Federal Register

3–30–05 Wednesday
Vol. 70 No. 60 Mar. 30, 2005

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U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

3–30–05 Wednesday
Vol. 70 No. 60 Mar. 30, 2005

Pages 16095–16382

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FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective March 30, 2005. The rate changes for primary and secondary credit were effective on the dated specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 3.50 percent to 3.75 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 4.00 percent to 4.25 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the federal funds rate (from 2.50 percent to 2.75 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> The Committee believes that, even after this action, the stance of monetary policy remains accommodative and, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. Output evidently continues to grow at a solid pace despite the rise in energy prices, and labor market conditions continue to improve gradually. Though longer-term inflation expectations remain well contained, pressures on inflation have picked up in recent months and pricing power is more evident. The rise in energy prices, however, has not notably fed through to core consumer prices.
>
> The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II as follows:

PART 201 EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	3.75	March 22, 2005.
New York	3.75	March 22, 2005.
Philadelphia	3.75	March 22, 2005.
Cleveland	3.75	March 22, 2005.
Richmond	3.75	March 22, 2005.
Atlanta	3.75	March 22, 2005.
Chicago	3.75	March 22, 2005.
St. Louis	3.75	March 23, 2005.

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Federal Reserve Bank	Rate	Effective
Minneapolis	3.75	March 22, 2005.
Kansas City	3.75	March 23, 2005.
Dallas	3.75	March 24, 2005.
San Francisco ..	3.75	March 22, 2005.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	4.25	March 22, 2005.
New York	4.25	March 22, 2005.
Philadelphia	4.25	March 22, 2005.
Cleveland	4.25	March 22, 2005.
Richmond	4.25	March 22, 2005.
Atlanta	4.25	March 22, 2005.
Chicago	4.25	March 22, 2005.
St. Louis	4.25	March 23, 2005.
Minneapolis	4.25	March 22, 2005.
Kansas City	4.25	March 23, 2005.
Dallas	4.25	March 24, 2005.
San Francisco ..	4.25	March 22, 2005.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 24, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–6260 Filed 3–29–05; 8:45 am]

BILLING CODE 6210–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19463; Directorate Identifier 2004–NE–14–AD; Amendment 39–14029; AD 2005–07–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45A, CF6–50A, CF6–50C, and CF6–50E Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003. This AD requires inspecting the stage 1 low pressure turbine (LPT) blades for damage and replacement of the LPT module if necessary. This AD results from a report of a stud that separated from a turbine mid frame (TMF) strut and from an updated analysis of strut stud failures. We are issuing this AD to prevent uncontained failure of the engine and possible damage to the airplane caused by failure of TMF strut studs.

DATES: This AD becomes effective May 4, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 4, 2005.

ADDRESSES: You can get the service information identified in this proposed AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an airworthiness directive (AD). The proposed AD applies to GE CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE SB No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003. We published the proposed AD in the **Federal Register** on October 27, 2004 (69 FR 62623). That action proposed to require inspecting the stage 1 LPT blades for damage and replacement of the LPT module if necessary.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Clarify if Extension Limits Are Still Allowed

One commenter requests that we clarify if the extension limits in aircraft maintenance manual (AMM) 72–00–00, are still allowed if out-of-limit LPT blade damage is found during the required borescope inspection. The commenter provided no justification for this request.

We do not feel we need to clarify allowing extension limits if the operator finds damage during the required borescope inspection. Paragraphs (g) and (i) of the proposed AD require replacing any LPT module that exceeds the AMM limits for the stage 1 LPT blade damage.

Requests for Credit for Inspections Already Performed

One commenter requests that we give operators credit for inspections already performed using GE Alert Service Bulletin (ASB) No. 72–A1251, dated September 24, 2003, before the effective date of the AD. Another commenter requests that we give operators credit for inspections already performed using an approved maintenance program. The commenters believe that based on the proposed AD wording, an operator would have to complete the initial inspection within 150 cycles-in-service after the effective date of the AD, regardless of any prior inspections done.

We agree that we should allow credit for inspection programs begun before the effective date of the AD. Because paragraph (e) of the proposed AD states that you are responsible for having this AD performed within the compliance times specified unless the actions have already been done, we feel that this statement provides credit for inspections already done. However, for clarity, we have added a paragraph (paragraph (j)) to the AD compliance that gives credit for initial and repetitive inspections done using GE ASB No. 72–A1251 or the applicable AMM.

Inspection AD Not Necessary

One commenter states that this inspection AD is not necessary. The commenter's reason is that GE had previously released an improved strut stud joint configuration (reference GE SB No. 72–0897, dated 1987), and recommended that studs not be reused (reference engine manual change in 1996). The commenter asks that we provide additional analysis to

substantiate the need for this inspection AD for engines configured with new, post-SB No. 72–0897 studs. The commenter sites their service experience, which has not shown wear or contact between the stud sleeve and nozzle support. The commenter states that the one documented failure of a first-run engine (non-reused stud) is an extremely rare and unique case because it occurred on a KC–10 military airplane application.

We do not agree. We didn't make GE SB No. 72–0897, which introduced the improved configuration, mandatory. We also didn't make the 1996 engine manual change, which specified the studs were not to be reused, mandatory. Also, GE has provided data that shows that the potential for contact, rubbing, and wear, exists by design, as a result of insufficient clearance between the hole in the LPT nozzle support and the sleeve fitted to the TMF strut stud. During engine operation, thermal and mechanical deflections between the nozzle support and the stud and sleeve assembly can result in contact between these components if minimum assembly clearance requirements are not met. This contact causes transverse loads and bending moments in the strut stud. The fatigue life of the stud is reduced as a result of these loads. The fracture surface of the stud involved in the most recent event showed signs of fatigue damage, characteristic of bending loads. Although the commenter has not yet experienced this condition, and there is only one known failure for the post SB No. 72–0897 configuration with a non-reused stud, the potential exists for stud failure. This inspection AD is necessary to detect studs that have failed, and to prevent an uncontained engine failure.

Request To Clarify the Word "Optional"

One commenter requests that we clarify the word "optional" in the Optional Terminating Action paragraph of the proposed AD. The commenter states that incorporation of GE SB No. 72–1239 is terminating action for the repetitive inspections in the proposed AD.

We do not agree. The proposed AD requires that operators perform the initial and repetitive inspections of the LPT. The proposed AD does not require that operators perform the reassembly described in GE SB No. 72–1239. However, if an operator chooses to perform GE SB No. 72–1239, as described in paragraph (j) of the proposed AD (now paragraph (k) of the AD), the initial and repetitive inspections are no longer required. The incorporation of GE SB No. 72–1239 is described as optional, because an operator can choose to continue to perform repetitive inspections or incorporate that SB. Either action provides an acceptable level of safety.

Conclusion

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

Costs of Compliance

There are about 2,079 GE CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines of the affected design in the worldwide fleet. We estimate that 790 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take about one work hour per engine to perform the actions, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the AD to perform one inspection to U.S. operators to be $51,350.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–07–05 General Electric Company: Amendment 39–14029. Docket No. FAA–2004–19463; Directorate Identifier 2004–NE–14–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 4, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003. These engines are installed on, but not limited to, Boeing DC10 and 747 series airplanes, and Airbus Industrie A300 series airplanes.

Unsafe Condition

(d) This AD results from a report of a stud that separated from a turbine mid frame (TMF) strut and from an updated analysis of strut stud failures. We are issuing this AD to prevent an uncontained failure of the engine and possible damage to the airplane caused by failure of TMF strut studs.

Compliance

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

Initial Inspection

(f) Borescope-inspect the low pressure turbine (LPT) stage 1 blades within 3,000 cycles-since-new (CSN), or 3,000 cycles-since-replacement of the TMF strut studs, or 150 cycles-in-service (CIS) after the effective date of this AD, which ever occurs later. Use paragraph 3.A.(2) of the Accomplishment Instructions of GE Alert Service Bulletin (ASB) No. CF6–50 S/B 72–A1251, dated September 24, 2003, to do the inspection.

(g) Replace any LPT module that has stage 1 LPT blade damage exceeding aircraft maintenance manual (AMM) limits.

Repetitive Inspections

(h) Borescope-inspect the LPT stage 1 blades within intervals of 500 cycles-since-last-inspection or within 500 cycles-since-last shop visit, or within 150 CIS after the effective date of this AD, whichever occurs later. Use paragraph 3.A.(3) of the Accomplishment Instructions of GE ASB No. CF6–50 S/B 72–A1251, dated September 24, 2003, to do the inspections.

(i) Replace any LPT module that has stage 1 LPT blade damage exceeding AMM limits.

Credit for Previous Actions

(j) We allow credit for compliance with paragraph (f) or (h) of this AD, for either of the following:

(1) Initial or repetitive inspections of LPT stage 1 blades using GE ASB No. CF6–50 SB 72–A1251, dated September 24, 2003 within the compliance times of this AD; or

(2) Initial or repetitive inspections of LPT stage 1 blades using the applicable AMM, within the compliance times of this AD.

Optional Terminating Action

(k) Engines incorporating GE SB No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or incorporating paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003, ends the repetitive inspection requirements in paragraph (h) of this AD.

Alternative Methods of Compliance

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) None.

Material Incorporated by Reference

(n) You must use General Electric Company Alert Service Bulletin No. CF6–50 S/B 72–A1251, dated September 24, 2003, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422 for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001, on the internet at *http://dms.dot.gov*, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Burlington, Massachusetts, on March 22, 2005.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–6107 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18774; Directorate Identifier 2003–NM–212–AD; Amendment 39–14027; AD 2005–07–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; and Model DC–9–81 (MD–81) and DC–9–82 (MD–82) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; and Model DC–9–81 (MD–81) and DC–9–82 (MD–82) airplanes. This AD requires repetitive detailed inspections of the upper and lower caps of the rear spar of the left and right wings, and corrective action if necessary. This AD also provides an optional modification that would end the repetitive inspections. This AD is prompted by reports of fatigue cracks in the upper and lower caps of the wing spar. We are issuing this AD to detect and correct fatigue cracking in the upper and lower caps of the rear spar of the left and right wings, which could result in structural failure of the wings.

