snowmobiles per day into the parks. Alternatives 2, 3 (in 2004–2005), and 4 require snowmobilers to be part of a commercially guided tour, which is expected to reduce benefits to snowmobilers who prefer unguided tours or who face additional expenses from being forced to take a guided tour. Alternatives 3 (in 2005–2006 and beyond) and 5 allow for at least 20% of the tours to be unguided or led by non-commercial guides, which may somewhat mitigate the potential loss in benefits associated with the commercial guided tour requirement.

The primary consumer group that would incur costs under Alternatives 2, 3, 4, and 5 would be the park visitors who do not ride snowmobiles. Out of the set of alternatives that allow for continued snowmobile access to the parks, Alternative 2 is expected to impose the lowest costs on non-snowmobile users because of the lower daily limits and the commercially guided tour requirements.

Alternative 5 is expected to provide the greatest benefits to local businesses because it places the least restrictions on snowmobilers and is expected to result in the largest increase in visitation. Alternatives 2 and 4 are the most restrictive options for snowmobilers (primarily due to the requirement that all snowmobilers in Yellowstone must be on commercially guided tours) and are expected to result in the smallest increase in visitation relative to the Alternative 1 baseline among Alternatives 2 through 5.

Based on the results of this analysis, the losses to non-snowmobilers generally outweigh the gains to snowmobilers and local businesses. However, there are a number of uncertainties that may influence this result. The most important factor is that this analysis uses the estimated losses to non-snowmobilers in Yellowstone to estimate the losses to non-snowmobilers in Grand Teton. This may overstate the losses to non-snowmobilers in Grand Teton because there is less snowmobile use in Grand Teton than in Yellowstone, which may imply that non-snowmobilers are less affected by their presence. Snowmobile use and non-snowmobile activities tend to occur in separate areas of Grand Teton, while there is much more overlap in the areas used by these visitors in Yellowstone. In addition, the study design did not describe whether all the snowmobiles were on guided tours. The effect of this on the conclusion of the results is unknown. Finally, the underlying study measured visitor's preferences as compared to hypothetical alternatives. The responses to the survey could differ from actual behavior.

The present values of quantified net benefits (benefits minus costs) are presented in Table 1 for the Alternative 1 baseline. As noted above, these quantified net benefits do not account for certain costs associated with the protection of park resources or with law enforcement incidents. Further, these quantified net benefits do not reflect potentially significant distributive impacts on local communities. For example, the regional economic analysis that was done as part of the Temporary Winter Use Plans Environmental Assessment (NPS, August 2004) show that Alternative 4 resulted in the second highest economic gains to the area businesses as compared to Alternative 1. While this type of analysis only estimates the effects to local businesses rather than to society as a whole (which is reflected in the results below), it provides useful information about the

rule's estimated effects in the surrounding communities. The regional economic analysis shows that Alternative 5 resulted in the highest gain to area businesses, but that alternative was not chosen due to its non-monetized effects on the parks' resources. The amortized quantified net benefits per year are presented in Table 2 for the Alternative 1 baseline.

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Table 1
Total Present Value of Quantified Net Benefits for the Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007 Relative to the Alternative 1 Baseline

	Total Present Value of Quantified Net Benefits
Alternative 2	
Discounted at 3%[a]	-$31,413,190 to -$13,561,920
Discounted at 7%[a]	-$29,120,810 to -$12,567,170
Alternative 3	
Discounted at 3%[a]	-$37,500,110 to -$15,445,220
Discounted at 7%[a]	-$34,852,390 to -$17,485,480
Alternative 4	
Discounted at 3%[a]	-$40,256,520 to -$19,906,990
Discounted at 7%[a]	-$37,331,330 to -$18,469,380
Alternative 5	
Discounted at 3%[a]	-$34,730,530 to -$8,600,760
Discounted at 7%[a]	-$32,203,250 to -$7,977,670

[a]Office of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

Table 2
Amortized Quantified Net Benefits per Year for the Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007 Relative to the Alternative 1 Baseline