DATES: This AD becomes effective May 4, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of May 4, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2004–18774; the directorate identifier for this docket is 2003–NM–212–AD.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; and Model DC–9–81 (MD–81) and DC–9–82 (MD–82) airplanes. That action, published in the **Federal Register** on August 5, 2004 (69 FR 47388), proposed to require repetitive detailed inspections of the upper and lower caps of the rear spar of the left and right wings, and corrective action if necessary. That action also proposed to provide an optional modification that would end the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request To Revise Corrective Action

One commenter requests that we revise the corrective action specified in the proposed AD. The commenter states there is a significant discrepancy between the proposed AD and McDonnell Douglas DC–9 Service Bulletin 57–179, Revision 1, dated December 21, 1994 (referenced as the appropriate source of service information for accomplishing the proposed actions). The commenter notes

that the proposed AD will require that if a crack is found on either the upper or lower spar cap, then both the upper and lower spar caps must be either permanently repaired as specified in paragraph (j) of the proposed AD or temporarily repaired as specified in paragraph (k) of the proposed AD. The commenter contends that the intent of the service bulletin is to repair (permanently or temporarily) only the cracked spar caps and then repetitive inspections can continue on spar caps that are not cracked. The commenter provides data that it contends strongly indicate that repair of both spar caps is not necessary if only one of the spar caps is found to be cracked. The commenter also refers to AD 88–01–04, which does not require repair of both spar caps if only one is found to be cracked.

The commenter states that requiring both spar caps to be repaired if either spar cap is found cracked would appear to be a requirement to retrofit all airplanes that have repaired only a single spar cap and therefore may result in grounded airplanes. The commenter also states that repairing both spar caps if only one spar cap is cracked would impose a large and unnecessary burden on operators.

The commenter requests that the final rule require only temporary or permanent repair of the cracked spar cap and continuing inspections of the uncracked spar cap on that spar.

We agree with the commenter to revise the final rule. When only one spar cap is found to be cracked on one spar, the intent of the service bulletin is to repair the cracked spar cap and continue inspections of the uncracked spar cap on that spar. We have revised paragraphs (j) and (k) of the final rule accordingly.

Request To Revise the Cost Section

The same commenter requests that we revise the Cost of Compliance section of the proposed AD. The commenter notes that the proposed AD estimates the cost at $260 per airplane, per inspection. The commenter states that based on its experience, the average cost to perform the inspections is $610 per airplane.

We do not agree to revise the Costs of Compliance section of the final rule. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Thus, the cost estimate in the final rule is only for the cost of the inspection. In addition, the cost estimate is based on the manufacturer's data provided in the service bulletin. We have not changed the final rule in this regard.

Conclusion

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

Clarification of Actions in Paragraph (n)

We have revised the wording in paragraph (n) of the final rule to clarify that for the applicable airplanes the actions specified in paragraph (n) are required only if the actions specified in paragraph (m) are being accomplished.

Costs of Compliance

There are about 1,163 airplanes worldwide of the affected design. This AD will affect about 583 airplanes of U.S. registry. The inspection will take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $151,580, or $260 per airplane, per inspection cycle.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–07–03 McDonnell Douglas: Amendment 39–14027. Docket No. FAA–2004–18774; Directorate Identifier 2003–NM–212–AD.

Effective Date

(a) This AD becomes effective May 4, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the models listed in Table 1 of this AD, certificated in any category; as listed in McDonnell Douglas DC–9 Service Bulletin 57–179, Revision 1, dated December 21, 1994.

TABLE 1.—APPLICABLE MODELS

Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F, airplanes
Model DC–9–21 airplanes
Model DC–9–31, DC–9–32, DC–9–32, (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, and DC–9–34F, DC–9–32F (C–9A, C–9B) airplanes

TABLE 1.—APPLICABLE MODELS—Continued

Model DC–9–41 airplanes
Model DC–9–51 airplanes
Model DC–9–81 (MD–81), and DC–9–82 (MD–82) airplanes

Unsafe Condition

(d) This AD was prompted by reports of fatigue cracks in the upper and lower caps of the wing spar. We are issuing this AD to detect and correct fatigue cracking in the upper and lower caps of the rear spar of the left and right wings, which could result in structural failure of the wings.

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) Unless otherwise stated, the term "service bulletin", as used in this Ad, means McDonnell Douglas DC–9 Service Bulletin 57–179, Revision 1, dated December 21, 1994.

Inspection of the Upper and Lower Caps of the Rear Spar

(g) At the time specified in paragraph (g)(1) or (g)(2) of this Ad, as applicable, do a detailed inspection of the upper and lower caps of the rear spar of the left and right wings at station Xrs = 267.000 for cracks in accordance with the Accomplishment Instructions of the service bulletin.

(1) For Group 1 airplanes identified in paragraph 1.A.(1) of the service bulletin: Inspect prior to the accumulation of 50,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later.

(2) For Group 2 airplanes identified in paragraph 1.A.(1) of the service bulletin: Inspect prior to the accumulation of 20,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later.

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."

No Crack Detected: Repetitive Inspections

(h) If no crack is detected during any detailed inspection required by paragraph (g) of this AD, repeat the inspection thereafter at intervals not to exceed 3,000 landings until the crack preventative modification specified in paragraph (m) of this AD is done.

Any Crack Detected: Corrective Actions

(i) If any crack is detected during any detailed inspection required by paragraph (g) of this AD, before further flight, do the actions specified in paragraph (j) of this AD, except as provided by paragraph (k) of this AD.

Permanent Repair Modification

(j) If required by paragraph (i) of this AD, do the permanent repair modification for any cracked rear spar cap; and at the times specified in paragraph (j)(1) or (j)(2) of this AD, as applicable, do the detailed inspection specified in paragraph (g) of this AD. Do the actions in accordance with the Accomplishment Instructions of the service bulletin.

(1) For Group 1 airplanes identified in paragraph 1.A.(1) of the service bulletin: Within 53,000 landings after accomplishing the permanent repair modification, do the detailed inspection. Repeat the detailed inspection thereafter at intervals not to exceed 3,000 landings until the crack preventative modification specified in paragraph (m) of this AD is done.

(2) For Group 2 airplanes identified in paragraph 1.A.(1) of the service bulletin: Within 33,000 landings after accomplishing the permanent repair modification, do the detailed inspection. Repeat the detailed inspection thereafter at intervals not to exceed 3,000 landings until the crack preventative modification specified in paragraph (m) of this AD is done.

Optional Temporary Repair Modification for Certain Cracking

(k) In lieu of the actions specified in paragraph (j) of this AD, for any crack that does not exceed the limits specified in the Accomplishment Instructions of the service bulletin: Before further flight, do the temporary repair modification for any cracked rear spar cap; and at the times specified in paragraphs (k)(1) and (k)(2) of this AD, do the detailed inspections specified in paragraphs (k)(1) and (k)(2) of this AD. Do the actions in accordance with the Accomplishment Instructions of the service bulletin.

(1) Within 1,500 landings after accomplishing the temporary repair modification, do a detailed inspection of the temporary repair for any new crack or crack progression and repeat the inspection thereafter at intervals not to exceed 1,500 landings until the permanent repair modification specified in paragraph (j) of this AD is done.

(2) Within 3,000 landings after accomplishing the temporary repair modification, do detailed, eddy current, and ultrasonic inspections of the temporary repair for any new crack or crack progression and repeat the inspections thereafter at intervals not to exceed 3,000 landings until the permanent repair modification specified in paragraph (j) of this AD is done.

(l) If any crack progression or new crack is detected during any inspection required by paragraph (k)(1) or (k)(2) of this AD, before further flight, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Optional Terminating Crack Preventative Modification

(m) Except as provided by paragraph (n) of this AD, accomplishment of the crack preventative modification in accordance with the applicable service bulletin listed in Table 2 of this AD ends the repetitive inspections required by this AD. If the applicable service bulletin specifies to contact the manufacturer for specific modification information: Repair per a method approved by the Manager, Los Angeles ACO, FAA. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

TABLE 2.—SERVICE BULLETINS FOR CRACK PREVENTATIVE MODIFICATION

For airplane model—	Use McDonnell Douglas service bulletin—
Model DC–9–10, –20, –30, –40, and –50 series airplanes; and Model DC–9–81 (MD–81) and DC–9–82 (MD–82) airplanes.	DC–9 Service Bulletin 57–160, dated December 7, 1987.
Model DC–9–81 (MD–81), DC–9–82 (MD–82), and DC–9–83 (MD–83) airplanes.	MD–80 Service Bulletin 57–177, Revision 1, dated June 12, 1989.
Model DC–9–82 (MD–82) airplanes	MD–80 Service Bulletin 57–178, Revision 1, dated June 12, 1990.

(n) For airplanes on which the temporary repair modification specified in paragraph (k) of this AD has been done: If accomplishing the crack preventative modification specified in paragraph (m) of this AD, before or concurrently with the crack preventative modification, do the permanent repair modification specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(o) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(p) You must use McDonnell Douglas DC–9 Service Bulletin 57–179, Revision 1, dated December 21, 1994, including McDonnell

Douglas Service Sketch 3268D, approved February 20, 1984, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on March 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6109 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19525; Directorate Identifier 2004–NM–18–AD; Amendment 39–14026; AD 2005–07–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 777–200 and –300 series airplanes. This AD requires inspection of the outer cylinder of the main landing gear (MLG) to determine the serial number; an ultrasonic inspection of the outer cylinder of the MLG for cracks if necessary; and applicable specified and corrective actions if necessary. This AD is prompted by reports indicating that two outer cylinders were found fractured in the weld area. We are issuing this AD to detect and correct cracks or defects that could result in a fracture of the outer cylinder of the MLG, which could lead to collapse of the MLG during landing.

DATES: This AD becomes effective May 4, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of May 4, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19525; the directorate identifier for this docket is 2004–NM–18–AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for all Boeing Model 777–200, –200ER, and –300 series airplanes. That action, published in the **Federal Register** on November 4, 2004 (69 FR 64263), proposed to require inspection of the outer cylinder of the main landing gear (MLG) to determine the serial number; an ultrasonic inspection of the outer cylinder of the MLG for cracks if necessary; and applicable specified and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request for Alternate Inspection or Extension of Compliance Time

One commenter asks that an "on-aircraft" inspection be allowed as an alternate means of accomplishing the inspection for cracking of the main landing gear (MLG) in order to avoid unnecessary removal and disassembly of the MLG. Additionally, the removal and disassembly costs would be saved if an on-wing (on-aircraft) inspection were available. The commenter also asks that, if an "on-aircraft" inspection is not possible, the compliance time for accomplishing the inspection of the outer cylinder of the MLG be extended until removal of the MLG can be done at a normal maintenance time for overhaul. The commenter states that it has airplanes that have been in-service for 4 years without any problems, and notes that the cracking of the MLG was found before it was installed on the airplane. The FAA would allow 6 years for compliance, as specified in the proposed AD. The commenter adds that the manufacturer states that 6 years is the time allowed for overhaul, but the overhaul limit is actually 10 years.