	Amortized Quantified Net Benefits per Year[b]
Alternative 2	
Discounted at 3%[a]	-$11,105,520 to -$4,794,550
Discounted at 7%[a]	-$11,096,530 to -$4,788,740
Alternative 3	
Discounted at 3%[a]	-$13,257,430 to -$5,460,350
Discounted at 7%[a]	-$13,280,560 to -$5,519,720
Alternative 4	
Discounted at 3%[a]	-$14,231,902 to -$7,037,730
Discounted at 7%[a]	-$14,225,165 to -$7,037,790
Alternative 5	
Discounted at 3%[a]	-$12,278,300 to -$3,040,630
Discounted at 7%[a]	-$12,271,100 to -$3,039,900

[a]Office of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.
[b]This is the present value of quantified net benefits reported in Table 1 amortized over the three-year analysis timeframe at the indicated discount rate.

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Quantified Benefits and Costs Relative to the Historical Use Baseline

The primary losses under Alternatives 1 through 5 relative to the historical use baseline accrue to the park visitors who ride snowmobiles in the parks and the businesses that serve them. Overall, Alternative 1 would impose greater losses on snowmobilers since it would ban snowmobiles in the parks. The losses associated with Alternatives 2 through 5 are less since those alternatives would allow some level of snowmobile use. Alternatives 2 and 4 would also require 100% commercially guided tours. That feature is expected to increase losses to snowmobilers who prefer unguided tours or who face additional expenses from being forced to take commercially guided tours.

The primary beneficiaries of Alternatives 1 through 5 would be the park visitors who do not ride snowmobiles. Alternative 1 would yield the greatest benefits for non-snowmobilers. Out of the set of alternatives allowing continued snowmobile access to the parks, Alternative 2 is expected to generate the largest gains for non-snowmobilers because of the lower daily limits, stricter technology requirements, and the commercially guided tour requirement. Alternative 4 is expected to generate only slightly lower gains for non-snowmobile users than Alternative 2, with the biggest difference between Alternatives 2 and 4 coming from the higher daily use limits under Alternative 4.

For businesses, the losses relative to the historical use baseline are expected to be ordered in the same way as losses accruing to snowmobilers because they are driven largely by the number of visitors. Alternative 1 is expected to have the greatest negative impact on local businesses because it places the highest restrictions on snowmobilers and is expected to result in the largest decrease in visitation. Alternative 5 is the least restrictive option for snowmobilers and is expected to result in the smallest decrease in visitation.

Based on the results of this analysis, the gains to non-snowmobilers generally outweigh the losses to snowmobilers and local businesses. However, as noted in the summary of benefits and costs relative to the Alternative 1 baseline, there are a number of uncertainties that may influence this result.

The present values of quantified net benefits (benefits minus costs) are presented in Table 3 for the historical use baseline. As noted above, these quantified net benefits do not account for certain costs associated with the protection of park resources or with law enforcement incidents. Further, these quantified net benefits do not reflect potentially significant distributive impacts on local communities. For example, the regional economic analysis that was done as part of the Temporary Winter Use Plans Environmental Assessment (NPS, August 2004) show that Alternative 4 resulted in the second lowest economic losses to the area businesses as compared to the historical use baseline. While this type of analysis only estimates the effects on local businesses rather than to society as a whole (which is reflected in the results below), it provides useful information about the economic impact to the surrounding communities. The regional economic analysis shows that Alternative 5 resulted in the lowest losses to area businesses, but that Alternative was not chosen due to its non-monetized effects on the parks' resources. The amortized quantified net benefits per year are presented in Table 4 for the historical use baseline.

Table 3
Total Present Value of Quantified Net Benefits for the Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007 Relative to the Historical Use Baseline

	Total Present Value of Quantified Net Benefits
Alternative 1	
Discounted at 3%[a]	$122,314,860 to $130,820,690
Discounted at 7%[a]	$113,396,820 to $121,284,230
Alternative 2	
Discounted at 3%[a]	$87,375,260 to $92,043,960
Discounted at 7%[a]	$81,003,340 to $85,333,060
Alternative 3	
Discounted at 3%[a]	$76,771,740 to $81,118,430
Discounted at 7%[a]	$71,155,010 to $75,200,030
Alternative 4	
Discounted at 3%[a]	$75,276,170 to $79,983,340
Discounted at 7%[a]	$69,786,780 to $74,152,310
Alternative 5	
Discounted at 3%[a]	$77,031,890 to $81,224,360
Discounted at 7%[a]	$71,414,700 to $75,302,790