We do not agree with the commenter's request for an "on-aircraft" inspection in place of the inspection of the outer cylinder of the MLG. There are no procedures for accomplishing an "on-aircraft" inspection specified in the referenced service information. Nor do we agree to extend the compliance time for accomplishing the inspection of the outer cylinder of the MLG until the removal of the MLG can be done at a normal maintenance time for overhaul. In developing an appropriate compliance time for this action, we considered the recommendation of the manufacturer, the urgency associated with the subject unsafe condition, and the practical aspect of accomplishing the required inspection within a period of time that corresponds to normal scheduled maintenance for most affected operators. The compliance time specified in this final rule represents an acceptable interval of time wherein affected airplanes may be allowed to operate without jeopardizing safety. In addition, no technical justification was provided to substantiate this request. Paragraph (k)(1) of this AD provides affected operators the opportunity to apply for an alternative method of compliance (AMOC) and to present data to justify the adjustment of the compliance time. We have made no change to the final rule in this regard.

Request for Part Number or Serial Number Identification on Affected Parts

One commenter asks that part number (P/N) or serial number (S/N) re-identification be done after accomplishing the required inspection. The commenter states that the referenced service bulletin does not require P/N or S/N re-identification of affected parts after accomplishing the inspection: the procedures only specify engraving the service bulletin number on the part. The commenter adds that the outer cylinder of the MLG is a life-limited part that must be tracked for the life of the part; therefore, P/N or S/N re-identification is necessary to track incorporation of the referenced service bulletin and the proposed AD. The

commenter notes that life-limited parts are tracked for the life of the part, and operators must know on which airplanes the S/N identified in the referenced service bulletin is installed.

We do not agree with the commenter. The referenced service bulletin specifies vibro-engraving or electro-chemically etching the service bulletin number next to the existing P/N on the outer cylinder assembly. We have determined that this action sufficiently differentiates between pre- and post-modification of the part and allows tracking for the life of the part. We have made no change to the final rule in this regard.

Requests To Change Applicability or Allow Alternate Method for Confirming the Serial Numbers

One commenter asks that the applicability specified in the proposed AD be changed to an appliance AD, which would be applicable only to airplanes with parts having the P/N and S/N identified in the referenced service bulletin, not all Model 777–200, –200ER, and –300 series airplanes. The commenter does not provide a reason for this request.

We do not agree with the commenter. Our general policy, when an unsafe condition results from an appliance or other item that is, or could be, installed on multiple airplane models, is that the AD is issued so that it is applicable to those airplane models, rather than to the item. The reason for this is simple: Making the AD applicable to the airplane models on which the appliance or other item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator. We have made no change to the final rule in this regard.

Another commenter asks that the applicability specified in the proposed AD be changed to match the effectivity identified in the referenced service bulletin, which applies to Model 777–200 series airplanes only. If the applicability is not changed, the commenter asks that an alternate method of confirming the S/N of the outer cylinder of the MLG be allowed. The commenter notes that one method is using digital records provided by the manufacturer. The commenter does not provide a reason for this request.

We partially agree with the commenter. We agree to change the applicability specified in the proposed AD somewhat. As specified in the "Differences" section of the proposed AD, Model 777–300 series airplanes are included in the applicability since we determined that, because of the potential for the affected outer cylinders to be installed on Model 777–300 series airplanes, the proposed actions must be done on those airplanes. As discussed below in "Explanation of Changes to Proposed AD," we inadvertently included Model 777–200ER series airplanes; we have removed that model from the applicability specified in this final rule.

We agree to allow the use of digital records provided by the manufacturer for confirming the serial number of the outer cylinder of the MLG, provided that precise tracking of which outer cylinder serial number is on which airplane since delivery can be determined from the airplane maintenance records. The final rule already provides for this by the maintenance records review specified in paragraph (h) of this AD. We have made no change to the final rule in this regard.

Request for Preliminary Inspection

One commenter asks that the requirements specified in paragraph (h)(2) of the proposed AD be changed to allow for a preliminary inspection of serial numbers to determine which airplanes are affected by the proposed AD. The commenter also asks to be allowed to accomplish any necessary inspections and corrective action at a later time, as long as those actions are accomplished within the compliance time required by paragraph (g) of the proposed AD. The commenter states that paragraph (h)(2) of the proposed AD specifies that if any serial number identified in the referenced service bulletin is installed, the ultrasonic inspection must be accomplished before further flight, in addition to accomplishing all applicable specified actions and any corrective action.

We agree that a preliminary inspection to determine the serial numbers of affected airplanes may be accomplished before accomplishing the requirements specified in paragraph (h)(2) of this AD. Operators are always permitted to perform actions earlier than the compliance time specified in an AD. In this case, it is at the operator's discretion to accomplish a preliminary inspection of the serial numbers to determine which airplanes are affected by the AD at any time before the required compliance time, if that time more closely fits the operator's maintenance schedule. We also agree that the inspection for cracking and any applicable specified actions, as required by paragraph (h)(2), may be accomplished at a later time as long as the inspection for cracking is done within the compliance time required by paragraph (g) of this AD. Paragraph (h)(2) of this AD has been changed accordingly.

We do not agree that any applicable corrective action resulting from inspection findings may be accomplished at a later time; the corrective action must always be accomplished before further flight after accomplishing the required inspection to maintain safety of flight. We have made no change to the final rule in this regard.

Explanation of Changes to Proposed AD

The applicability in the proposed AD addresses "All Boeing Model 777–200, –200ER, and –300 series airplanes." We inadvertently included Model 777–200ER series airplanes, which are not specified on the type certificate data sheet and are encompassed within the Model 777–200 series. Our intent is that the AD apply to all Model 777–200 and –300 series airplanes; therefore, we have changed the applicability in this final rule accordingly.

Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an AMOC for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative.

Conclusion

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

Costs of Compliance

This AD affects about 463 Model 777 series airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part Number Inspection	1 to 229 (depending on which inspection method is used).	$65	None ...	$65 to $14,885	133	$8,645 to $1,979,705
Ultrasonic Inspection (if necessary).	6	$65	None ...	$390 per outer cylinder, $780 for both outer cylinders on the airplane.	unknown, but there may be up to 26 affected outer cylinders in fleet.	$10,140

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–07–02 Boeing: Amendment 39–14026. Docket No. FAA–2004–19525; Directorate Identifier 2004–NM–18–AD.

Effective Date

(a) This AD becomes effective May 4, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 777–200 and –300 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports that two outer cylinders of the main landing gear (MLG) were found fractured in the weld area. We are issuing this AD to detect and correct cracks or defects that could result in a fracture of the outer cylinder of the MLG, which could lead to collapse of the MLG during landing.

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 "the service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 777–32A0038, Revision 1, dated February 19, 2004.

Compliance Time

(g) Perform the applicable actions specified in paragraph (h) of this AD at the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Within 4,000 flight cycles or 750 days after the effective date of this AD, whichever occurs first; or

(2) Before accumulation of 8,000 total flight cycles on the outer cylinder or 72 months on the outer cylinder since new, whichever occurs first.

Part Identification Inspection, Ultrasonic Inspection, and Corrective Action

(h) Inspect the outer cylinder of the MLG to determine whether an outer cylinder having a serial number (S/N) listed in paragraph 1.D., "Description," of the service bulletin is installed. Instead of an inspection of the outer cylinder of the MLG, a review of airplane maintenance records is acceptable if the S/N of the outer cylinder can be positively determined from that review.

(1) If no S/N identified in the service bulletin is installed, no further action is required by this paragraph.

(2) If any S/N identified in the service bulletin is installed, at the applicable compliance time specified in paragraph (g) of this AD, do an ultrasonic inspection of the outer cylinder of the MLG for cracks, and do all applicable specified and corrective actions per the service bulletin. Do any applicable corrective action before further flight.

Reporting a Crack

(i) Submit a report of any crack that is found during the inspection required by paragraph (h)(2) of this AD to the Manager, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the outer cylinder serial number and part number, and the number of landings and flight hours on the outer cylinder. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install an outer cylinder having a S/N listed in paragraph 1.D., "Description," of the service bulletin on any airplane unless it has been inspected and all specified and corrective actions are accomplished in accordance with paragraph (h)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings.

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 777–32A0038, Revision 1, dated February 19, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on March 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6110 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–243–AD; Amendment 39–14028; AD 2005–07–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to the airplane models listed above. That AD currently requires repetitive inspections to detect discrepancies of the transfer tubes and the collar of the ball nut of the trimmable horizontal stabilizer actuator (THSA), and corrective action if necessary. This amendment expands the applicability of the existing AD; and requires new repetitive inspections for discrepancies of the ball screw assembly; corrective action if necessary; repetitive greasing of the THSA ball nut, and replacement of the THSA if necessary; and a modification or replacement (as applicable) of the ball nut assembly, which would end certain repetitive inspections. The actions specified by this AD are intended to prevent degraded operation of the THSA due to the entrance of water into the ball nut. Degraded operation could lead to reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 4, 2005.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of May 4, 2005.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 26, 2001 (66 FR 31143, June 11, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–11–09, amendment 39–12252 (66 FR 31143, June 11, 2001), which is applicable to certain Airbus Model A330 and A340 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 31, 2004 (69 FR 53016). That action proposed to expand the applicability of the existing AD; and require new repetitive inspections for discrepancies of the ball screw assembly; corrective action if necessary; repetitive greasing of the trimmable horizontal stabilizer actuator (THSA) ball nut, and replacement of the THSA if necessary; and a modification or replacement (as applicable) of the ball nut assembly, which would end certain repetitive inspections.