[a]Office of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

Table 4
Amortized Quantified Net Benefits per Year for the Winter Use Plans in the Greater Yellowstone Area 2004-2005 through 2006-2007 Relative to the Historical Use Baseline

	Amortized Quantified Net Benefits per Year[b]
Alternative 1	
Discounted at 3%[a]	$43,242,020 to $46,249,090
Discounted at 7%[a]	$43,210,050 to $46,215,560
Alternative 2	
Discounted at 3%[a]	$30,889,810 to $32,540,340
Discounted at 7%[a]	$30,866,460 to $32,516,310
Alternative 3	
Discounted at 3%[a]	$27,141,140 to $28,677,830
Discounted at 7%[a]	$27,113,740 to $28,655,100
Alternative 4	
Discounted at 3%[a]	$26,612,410 to $28,276,540
Discounted at 7%[a]	$26,592,370 to $28,255,860
Alternative 5	
Discounted at 3%[a]	$27,233,110 to $28,715,280
Discounted at 7%[a]	$27,212,690 to $28,694,250

[a]Office of Management and Budget Circular A-4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.
[b]This is the present value of quantified net benefits reported in Table 3 amortized over the three-year analysis timeframe at the indicated discount rate.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It 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. These conclusions are based on the report "Economic Analysis of Temporary Regulations on Snowmobile Use in the Greater Yellowstone Area" (RTI International, October 2004).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS has been the subject of numerous lawsuits regarding winter use management.

Regulatory Flexibility Act

The Department of the Interior has determined that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore a Regulatory Flexibility Analysis has been conducted. The information is contained in the report entitled "Economic Analysis of Temporary Regulations on Snowmobile Use in the Greater Yellowstone Area" (RTI International, October 2004). The report is available on the Yellowstone Web site.

From the point of view of small businesses, Alternative 5 and potentially Alternative 3 might be marginally better for small businesses depending on how popular commercially guided tours turn out to be, because they may result in higher visitation than Alternative 4. However, for reasons described in Section 1 of the Economic Analysis and the August 2004 Temporary Winter Use Plans Environmental Assessment, NPS has decided that all snowmobiles should be commercially guided. Compared to Alternative 2, Alternative 4 would be better for small businesses because of the higher daily entrance limits, thus potentially increasing revenue generated by higher snowmobile visitation to the parks.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does 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. This rulemaking has no effect on methods of manufacturing or production and specifically affects the

Greater Yellowstone Area, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

An Environmental Assessment and a Finding of No Significant Impact (FONSI) have been completed. The EA and FONSI are available for review by contacting Yellowstone or Grand Teton Superintendent Offices or at *www.nps.gov/yell/winteruse-ea.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

The NPS has evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the previous SEIS. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Drafting Information: The primary authors of this regulation were Kevin Schneider, Outdoor Recreation Planner, and John Sacklin, Management Assistant, Yellowstone National Park; Gary Pollock, Management Assistant, Grand Teton National Park; and Kym Hall, Special Assistant, National Park Service, Washington DC.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ 36 CFR part 7 is amended as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); § 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Amend § 7.13 to revise paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (1)(17) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (1)(2) through (l)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* This paragraph also applies to non administrative snowmobile use by the NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

Commercial guide means a guide who operates as a snowmobile guide for a fee or compensation and is authorized to operate in the park under a concession contract. In this regulation, "guide" also means "commercial guide."

Historic snowcoach means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

Oversnow route means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

Oversnow vehicle means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach or a snowplane must comply with all requirements applicable to snowmobiles.

Snowcoach means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers.

Snowplane means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* (i) You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) is in effect only through the winter season of 2006–2007.

(4) *May I operate a snowcoach in Yellowstone National Park?* (i) Commercial snowcoaches may be operated in Yellowstone National Park under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the applicable EPA emission standards for the vehicle at the time it was manufactured.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(iv) of this section.

(vi) Historic snowcoaches are not required to meet air emissions restrictions.