Explanation of New Relevant Service Information

Since the preparation of the supplemental NPRM, Airbus has issued Service Bulletin A330–27–3102, Revision 05, dated July 7, 2004. (The supplemental NPRM refers to Airbus Service Bulletin A330–27–3102, Revision 04, dated December 8, 2003, as the acceptable source of service information for accomplishing certain inspections and corrective actions.) Airbus issued Revision 05 to expand the effectivity to include Models A330–302 and –303 airplanes, and to list additional manufacturer's serial numbers in the service bulletin. Revision 05 does not contain any new procedures. Accordingly, we have revised paragraph (e) of this AD to refer to Revision 05 as the acceptable source of service information for the actions required by that paragraph. We have also revised paragraph (i)(2) of this AD to state that inspections and corrective actions accomplished previously in accordance with Airbus Service Bulletin A330–27–3102, Revision 04, are acceptable for compliance with paragraph (e). We find that referring to Revision 05 does not result in an expansion of the applicability of this AD because the applicability of the supplemental NPRM includes all Airbus Model A330, A340–200, and A340–300 series airplanes.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France,

classified Airbus Service Bulletin A330–27–3102, Revision 05, as mandatory and issued French airworthiness directive F–2002–414 R3, dated July 7, 2004, to ensure the continued airworthiness of these airplanes in France. We have revised Note 8 of this AD to refer to this latest revision of the French airworthiness directive.

Explanation of Editorial Change

We have revised paragraphs (c)(3) and (f) of this AD to more accurately state the warning messages that may be displayed on the electronic centralized aircraft monitor (ECAM) associated with the "PITCH TRIM ACTR (1CS)" maintenance message.

Comments

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

Request To Remove Paragraph (f)

One commenter requests that we revise the supplemental NPRM to remove paragraph (f), which requires inspecting in accordance with paragraph (e) of the supplemental NPRM before further flight if a "F/CTL PRIM X PITCH FAULT" or "F/CTL STAB CTL FAULT" warning message is displayed on the ECAM associated with the "PITCH TRIM ACTR (1CS)." The commenter states that it has no mechanism to document compliance with this requirement because, if the ECAM warning is displayed in flight, there is no process to ensure that the pilot will record the warning in the airplane logbook, though this is the general practice.

The commenter further states that the normal procedures if the subject ECAM message appears would lead a mechanic to the Airbus A330/A340 Troubleshooting Manual (TSM), most likely to TSM Task 27–90–00–810–847, "Failure of the Pitch Trim Actuator Detected by the FCPC1 or FCPC2." The commenter explains that the first step of this task would be to perform an operational test of the servo loops of the trimmable horizontal stabilizer. If this operational test shows no discrepancy, no further action would be necessary. If the test confirms a discrepancy, the TSM specifies a detailed visual inspection of the ball screw assembly in accordance with Task 27–44–51–210–805 of the Airbus A330/A340 Airplane Maintenance Manual (AMM). The commenter feels that the TSM is the primary source of guidance for diagnosing system problems and that the procedures in the TSM would provide adequate guidance should a subject ECAM message appear. Thus, the commenter states that the requirements of paragraph (f) of the supplemental NPRM are not warranted. The commenter does note that there is no mechanism for it "to generate the requirement to refer to the specific TSM task and document its compliance in every instance."

We do not concur that paragraph (f) of this AD is unnecessary. Section 121.563 ("Reporting mechanical irregularities") of the Federal Aviation Regulations (FARs) (14 CFR 121.563) requires that the pilot ensure that all mechanical irregularities that occur during flight are entered into the maintenance log at the end of the flight. That section also requires that, before each flight, the pilot must determine the status of any irregularity entered in the maintenance log at the end of the preceding flight. A "F/CTL PRIM X PITCH FAULT" message is informational only and will remain displayed on ECAM through landing because there is no action that the crew can take that will correct the failure. Crew procedures for the "F/CTL STAB CTL FAULT" will also not correct the failure; therefore that ECAM message will remain displayed through landing. ECAM messages remaining after the flight are considered mechanical irregularities that must be entered in the maintenance log in accordance with 14 CFR 121.563. We have not changed the AD in this regard.

However, we do concur that performing an operational test in accordance with TSM Task 27–90–00–810–847 would be an acceptable means of complying with paragraph (e) of this AD, provided that, if the operational test confirms a discrepancy, the detailed inspection required by paragraph (e) of this AD, and any necessary corrective actions, are done before further flight. We have revised paragraph (e) of this AD accordingly.

Request To Allow Alternative Method for Repetitive Inspections

The first commenter requests that, if we decide that it is necessary to retain paragraph (f) of the supplemental NPRM, we refer to AMM Task 27–44–51–210–805 as an alternative method for doing the repetitive inspections. A second commenter makes the same request. The commenters note that the procedures in this AMM task are equivalent to those in Airbus Service Bulletin A330–27–3102, Revision 04, which is referenced in the supplemental NPRM as the appropriate source of service information for the necessary inspection.

We concur. We have revised paragraph (e) of this AD to state that an inspection done according to Task 27–44–51–210–805 of the AMM is acceptable for compliance with that paragraph. (Paragraph (f) of this AD refers to the inspection in paragraph (e).)

Request To Clarify Terminology

One commenter requests that we revise paragraph (d) of the supplemental NPRM to revise the reference to grease being expelled through the "drain hole." The commenter notes that the lubrication procedures specified in Chapter 12–22–27 of the Airbus A330/A340 AMM identify this orifice as the "vent hole." The commenter requests that the terminology be changed for clarification. We concur and have revised paragraph (d) of this AD accordingly.

Request To Revise Cost Impact Estimate

One commenter requests that we revise the number of affected airplanes estimated in the Cost Impact section of the supplemental NPRM. The commenter notes that we estimate that 9 Model A330 series airplanes would be affected. The commenter operates 10 affected U.S.-registered Model A330 series airplanes.

We concur. Since the issuance of the original NPRM and the supplemental NPRM, more Model A330 series airplanes have been registered in the U.S. We have revised the estimated number of affected Model A330 series airplanes to 19.

Conclusion

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

Cost Impact

There are approximately 19 Model A330 series airplanes of U.S. registry that are affected by this AD. Currently, there are no affected Model A340–200 or –300 series airplanes on the U.S. Register. However, if an affected Model A340–200 or –300 series airplane is imported and placed on the U.S. Register in the future, the following costs will also apply to those airplanes.

The inspections (in accordance with Airbus All Operators Telex (AOT) A330–27A3088 or A340–27A4093, as applicable) that are currently required

by AD 2001–11–09 take approximately 1 work hour per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,235, or $65 per airplane, per inspection cycle.

The new inspections (in accordance with Airbus SBs A330–27–3088 or A340–27–4093, as applicable) that are required by this AD take approximately 1 work hour per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $1,235, or $65 per airplane, per inspection cycle.

The new greasing action that is required by this AD takes approximately 1 work hour per airplane, per maintenance cycle, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $1,235, or $65 per airplane, per maintenance cycle.

In addition to the actions stated above, certain airplanes may be subject to additional actions. The following table contains the cost impact estimate for each airplane affected by the SBs listed below, at an average labor rate of $65 per work hour:

For airplanes listed in Airbus SB—	Estimated number of work hours	Estimated parts cost	Estimated cost per airplane
A330–27–3085 or A340–27–4089, both Revision 02	12	No charge	$780
A330–27–3093 or A340–27–4099, both Revision 01	6	No charge	390
A330–27–3052, Revision 03	6	No charge	390
A330–27–3007, Revision 01	1	No charge	65
A330–27–3015	2	No charge	130
A330–27–3047, Revision 01	2	No charge	130
A330–27–3050	2	No charge	130
A330–55–3020, Revision 01	2 (inspection only)	None	130
A340–27–4059, Revision 03	6	No charge	390
A340–27–4007	2	No charge	130
A340–27–4025	2	No charge	130
A340–27–4054, Revision 01	2	No charge	130
A340–27–4057	2	No charge	130
A340–55–4021, Revision 01	2 (inspection only)	None	130

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12252 (66 FR 31143, June 11, 2001), and by adding a new airworthiness directive (AD), amendment 39–14028, to read as follows:

2005–07–04 Airbus: Amendment 39–14028. Docket 2001–NM–243–AD. Supersedes AD 2001–11–09, Amendment 39–12252.

Applicability: All Model A330, A340–200, and A340–300 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degraded operation of the trimmable horizontal stabilizer actuator (THSA) due to the entrance of water into the ball nut, which could result in reduced controllability of the airplane, accomplish the following:

Requirements of AD 2001–11–09

Repetitive Inspections

(a) For Model A330, A340–200, and A340–300 series airplanes equipped with a THSA part number (P/N) 47172, and on which Airbus Modification 45299 has been performed: Within 150 flight hours from June 26, 2001 (the effective date of AD 2001–11–09, amendment 39–12252), perform a detailed inspection to detect discrepancies in the THSA (including distortion of the transfer tubes, disconnection of the tubes, and distortion of the collar of the ball nut), in accordance with Airbus All Operators Telex (AOT) A330–27A3088 (for Model A330 series airplanes) or A340–27A4093 (for Model A340 series airplanes), both dated April 5, 2001, as applicable. If any discrepancy, as defined in paragraph 4–2–2/ Rejection Criteria of the applicable AOT, is detected, prior to further flight, replace the THSA with a serviceable one, in accordance with the applicable AOT.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) At intervals not to exceed 150 flight hours, repeat the inspection mandated in paragraph (a) of this AD, until paragraph (c) of this AD has been accomplished.

New Requirements of This AD

Repetitive Detailed Inspections of THSA Ball Nut and Corrective Action

(c) For airplanes equipped with a THSA having P/N 47172 or 47147–400: At the applicable compliance time specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, perform a detailed inspection of the transfer tubes and collar on the THSA ball nut to detect discrepancies, including ball migration, distortion, or evidence of disconnection of the THSA ball nut; in accordance with Airbus Service Bulletin A330–27–3088 (for Model A330 series airplanes) or A340–27–4093 (for Model A340–200 and –300 series airplanes), both Revision 04, both dated September 5, 2002; as applicable. Repeat this inspection at intervals not to exceed 150 flight hours until paragraph (g) of this AD is accomplished. If any discrepancy is found during any inspection in accordance with this paragraph, before further flight, repair the THSA, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(1) For airplanes equipped with a THSA having P/N 47172 or 47147–400: Except as provided by paragraph (c)(3) of this AD, for airplanes inspected before the effective date of this AD in accordance with paragraph (a) of this AD, do the initial inspection within 150 flight hours since the most recent inspection in accordance with paragraph (a) or (b) of this AD. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (b) of this AD.

(2) For airplanes equipped with a THSA having P/N 47172 or 47147–400: Except as provided by paragraph (c)(3) of this AD, for airplanes not inspected before the effective date of this AD in accordance with paragraph (a) of this AD, do the initial inspection within 150 flight hours after the effective date of this AD. Accomplishment of this inspection within the compliance time specified in paragraph (a) of this AD eliminates the need to accomplish the inspection in paragraph (a) of this AD and terminates the repetitive inspections required by paragraph (b) of this AD.

(3) For airplanes equipped with a THSA having P/N 47172 or 47147–400: If the "F/CTL PRIM X PITCH FAULT" or "F/CTL STAB CTL FAULT" message is displayed on the electronic centralized aircraft monitor (ECAM) associated with the "PITCH TRIM ACTR (1CS)" maintenance message, do the inspection in paragraph (c) of this AD before further flight after the message is displayed on the ECAM.

Repetitive Greasing Procedure

(d) For airplanes equipped with a THSA having P/N 47172, 47172–300, or 47147–XXX (where "XXX" is any dash number): Within 700 flight hours after accomplishment of the last greasing of the ball nut of the THSA, grease the ball nut of the THSA in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). Doing the actions in Chapter 12–22–27, page block 301, of the Airbus A330/A340 Airplane Maintenance Manual (AMM) is one approved method. Repeat the greasing procedures at intervals not to exceed 700 flight hours. If, during any accomplishment of the greasing procedure, the new grease is expelled from the transfer tube (instead of through the vent hole): Before further flight, replace the THSA with a new or serviceable THSA in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent). Replacement of the THSA in accordance with Chapter 27–44–51 of the Airbus A330/A340 AMM is one approved method.

Repetitive Inspections of the Ball Screw Assembly and Corrective Actions

(e) For airplanes equipped with a THSA having P/N 47172, 47172–300, or 47147–XXX (where "XXX" is any dash number): Except as provided by paragraph (f) of this AD, within 700 flight hours after the effective date of this AD, perform a detailed inspection of the ball screw assembly for discrepancies; including cracks, metallic debris, dents, corrosion, loose nuts, and damaged or missing lock washers and pins; and an inspection of the gap between the secondary nut tenons and the transfer plates using a feeler gage to ensure free movement; in accordance with Airbus Service Bulletins A330–27–3102, Revision 05, dated July 7, 2004 (for Model A330 series airplanes); or A340–27–4107, Revision 04, dated June 20, 2003 (for Model A340–200 and –300 series airplanes); as applicable. A detailed inspection done in accordance with Task 27–44–51–210–805 of the Airbus A330/A340 AMM is one approved method of compliance with the inspection requirements of this paragraph. An operational test in accordance with Task 27–90–00–810–847 is another approved method for compliance with the inspection requirements of this paragraph, provided that, if the operational test confirms a discrepancy, the detailed inspection required by this paragraph, and applicable corrective actions, are done before further flight.

(1) Repeat the inspection at intervals not to exceed 700 flight hours, except as provided by paragraph (f) of this AD.

(2) If any discrepancy is found that is outside the limits specified in the applicable service bulletin, before further flight, replace the THSA with a new part, in accordance with a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). Replacement of the THSA in accordance with Chapter 27–44–51 of the Airbus A330/A340 AMM is one approved method.

Note 2: There is no terminating action at this time for the repetitive actions required by paragraphs (d) and (e) of this AD.

(f) If the "F/CTL PRIM X PITCH FAULT" or "F/CTL STAB CTL FAULT" message is displayed on the ECAM associated with the "PITCH TRIM ACTR (1CS)" maintenance message, do the inspection in paragraph (e) of this AD before further flight after the message is displayed on the ECAM.

Modification

(g) Within 24 months after the effective date of this AD, modify the ball nut of each THSA by doing paragraph (g)(1) or (g)(2) of this AD, as applicable. Accomplishment of paragraph (g)(1) or (g)(2) of this AD terminates the repetitive inspections required by paragraph (c) of this AD.

(1) For THSAs having P/N 47172: Modify the ball nut of the THSA, or replace the existing THSA with a serviceable part having P/N 47172–300; in accordance with Airbus Service Bulletin A330–27–3085 (for Model A330 series airplanes) or A340–27–4089 (for Model A340–313 series airplanes), both Revision 02, both dated September 5, 2002; as applicable.

Note 3: Airbus Service Bulletins A330–27–3085 and A340–27–4089 refer to TRW Aeronautical Systems Service Bulletin 47172–27–03, dated October 24, 2001, as the appropriate source of service information for additional instructions for accomplishing the modification of the ball nut of the THSA.

(2) For THSAs having P/N 47147–2XX, 47147–3XX, or 47147–400 (where "XX" represents any dash number): Modify the ball nut of the THSA, or replace the existing THSA with an improved part having P/N 47147–500; as applicable; in accordance with Airbus Service Bulletin A330–27–3093 (for Model A330 series airplanes) or A340–27–4099 (for Model A340–200 and –300 series

airplanes), both Revision 01, both dated September 5, 2002; as applicable.

Note 4: Airbus Service Bulletins A330–27–3093 and A340–27–4099 refer to TRW Aeronautical Systems Service Bulletin 47147–27–10, dated June 27, 2002, as the appropriate source of service information for additional instructions for accomplishing the modification of the ball nut of the THSA.

Previous/Concurrent Requirements

(h) Prior to or concurrently with accomplishment of the requirements of paragraph (g)(2) of this AD, do all of the actions specified in the Accomplishment Instructions of the applicable Airbus service bulletins listed in Table 1 or 2 of this AD, as applicable, in accordance with those service bulletins.

Note 5: Airbus Service Bulletin A330–27–3093, Revision 01, dated September 5, 2002, specifies that the actions in Airbus Service Bulletin A330–27–3052 must be accomplished previously or concurrently. Airbus Service Bulletin A330–27–3052, Revision 03, dated December 5, 2001, specifies that the actions in Airbus Service Bulletins A330–27–3007, A330–27–3015, A330–27–3047, A330–27–3050, and A330–55–3020 must be accomplished previously or concurrently.

Note 6: Airbus Service Bulletin A340–27–4099, Revision 01, dated September 5, 2002, specifies that the actions in Airbus Service Bulletin A340–27–4059 must be accomplished previously or concurrently. Airbus Service Bulletin A340–27–4059, Revision 03, dated December 5, 2001, specifies that the actions in Airbus Service Bulletins A340–27–4007, A340–27–4025, A340–27–4054, A340–27–4057, and A340–55–4021, must be accomplished previously or concurrently.

TABLE 1.—PREVIOUS/CONCURRENT REQUIREMENTS FOR MODEL A330 SERIES AIRPLANES

Airbus service bulletin	Revision level	Date	Main action	Additional source of service information
A330–27–3007	01	September 18, 1996	Replace rudder servo controls with modified parts.	Samm Avionique Service Bulletin SC5300–27–24–01, dated April 15, 1994.
A330–27–3015	Original	June 7, 1995	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace Service Bulletin 47147–27–02, Revision 1, dated January 31, 1996.
A330–27–3047	01	November 26, 1997	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147–27–04, Revision 1, dated June 20, 1997.
A330–27–3050	Original	November 15, 1996	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace Service Bulletin 47147–27–05, dated November 8, 1996.
A330–27–3052	03	December 5, 2001	Replace THSA with a modified THSA.	Lucas Aerospace Service Bulletin 47147–27–07, dated May 4, 1998.
A330–55–3020	01	October 21, 1998	Perform a general visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

TABLE 2.—PREVIOUS/CONCURRENT REQUIREMENTS FOR MODEL A340 SERIES AIRPLANES

Airbus service bulletin	Revision level	Date	Main action	Additional source of service information
A340–27–4007	Original	April 7, 1994	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147–27–01, dated May 4, 1998.
A340–27–4025	Original	June 7, 1995	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace Service Bulletin 47147–27–02, Revision 1, dated January 31, 1996.
A340–27–4054	01	November 26, 1997	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147–27–04, Revision 1, dated June 20, 1997.
A340–27–4057	Original	November 15, 1996	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace Service Bulletin 47147–27–05, dated November 8, 1996.
A340–27–4059	03	December 5, 2001	Replace THSA with a modified THSA.	Lucas Aerospace Service Bulletin 47147–27–07, dated May 4, 1998.
A340–55–4021	01	October 21, 1998	Perform a general visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

Note 7: 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."

Actions Accomplished Previously

(i) Actions accomplished before the effective date of this AD in accordance with previous revisions of the service information referenced in this AD are acceptable for corresponding actions required by this AD as specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD.

(1) Inspections and corrective actions accomplished in accordance with Airbus Service Bulletin A330–27–3088 (for Model A330 series airplanes) or A340–27–4093 (for Model A340–200 and –300 series airplanes), both Revision 03, both excluding Appendix 01, both dated October 19, 2001; as applicable; are acceptable for compliance with paragraph (c) of this AD.

(2) Inspections and corrective actions accomplished in accordance with Airbus Service Bulletin A330–27–3102, Revision 02, excluding Appendix 01, dated November 7, 2002, Revision 03, excluding Appendix 01, dated June 20, 2003, or Revision 04, dated December 8, 2003 (for Model A330 series airplanes); or A340–27–4107, Revision 03, excluding Appendix 01, dated December 4, 2002 (for Model A340–200 and –300 series airplanes); as applicable; are acceptable for compliance with paragraph (e) of this AD.

(3) Modifications accomplished in accordance with Airbus Service Bulletin A330–27–3085 (for Model A330 series airplanes) or A340–27–4089 (for Model A340–313 series airplanes), both Revision 01, both dated January 23, 2002; as applicable; are acceptable for compliance with paragraph (g)(1) of this AD.

(4) Modifications accomplished in accordance with Airbus Service Bulletin A330–27–3093 (for Model A330 series airplanes) or A340–27–4099 (for Model A340–200 and -300 series airplanes), both dated June 27, 2002; as applicable; are acceptable for compliance with paragraph (g)(2) of this AD.

No Reporting Required

(j) Where Airbus Service Bulletins A330–27–3088, Revision 04, dated September 5, 2002; A340–27–4093, Revision 04, dated September 5, 2002; A330–27–3102, Revision 05, dated July 7, 2004; and A340–27–4107, Revision 04, dated June 20, 2003; describe procedures for completing a reporting sheet with inspection results, this AD does not require that action.

Alternative Methods of Compliance

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

Incorporation by Reference

(l) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus All Operators Telex A330–27A3088, dated April 5, 2001; Airbus All Operators Telex A340–27A4093, dated April 5, 2001; or the Airbus service bulletins listed in Table 3 of this AD; as applicable.