(vii) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) is in effect only through the winter season of 2006–2007.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have been shown to have emissions no greater than the limits specified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A) as measured at full throttle using test procedures similar to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where must I operate my snowmobile in Yellowstone National Park?* (i) You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season of 2006–2007:

(A) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(B) Norris Junction to Canyon Junction.

(C) The Grand Loop Road from Norris Junction to Madison Junction.

(D) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(E) The Grand Loop Road from Madison Junction to West Thumb.

(F) The South Entrance Road from the South Entrance to West Thumb.

(G) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(H) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(I) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(J) The South Canyon Rim Drive.

(K) Lake Butte Road.

(L) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(M) Firehole Canyon Drive between noon and 9 p.m. each day.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(M) of this section and the following additional oversnow routes through the winter season 2006–2007:

(A) Firehole Canyon Drive.

(B) Fountain Flat Road.

(C) Virginia Cascades Drive.

(D) North Canyon Rim Drive.

(E) Riverside Drive.

(F) That portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?

(i) All recreational snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(10) *Are there limits established for the numbers of snowmobiles permitted to operate in the park each day?* The numbers of snowmobiles allowed to operate in the park each day is limited to a certain number per entrance or location. The limits are listed in the following table:

TABLE 1 TO § 7.13.—DAILY SNOWMOBILE LIMITS

Park entrance/location	Total number of commercially guided snowmobile allocations
(i) YNP—North Entrance* ...	30
(ii) YNP—West Entrance	400
(iii) YNP—South Entrance ..	220
(iv) YNP—East Entrance	40
(v) YNP—Old Faithful*	30

*These limits may be reallocated between these two areas as necessary, so long as the total daily number of snowmobiles for the two areas does not exceed 60.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Expect for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employee, or other non-recreational users as authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations contained in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is not subject to §§ 2.18 (b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR part 1.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(16) *May I operate a snowplane in Yellowstone?* The operation of a snowplane in Yellowstone is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

■ 3. Amend § 7.21 to revise paragraph (a) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

(a)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (a)(2) through (a)(17) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(17) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Parkway?* (i) You may operate a snowmobile in the Parkway in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in the Parkway established in paragraph (a)(3)(i) is in effect only through the winter season 2006–2007.

(4) *May I operate a snowcoach in the Parkway?* (i) Commercial snowcoaches may be operated in the Parkway under a concessions contract. Non-commercial snowcoaches may be operated if

authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the applicable EPA emission standards for the vehicle at the time it was manufactured.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emission-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(iv) of this section.

(vi) Historic snowcoaches are not required to meet air emissions restrictions.

(vii) The authority to operate a snowcoach in the Parkway established in paragraph (a)(4)(i) is in effect only through the winter season of 2006–2007.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound requirements as set forth in this section may be operated in the Parkway. The Superintendent will approve snowmobile makes, models and year of manufacture that meet those restrictions. Any snowmobile model not approved by the superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the restrictions identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle using test procedures similar to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions restrictions shall not apply to snowmobiles originating in the Targhee National Forest and traveling on the Grassy Lake Road to Flagg Ranch. However these snowmobiles may not travel further into the Parkway than Flagg Ranch unless they meet the air and sound emissions and all other requirements of this section.

(iv) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where must I operate my snowmobile in the Parkway?* (i) You must operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season of 2006–2007:

(A) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway north to the Snake River Bridge.

(B) Along U.S. Highway 89/287 from the Snake River Bridge to the northern boundary of the Parkway.

(C) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(D) Flagg Ranch developed area.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated through the winter season of 2006–2007 on the route designated for snowmobile use in paragraph (a)(7)(i)(B) of this section. No other routes are open to snowcoach use.

(ii) The Superintendent may open or close this oversnow route, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in the Parkway, and what other guiding requirements apply?* All recreational snowmobile operators using the oversnow route along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the parkway must be accompanied by a commercial guide. A guide is not required in other portions of the Parkway.