TABLE 3.—AIRBUS SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Revision	Date
A330–27–3007	01	September 18, 1996.
A330–27–3015	Original	June 7, 1995.
A330–27–3047	01	November 26, 1997.
A330–27–3050	Original	November 15, 1996.
A330–27–3052	03	December 5, 2001.
A330–27–3085	02	September 5, 2002.
A330–27–3088, excluding Appendix 01	04	September 5, 2002.
A330–27–3093	01	September 5, 2002.
A330–27–3102, excluding Appendix 01	05	July 7, 2004.
A330–55–3020	01	October 21, 1998.
A340–27–4007	Original	April 7, 1994.
A340–27–4025	Original	June 7, 1995.
A340–27–4054	01	November 26, 1997.
A340–27–4057	Original	November 15, 1996.
A340–27–4059	03	December 5, 2001.
A340–27–4089	02	September 5, 2002.
A340–27–4093, excluding Appendix 01	04	September 5, 2002.
A340–27–4099	01	September 5, 2002.
A340–27–4107, excluding Appendix 01	04	June 20, 2003.
A340–55–4021	01	October 21, 1998.

Airbus Service Bulletin A330–27–3007, Revision 01, contains the following effective pages:

Page No.	Revision level shown on the page	Date shown on the page
1, 7	01	September 18, 1996.
2–6	Original	October 5, 1994.

(1) The incorporation by reference of the Airbus Service Bulletins in Table 3 of this AD is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus All Operators Telex A330–27A3088, dated April 5, 2001; and Airbus All Operators Telex A340–27A4093, dated April 5, 2001; was approved previously by the Director of the Federal Register as of June 26, 2001 (66 FR 31143, June 11, 2001).

(3) To get copies of this service information, go to Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 8: The subject of this AD is addressed in French airworthiness directives F–2002–414 R3, dated July 7, 2004, and 2002–415(B) R2, dated October 30, 2002.

Effective Date

(m) This amendment becomes effective on May 4, 2005.

Issued in Renton, Washington, on March 17, 2005.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6111 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 040615184–4184–01]

RIN 0694–AD15

Amendments Affecting the Country Scope of the Chemical/Biological End-User/End-Use Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the chemical and biological weapons end-user/end-use controls in the Export Administration Regulations (EAR). Specifically, this final rule expands the country scope of the EAR restrictions on certain chemical and biological weapons end-uses to apply to exports and reexports of items subject to the EAR to any destination, worldwide. Prior to the publication of this rule, such restrictions applied only to exports and reexports of items subject to the EAR to certain countries of concern for chemical and/or biological reasons. The amendments are consistent with the "catch-all" provisions in the Australia Group's (AG) "Guidelines for Transfers of Sensitive Chemical or Biological Items."

DATES: This rule is effective March 30, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AD15, by any of the following methods:

- E-mail: *wfisher@bis.doc.gov*. Include "RIN 0694–AD15" in the subject line of the message.
- Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AD15.

FOR FURTHER INFORMATION CONTACT: Mark Sagrans, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–7900.

SUPPLEMENTARY INFORMATION:

Background

This rule expands the country scope of the "end-user/end-use" controls in Section 744.4(a) of the EAR. Section 744.4 sets forth the EAR "end-user/end-use" provisions that apply to chemical and biological weapons end-uses. Section 744.4(a) of the EAR requires a license to export or reexport items subject to the EAR if, at the time of the export or reexport, the exporter or reexporter knows that the items are intended for chemical or biological weapons activities. Prior to the publication of this rule, the country scope of this "end-user/end-use" license requirement applied only to countries of concern for chemical and biological weapons reasons (*i.e.*, Country Group D:3 in Supplement 1 to part 740 of the EAR). This final rule amends Section 744.4(a) of the EAR to expand the number of countries subject to this EAR "end-user/end-use" license requirement to include all destinations, worldwide, including the countries identified in Country Group A:3 (*i.e.*, the AG-participating countries). The amendments are consistent with the "catch-all" provisions in the Australia Group's (AG) "Guidelines for Transfers of Sensitive Chemical or Biological Items" (Guidelines).

The AG-related changes described above do not affect Section 744.4(b) of the EAR, which describes certain "end-user/end-use" license requirements that apply to any exporter or reexporter who has been "informed" by BIS that a license is required by a certain end-user due to an unacceptable risk of use in or diversion to chemical or biological weapons activities, because this EAR provision currently has a worldwide country scope that is consistent with the equivalent "catch-all" provision in the AG Guidelines.

This rule imposes new export controls for foreign policy reasons. As required by section 6 of the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to the Congress on March 21, 2005. Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Savings Clause

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 14, 2005, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before April 29, 2005. Any such items not actually exported before midnight, on April 29, 2005, require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on

this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Section 744.4 is amended by revising paragraph (a) to read as follows:

§ 744.4 Restrictions on certain chemical and biological weapons end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if, at the time of export or reexport you know that the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

* * * * *

Dated: March 23, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–6271 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408 and 416

[Regulations No. 4, 8 and 16]

RIN 0960–AG06

Expanded Authority for Cross-Program Recovery of Benefit Overpayments

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are adopting without change the final rules that were published in the **Federal Register** on January 3, 2005, at 70 FR 11, revising our rules on the recovery of overpayments incurred under one of our programs from benefits payable to the overpaid individual under other programs we administer. The revised rules expand the authority for cross-program recovery of overpayments made in our various programs. We are implementing a portion of those rules that we did not implement on January 3, 2005, pending consideration of public comments that we requested at that time.

DATES: Most of these rules were effective January 3, 2005. Some provisions were changed from the version published earlier with a notice of proposed rulemaking (NPRM) and were not implemented on January 3. We are implementing those changes effective March 30, 2005.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY 1–800–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2004, at 69 FR 51962, we published an NPRM in which we proposed to expand our ability to recover overpayments made in one of our programs from benefits payable to the overpaid individual under other programs we administer. These programs are Social Security benefits under title II of the Social Security Act (the Act), Special Veterans Benefits (SVB) under title VIII of the Act and Supplemental Security Income (SSI) benefits under title XVI of the Act. After considering the public comments we received on the NPRM, we published the final rules with request for comment on January 3, 2005, at 70 FR 11, expanding our cross-program recovery authority effective January 3, 2005. As stated in those final rules with request for comment, although most of the amendments to the regulations were effective upon publication, we solicited additional public comments on material changes from the NPRM version in some provisions (*i.e.*, the removal of provisions excluding certain types of cases from cross-program recovery). We stated that we would not implement these changes until after we considered any comments we received during the 30-day public comment period.

Final Rules With Request for Comment

In the final rules with request for comment published January 3, 2005, we changed the regulations in 20 CFR parts 404, 408 and 416 to reflect the expanded cross-program recovery authority granted by section 1147 of the Act (42 U.S.C. 1320b–17), as amended by section 210 of the Social Security Protection Act of 2004 (SSPA), Public Law 108–203.

Previously, part 404 had no provisions permitting cross-program recovery, since that option had not been applied to collect title II benefit overpayments. In part 404, we added new §§ 404.530, .535, .540 and .545, which parallel existing regulations at §§ 408.930 through 408.933, to include the expanded authority to recover title II overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income (as defined in the regulation) to recover a title II overpayment;
- We may withhold no more than 10 percent of current monthly SVB payments to recover a title II overpayment;
- We may withhold up to 100 percent of SSI and SVB past-due payments to recover a title II overpayment.

We changed §§ 408.930 through 408.933 to reflect the expanded authority to recover title VIII overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income to recover an SVB overpayment;
- We may withhold no more than 10 percent of current monthly title II benefits to recover an SVB overpayment;
- We may withhold up to 100 percent of title II and SSI past-due payments to recover an SVB overpayment.

We changed the regulations at § 416.570 to delete obsolete information. We changed the regulations at § 416.572 and added §§ 416.573, .574 and .575 to reflect the expanded authority to

recover title XVI overpayments as follows:

- We may withhold no more than 10 percent of current monthly title II benefits to recover an SSI overpayment;
- We may withhold no more than 10 percent of current monthly SVB payments to recover an SSI overpayment;
- We may withhold up to 100 percent of title II and SVB past-due payments to recover an SSI overpayment.

The new sections follow the same structure as the existing regulations at §§ 408.930 through 408.933. We believe that this format is easy for members of the public to understand. We removed the title II example from § 416.572 because the example illustrated how we applied the 10 percent limit to past-due title II benefits. Under the new law, this limitation no longer applies. We removed the title VIII example from § 416.572 because we added a cross-reference to the title VIII regulations that explain how title VIII benefits are computed.

We removed from the SVB and SSI regulations the provisions that preclude cross-program recovery when the overpaid person is currently eligible for payment under the program from which we made the overpayment. The amended statute does not contain that restriction. As revised, § 416.572(b) also states that if we are already recovering an overpayment from title II benefits, the maximum amount which may be withheld from title XVI monthly benefits is the lesser of the person's title XVI benefit for that month or 10 percent of the person's total income for that month, not including the title II income used to compute the title XVI benefit.

Like the current regulations in 20 CFR part 408, subpart I, and part 416, subpart E, the final regulations for each program require that, before we impose cross-program recovery, we will notify the overpaid person of the proposed action and allow the overpaid person an opportunity to pay the remaining balance of the overpayment debt, to request review of the status of the debt, to request waiver of recovery, and to request recovery of the debt from current monthly benefits at a different rate than that stated in the notice. We will not begin cross-program recovery from current monthly benefits until 30 calendar days have elapsed after the date of the notice. If within that time period the person requests review of the debt, waiver of recovery of the debt, or reduction of the rate of recovery from current monthly benefits stated in the notice, we will not take any action to reduce current monthly benefits before we notify the debtor of our determination on the request. As permitted by section 1147(b)(2)(A) of the Act, the regulations provide that, if we find that the overpaid person or that person's spouse was involved in willful misrepresentation or concealment of material information in connection with the overpayment, we can withhold the entire amount of the current monthly benefit.

As we mentioned above, the final rules with request for comment contained material changes from the NPRM published on August 24, 2004. We deleted from §§ 404.530(b), 408.930(b) and 416.572(b) the provisions that excluded certain types of cases from cross-program recovery. Under one of the exclusions, we would not have applied cross-program recovery when the overpaid person was no longer eligible for payment under the program where the overpayment occurred but was refunding that overpayment voluntarily by making monthly installment payments. Under the other exclusion, we would not have recovered an overpayment in one program by adjusting benefits payable under another program when we were already adjusting those benefits to recover an overpayment of benefits within that program.

As amended by section 210 of the SSPA, section 1147 of the Act permits us to apply cross-program recovery in both situations described above. By eliminating these exclusions from paragraph (b) of §§ 404.530, 408.930 and 416.572, we believe that we will fulfill our stewardship responsibilities regarding the programs more effectively. If an individual is not eligible for SSI benefits and is refunding an SSI overpayment by making monthly installment payments, we would be able to recover the SSI overpayment by cross-program recovery against a title II past-due benefit. Cross-program recovery is a more efficient and reliable collection method than collection by installment payments. This approach is consistent with our policy under amended section 1147 of the Act to apply cross-program recovery in addition to adjusting benefits payable under the program in which the overpayment was made. Moreover, if an individual incurred both an SSI overpayment and a title II overpayment, we would be able to recover both the title II overpayment and the SSI overpayment simultaneously from the title II benefits. For example, if we are collecting a title II overpayment by title II benefit adjustment and a large title II underpayment becomes payable, we could collect the title II overpayment balance from that underpayment and apply any remaining title II past-due benefits to the SSI overpayment.

Public Comments

The final rules with request for comment that were published on January 3, 2005, provided the public with a 30-day comment period. We received one comment.

Comment: The commenter expressed concerns about the repayment ability of title II and SSI beneficiaries, since many have no other income and would not be able to meet their living expenses if cross-program recovery is implemented as planned.

Response: There are procedures in place to accommodate individuals who cannot afford to repay an overpayment by cross-program recovery at the proposed rate. Our new regulations at 20 CFR 404.540, 408.932 and 416.574 state that the written notice of our intention to apply cross-program recovery will advise that the beneficiary may request a different rate of withholding from the amount proposed. If a lower rate is requested, a rate of withholding that is appropriate to the financial condition of the overpaid individual will be set after an evaluation of all the pertinent facts. See 20 CFR 404.508, 404.535(c), 408.923, 408.931(c), 416.571 and 416.573(c). However, we will not withhold at a lower rate if the individual willfully misrepresented or concealed material information in connection with the overpayment. See 20 CFR 404.535(d), 408.931(d), and 461.573(d).

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these rules in accordance with Executive Order 12866, as amended by Executive Order 13258. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has

approved the information collection requirements contained in § 408.932(c), (d) and (e) of these final rules. The OMB control number for this collection is 0960–0692, expiring November 30, 2007.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; and 96.020, Special Benefits for Certain World War II Veterans)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure, Aged; Reporting and recordkeeping requirements, Social Security; Special Veterans benefits, Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs; Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 9, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ Accordingly, the final rules amending 20 CFR parts 404, 408 and 416 that were published at 70 FR 11 on January 3, 2005, are adopted as final rules without change.

[FR Doc. 05–6204 Filed 3–29–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–023]

Drawbridge Operation Regulations: Housatonic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the U.S. 1 Bridge, mile 3.5, across the Housatonic River at Stratford, Connecticut. Under this temporary deviation only one of the two-bascule leafs at the bridge need open for the passage of vessel traffic from April 1, 2005 through May 27, 2005. Two-leaf, full bridge openings, will be provided upon three days advance notice. This temporary deviation is necessary to facilitate rehabilitation repairs at the bridge.

DATES: This deviation is effective from April 1, 2005 through May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The U.S. 1 Bridge has a vertical clearance in the closed position of 32 feet at mean high water and 37 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.207.

The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the drawbridge operation regulations to facilitate scheduled rehabilitation maintenance at the bridge.

Under this temporary deviation only one of the two-bascule leafs need open for the passage of vessel traffic from April 1, 2005 through May 27, 2005. Two-leaf, full bridge openings, shall be provided after at least a three-day advance notice is given by calling the number posted at the bridge.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 23, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–6309 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–05–021]

RIN 1625–AA00

Safety Zone; National Cherry Blossom Festival Fireworks Display, Potomac River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Upper Potomac River in the Washington Channel, Washington, DC. This safety zone is necessary to provide for the safety of life and property during a fireworks display being held during the annual National Cherry Blossom Festival in Washington, DC. This safety zone will restrict the movement of vessel traffic in the immediate area of the fireworks discharge site.

DATES: This rule is effective from 7 p.m. to 9 p.m. eastern standard time on April 2, 2005, with a rain date of April 3, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–021 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Houck, Coast Guard Sector Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display from a barge, such as premature detonation or falling burning debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This safety zone of short duration is needed to provide for the safety of persons and vessels on the Potomac River and the public at large. Advance notification of the security zone and the fireworks display will be provided to the public via marine information broadcasts and by local media.

Background and Purpose

On April 2, 2005, the National Cherry Blossom Festival will sponsor a fireworks display from a barge on the Washington Channel, in Washington, DC, in approximate position latitude 38°52′08.5″ N, longitude 077°01′13.0″ W. The event will consist of an aerial fireworks display of short duration. A fleet of spectator vessels is anticipated.

Due to the need for vessel control on the waters of the Washington Channel during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of the Washington Channel. The temporary safety zone will be enforced from 7 p.m. to 9 p.m. eastern standard time on April 2, 2005, with a rain date of April 3, 2005. The effect will be to restrict general navigation in the regulated area during the event. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the Washington Channel outside the safety zone. This safety zone is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this rule prevents traffic from transiting a portion of the Washington Channel during the event, the effect of this rule will not be significant due to the limited duration of the regulation, limited size of the regulated area, and the extensive notifications that will be made to the maritime community via marine information broadcasts and local media, so mariners can adjust their plans accordingly. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Washington Channel from 7 p.m. to 9 p.m. Eastern Standard Time on April 2, 2005 or April 3, 2005 if the rain date becomes necessary.

Although this rule prevents traffic from transiting or anchoring in a portion of the Washington Channel during the event, the effect of this rule will not be significant because of its limited duration, limited area, and the advance notifications that will be made to the maritime community via marine information broadcasts and local media, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guards, call 1–888–REG–FAIR (1–888–743–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule does not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 12211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This regulation establishes a temporary safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. From 7 p.m. until 9 p.m. on April 2, 2005, add temporary § 165.T05–021 to read as follows:

§ 165.T05–021 Safety zone; National Cherry Blossom Festival Fireworks Display, Potomac River, Washington, DC.

(a) *Location.* The following area is a safety zone: All waters located on the Upper Potomac River in the Washington Channel, Washington, DC, within a 350-foot diameter of a fireworks discharge barge located in approximate position latitude 38°52′08.5″ N, longitude 077°01″13.0″ W.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at (410) 576–2693 or by radio on VHF–FM channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions. The Captain of the Port* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective period.* This section is effective from 7 p.m. to 9 p.m. Eastern Standard Time on April 2, 2005, with a rain date of April 3, 2005.

Dated: March 22, 2005.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 05–6307 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0011; FRL–7891–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on May 31, 2005, without further notice, unless EPA receives adverse written comment by April 29, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0011 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov*.

D. Mail: R03–OAR–2005–PA–0011, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–0011. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME,

regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f), applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the "generic RACT regulations". A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA) or Operating Permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions.

It must be noted that the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 Pa Code Chapters 121, 123 and 145.

On February 4, 2003, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for five sources of VOC and NO_X. The Commonwealth's submittals consist of PAs and OPs which impose VOC and NO_X RACT requirements for each source.

II. Summary of the SIP Revisions

Copies of the actual PAs and OPs imposing RACT and PADEP's evaluation memoranda are included in the electronic and hard copy docket for this final rule. As previously stated, all documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. The table below identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan Approval (PA #) Operating Permit (OP #)	Source type	"Major source" Pollutant
R.H. Sheppard Co., Inc.	York	67–2016	Foundry operations	VOC
Wheatland Tube Co.	Mercer	OP 43–182	Steel pipe manufacturing	VOC
Transcontinental Gas Pipeline Corp.	Potter	OP–53–0006	Natural gas units	VOC/NO_X
Transcontinental Gas Pipeline Corp.	Columbia	OP–19–0004	Natural gas-fired engines	VOC/NO_X
Transcontinental Gas Pipeline Corp.	Lycoming	PA–41–0005A	Natural gas-fired engines	VOC/NO_X

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for five major sources. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 31, 2005, without further notice unless EPA receives adverse comment by April 29, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

C. Petitions for Judicial Review

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 May 31, 2005. Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for five sources in the Commonwealth of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 18, 2005.

James Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 NN–Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries

for R.H. Sheppard Co., Inc., Wheatland Tube Company, and three Transcontinental Gas Pipeline Corporations at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) EPA-APPROVED SOURCE-SPECIFIC REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) REQUIREMENTS FOR VOLATILE ORGANIC COMPOUNDS (VOC) AND OXIDES OF NITROGEN (NO_X)

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
R.H. Sheppard Co., Inc	67–2016	York	8/4/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Wheatland Tube Company	OP 43–182	Mercer	7/26/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	OP–53–0006	Potter	10/13/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	OP–19–0004	Columbia	5/30/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(i)
Transcontinental Gas Pipeline Corporation.	PA–41–0005A	Lycoming	8/9/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(i)

* * * * *

[FR Doc. 05–6280 Filed 3–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0004; FRL–7891–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Ten Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for ten major sources of nitrogen oxides (NO_X). These sources are located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on May 31, 2005 without further notice, unless EPA receives adverse written comment by April 29, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0004 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov*.

D. Mail: R03–OAR–2005–PA–0004, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03-OAR–2005–PA–0004. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the "generic RACT regulations". A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA) or Operating Permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions.

It must be noted that the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

On August 30, 2004, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for ten sources of NO_X. The Commonwealth's submittals consist of PAs and OPs which impose NO_X RACT requirements for each source.