(i) Guided snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(ii) Guided snowmobile parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(10) *Are there limits established for the numbers of snowmobiles permitted to operate in the Parkway each day?* (i) The numbers of snowmobiles allowed to operate in the Parkway each day is limited to a certain number per road segment. The limits are listed in the following table:

TABLE 1 TO § 7.21.—DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Total number of snowmobile entrance passes
(ii) GTNP and the Parkway—Total Use on CDST *	50
(iii) Grassy Lake Road (Flagg-Ashton Road)	50

TABLE 1 TO § 7.21.—DAILY SNOWMOBILE ENTRY LIMITS—Continued

Park entrance/road segment	Total number of snowmobile entrance passes
(iv) Flagg Ranch to Yellowstone South Entrance	220

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this trail in both parks.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle operator's license. The license must be carried by the driver at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect parkway resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobiles use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles is not subject to §§ 2.18(d), (e), and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR part 1.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(16) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (a)(1) through (a)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

■ 4. Amend § 7.22 to revise paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent

(2) *What terms do I need to know?* All the terms in § 7.13(l)(1) of this part apply to this section. This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Grand Teton National Park?* (i) You may operate a snowmobile in Grand Teton National Park in compliance with use limits, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Grand Teton National Park established in paragraph (g)(3)(i) is in effect only through the winter season of 2006–2007, except for the routes designated in paragraphs (g)(16) and (18) of this section, for which it will remain in effect.

(4) *May I operate a snowcoach in Grand Teton National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the superintendent.

(5) *Must I operate a certain model of snowmobile in the park?* Only

commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in Grand Teton?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle using procedures similar to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where must I operate my snowmobile in the park?* (i) You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use through the winter season 2006–2007:

(A) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must possess a valid Wyoming fishing license and the proper fishing gear. Snowmobiles may only be used to travel to and from fishing locations on the lake.

(B) The Continental Divide Snowmobile Trail along U.S. 26/287 from Moran Junction to the eastern park boundary and along U.S. 89/287 from Moran Junction to the north park boundary.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel, and may establish separate zones for motorized and non-motorized use on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Must I travel with a commercial guide while snowmobiling in Grand Teton National Park?* You are not required to use a guide while snowmobiling in Grand Teton National Park.

(9) *Are there limits established for the numbers of snowmobiles permitted to operate in the park each day?* The numbers of snowmobiles allowed to operate in the park each day are limited to a certain number per road segment or location. The snowmobile limits are listed in the following table:

TABLE 1 TO § 7.22.—DAILY SNOWMOBILE LIMITS

Road segment/location	Total number of snowmobiles
(i) GTNP and the Parkway—Total Use on CDST*	50
(ii) Jackson Lake	40

*The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 50 daily snowmobile use limit applies to total use on this route in both parks; however the limit does not apply to the portion described in paragraph (16)(ii) of this section.

(10) *When may I operate my snowmobile*? The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles*? (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle operator's license. The license must be carried by the driver at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in

36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snow coach operator and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR part 1.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(15) *May I operate a snowplane in the park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on designated routes through the park. Requirements established in this section related to air and sound emissions, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. The following routes only are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) The Continental Divide Snowmobile Trail, from the east park boundary to Moran Junction.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may use those routes designated in paragraph (g)(16) of this section only to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* Until such time as the United States takes full possession of an inholding in the park, the Superintendent may establish reasonable and direct access routes via snowmobile, to such inholding, or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the "Clark Property".

(iii) From the Moose-Wilson Road to the land commonly referred to as the "Barker Property".

(iv) From the Moose-Wilson Road to the land commonly referred to as the "Wittimer Property".

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the "Halpin Properties".

(vi) From the south end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the "JY Ranch".

(vii) From Highway 26/89/187 to those lands commonly referred to as the "Meadows", the "Circle EW Ranch", the "Moulton Property", the "Levinson Property" and the "West Property".

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X to the piece of land commonly referred to as the "Lost Creek Ranch".

(ix) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* Those routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(1) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

Dated: November 4, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–25093 Filed 11–9–04; 8:45 am]

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  - West Coast salmon fisheries; comments due by 11-16-04; published 11-1-04 [FR 04-24342]

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- Contract requirements; consolidation; comments due by 11-16-04; published 9-17-04 [FR 04-21017]
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H.R. 4381/P.L. 108–392

To designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the "Harvey and Bernice Jones Post Office Building". (Oct. 30, 2004; 118 Stat. 2245)

H.R. 4471/P.L. 108–393

Homeownership Opportunities for Native Americans Act of 2004 (Oct. 30, 2004; 118 Stat. 2246)

H.R. 4481/P.L. 108–394

Wilson's Creek National Battlefield Boundary Adjustment Act of 2004 (Oct. 30, 2004; 118 Stat. 2247)

H.R. 4556/P.L. 108–395

To designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the "General William Carey Lee Post Office Building". (Oct. 30, 2004; 118 Stat. 2249)

H.R. 4579/P.L. 108–396

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H.R. 4618/P.L. 108–397

To designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, as the "Anthony I. Lombardi Memorial Post Office Building". (Oct. 30, 2004; 118 Stat. 2251)

H.R. 4632/P.L. 108–398

To designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the "Archie Spigner Post Office Building". (Oct. 30, 2004; 118 Stat. 2252)

H.R. 4731/P.L. 108–399

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program. (Oct. 30, 2004; 118 Stat. 2253)

H.R. 4827/P.L. 108–400

To amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area. (Oct. 30, 2004; 118 Stat. 2254)

H.R. 4917/P.L. 108–401

Federal Regulatory Improvement Act of 2004 (Oct. 30, 2004; 118 Stat. 2255)

H.R. 5027/P.L. 108–402

To designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the "Specialist Eric Ramirez Post Office". (Oct. 30, 2004; 118 Stat. 2257)

H.R. 5039/P.L. 108–403

To designate the facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, as the "Eva Holtzman Post Office". (Oct. 30, 2004; 118 Stat. 2258)

H.R. 5051/P.L. 108–404

To designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the "Leonard C. Burch Post Office Building". (Oct. 30, 2004; 118 Stat. 2259)

H.R. 5107/P.L. 108–405

Justice for All Act of 2004 (Oct. 30, 2004; 118 Stat. 2260)

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Special Olympics Sport and Empowerment Act of 2004 (Oct. 30, 2004; 118 Stat. 2294)

H.R. 5133/P.L. 108–407

To designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the "Martha Pennino Post Office Building". (Oct. 30, 2004; 118 Stat. 2297)

H.R. 5147/P.L. 108–408

To designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the "Evan Asa Ashcraft Post Office Building". (Oct. 30, 2004; 118 Stat. 2298)

H.R. 5186/P.L. 108–409

Taxpayer-Teacher Protection Act of 2004 (Oct. 30, 2004; 118 Stat. 2299)

H.R. 5294/P.L. 108–410

John F. Kennedy Center Reauthorization Act of 2004 (Oct. 30, 2004; 118 Stat. 2303)

S. 129/P.L. 108–411

Federal Workforce Flexibility Act of 2004 (Oct. 30, 2004; 118 Stat. 2305)

S. 144/P.L. 108–412

To require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land. (Oct. 30, 2004; 118 Stat. 2320)

S. 643/P.L. 108–413

Hibben Center Act (Oct. 30, 2004; 118 Stat. 2325)

S. 1194/P.L. 108–414

Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (Oct. 30, 2004; 118 Stat. 2327)

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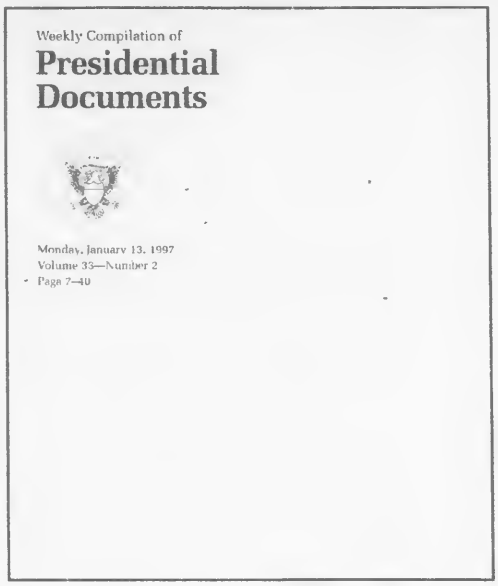

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