II. Summary of the SIP Revisions

Copies of the actual PAs and OPs imposing RACT and PADEP's evaluation memorandum are included in the electronic and hard copy docket for this final rule. As previously stated, all documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. The table below identifies the sources and the individual PAs and OPs which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #) operating permit (OP #)	Source type	"Major source" pollutant
The Pennsylvania State University—University Park.	Centre	OP–14–0006	Boilers	NO_X
Tennessee Gas Pipeline Company—Charleston Township.	Tioga	OP–59–0001	Natural-Gas Turbines; Heaters; Generator; Boiler.	NO_X
Tennessee Gas Pipeline Company—Wyalusing Township.	Bradford	OP–08–0002	Natural-Gas Turbines; Heaters; Generator; Boiler.	NO_X
Masland Industries	Cumberland	21–2001	Boilers	NO_X
ESSROC Cement Corp.	Lawrence	OP–37–003	Cement Kilns	NO_X
The Magee Carpet Company	Columbia	OP–19–0001	Boilers; Carpet Dryers; Generators; Space Heaters.	NO_X
Tennessee Gas Pipeline Company—Howe Township.	Forest	OP–27–015	Engines; Boilers; Furnaces; Hot Water Heater.	NO_X
Tennessee Gas Pipeline Corporation—Buck Township.	Luzerne	40–0002, 40–0002A.	Engines; Turbine	NO_X

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES—Continued

Source	County	Plan approval (PA #) operating permit (OP #)	Source type	"Major source" pollutant
Transcontinental Gas Pipe Line Corporation—Peach Bottom Township.	York	67–2012	Engines	NO_X
Standard Steel Division of Freedom Forge Corp.	Mifflin	44–2001	Furnaces; Engines; Heat Boilers	NO_X

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. The Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require NO_X RACT for ten major sources. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 31, 2005 without further notice unless EPA receives adverse comment by April 29, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for ten named sources.

C. Petitions for Judicial Review

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 May 31, 2005.

Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for ten sources in the Commonwealth of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 23, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for The Pennsylvania State University-University Park, Tennessee Gas Pipeline Company-Charleston Township, Tennessee Gas Pipeline Company-Wyalusing Township, Masland Industries, ESSROC Cement Corp., The Magee Carpet Company, Tennessee Gas Pipeline Company-Howe Township, Tennessee Gas pipeline Corporation-Buck Township, Transcontinental Gas Pipe Line Corporation-Peach Bottom Township, and Standard Steel Division of Freedom Forge Corp. at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) EPA-Approved Source-Specific Reasonably Available Control Technology (RACT) Requirements for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X)

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
The Pennsylvania State University—University Park.	OP–14–0006	Centre	12/30/98	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
Tennessee Gas Pipeline Company—Charleston Township.	OP–59–0001	Tioga	5/31/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
Tennessee Gas Pipeline Company—Wyalusing Township.	OP–08–0002	Bradford	5/31/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
Masland Industries	21–2001	Cumberland	5/31/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
ESSROC Cement Corp.	OP–37–003	Lawrence	7/27/95, 3/31/99	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
The Magee Carpet Company	OP–19–0001	Columbia	1/22/97	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
Tennessee Gas Pipeline Company—Howe Township.	OP–27–015	Forest	7/27/00	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
Tennessee Gas Pipeline Corporation—Buck Township.	40–0002, 40–0002A	Luzeme	5/31/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
Transcontinental Gas Pipe Line Corporation—Peach Bottom Township.	67–2012	York	5/5/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)
Standard Steel Division of Freedom Forge Corp.	44–2001	Mifflin	5/31/95	3/30/05 [Insert page number where the document begins].	52.2020(d)(1)(c)

* * * * *

[FR Doc. 05–6283 Filed 3–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–MD–0003; FRL–7891–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definition of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of Environment (MDE). The revisions update the SIP's reference to the EPA definition of volatile organic compounds (VOC). EPA is approving these revisions to the State of Maryland's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on May 31, 2005 without further notice, unless EPA receives adverse written comment by April 29, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–MD–0003 by one of the following methods:

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

B. Agency Website: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *frankford.harold@epa.gov*.

D. Mail: R03–OAR–2005–MD–0003, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–MD–0003. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108, or by e-mail at *frankford.harold@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revisions

On December 1, 2003, the State of Maryland submitted a formal revision (No. 03–13) to its SIP. The SIP revision consists of a revised reference to the Federal definition of VOC at 40 CFR 51.100(s) which is found at COMAR 26.11.01.01B(53), Maryland's definition for "volatile organic compounds (VOC)". These regulatory revisions became effective on November 24, 2003.

II. Description of the SIP Revision

Maryland has amended COMAR 26.11.01.01B(53) to update the Federal reference for incorporation of the EPA definition of VOC found at 40 CFR 51.100(s) from the 2000 edition (the currently SIP-approved version) to the 2002 edition of the Code of Federal Regulations (CFR).

III. Final Action

EPA is approving revisions to COMAR 26.11.01.01B(53) of the Maryland SIP to update the references to the EPA definition of VOC found at 40 CFR 51.100(s) in effect as of 12/31/2002. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 31, 2005 without further notice unless EPA receives adverse comment by April 29, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May

22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 May 31, 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 to approve Maryland's revised definition of "volatile organic compound (VOC)" 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, Ozone, Volatile organic compounds.

Dated: March 23, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.01.01B(53) after the existing entry for COMAR 26.11.01.01A.,B. to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.01.01 General Administrative Provisions				
*	*	*	*	*
26.11.01.01B(53)	Definitions—definition of volatile organic compound (VOC).	11/24/03	3/30/05 [Insert page number where the document begins].	Definition reflects the version of 40 CFR 51.100(s) in effect as of 12/31/2002.
*	*	*	*	*

[FR Doc. 05–6287 Filed 3–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0005; FRL–7891–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X and VOC RACT Determinations for Four Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for four major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on May 31, 2005, without further notice, unless EPA receives adverse written comment by April 29, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0005 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov*.

D. Mail: R03–OAR–2005–PA–0005, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–0005. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the "generic RACT regulations". A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA) or Operating Permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions.

It must be noted that the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as SIP

revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

On August 30, 2004, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for four sources of VOC and/or NO_X. The Commonwealth's submittals consist of PAs and OPs which impose VOC and/or NO_X RACT requirements for each source.

II. Summary of the SIP Revisions

Copies of the actual PAs and OPs imposing RACT and PADEP's evaluation memoranda are included in the electronic and hard copy docket for this final rule. As previously stated, all documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. The table below identifies the sources and the individual PAs and OPs which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #) operating permit (OP #)	Source type	"Major source" pollutant
Pope and Talbot, Inc.	Lackawanna	35–0004	Incinerator, Boilers, Paper Machine, and Wash/Paper Defoamer.	NO_X and VOC
Pennsylvania Power and Light Company	Dauphin	22–2011	Four Combustion Turbines	DNO_X and VOC
Ellwood Group Inc.	Lawrence	OP 37–313	Furnaces, Heaters, Burners, and Boilers	NO_X and VOC
National Fuel Gas Supply Corporation	Potter	53–0009A; 53–0009	Natural Gas Compression and Pipeline Equipment.	NO_X and VOC

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for four major of sources. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 31, 2005, without further notice unless EPA receives adverse comment by April 29, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for four named sources.

C. Petitions for Judicial Review

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 May 31, 2005. Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for four sources in the Commonwealth of Pennsylvania 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 18, 2005.

James Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for Pope and Talbot, Inc., Pennsylvania Power and Light Company, Ellwood Group Inc., and National Fuel Gas Supply Corporation at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) EPA-APPROVED SOURCE-SPECIFIC REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) REQUIREMENTS FOR VOLATILE ORGANIC COMPOUNDS (VOC) AND OXIDES OF NITROGEN (NO_X)

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
Pope and Talbot, Inc. ...	35–0004	Lackawanna	5/31/96	3/30/05 [Insert page number where the document begins].	52.2020 (d)(1)(d)
Pennsylvania Power and Light Company.	22–2011	Dauphin	6/7/95	3/30/05 [Insert page number where the document begins].	52.2020 (d)(1)(d)
Ellwood Group Inc.	OP 37–313	Lawrence	1/31/01	3/30/05 [Insert page number where the document begins].	52.2020 (d)(1)(d)
National Fuel Gas Supply Corporation.	53–0009A, 53–0009 ...	Potter	8/5/96	3/30/05 [Insert page number where the document begins].	52.2020 (d)(1)(d)

[FR Doc. 05–6289 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2005–IA–0001; FRL–7892–1]

Approval and Promulgation of State Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the state of Iowa. The purpose of this revision is to approve the 2004 update to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These revisions will help to ensure consistency between the applicable local agency rules and Federally-approved rules, and ensure Federal enforceability of the applicable parts of the local agency air programs.

DATES: This direct final rule will be effective May 31, 2005, without further notice, unless EPA receives adverse comment by April 29, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2005–IA–0001, by one of the following methods:

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

2. Agency Website: *http://docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment 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.

3. E-mail: *hamilton.heather@epa.gov*.

4. Mail: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the EPA Region 7 location listed in the previous paragraph. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Instructions: Direct your comments to RME ID No. R07–OAR–2005–IA–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, 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 RME, regulations.gov, or e-mail. The EPA RME website and the Federal regulations.gov website 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. 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 RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action

against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) requested EPA approval of the 2004 revisions to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution, as a revision to the Iowa SIP. The changes were adopted by the Polk County Board of Health Supervisors on January 6, 2004, and became effective the same day.

The following is a description of the revisions to the Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V, which are subject to this approval action:

1. *Changes in Definitions.* Changes were made to the following definitions found in Article I, 5–2: AQD, emission limitation and emission standard, Health Officer, and EPA reference method. These changes make minor clarifications to the definitions and updates to the references to Federal rules.

2. *Revision to general limitation of visible air contaminants.* Article IV, 5–9 changes the opacity of visible air contaminants to equal to, or greater than 20 percent or a lesser level as specified in a construction or operating permit. The previous percentage of opacity was 40 percent. This revision will reduce opacity and elevate the protection of air quality.

3. *Revision to emission of air contaminants from industrial processes.* Article VI, 5–14 revises the emission of particulate matter from any process from 0.1 grain per dry standard cubic foot of exhaust gas, to 0.10 grain per dry standard cubic foot of exhaust gas.

4. *Excess emissions.* Article VI, 5–17(b) and 5–17(d) is revised to remove the language "other than incident during startup or shutdown." These revisions make the regulations more stringent by identifying excess emissions during a period of startup or shutdown as violations.

5. A typographical error is corrected in Article VI, 5–17(e) to read as "Subsections (a) through (d)".

6. *Performance test for stack emission test.* Article VII, 5–18 makes a reference to "Compliance Sampling Manual". The revision reflects the most current update of the Manual through March 14, 2001.

7. Article VII, 5–18(a)(3) makes updates to reference the most current Federal rules.

8. *Processing of application for permits.* Article X, Division 1 (Construction Permits), 5–30 removes the language referring to issuance of construction permits for new major stationary source permits. These permits are not issued by the Polk County Air Quality Division office, but rather by IDNR. The correct title of the Polk County Air Quality Division was also cited to be consistent with the updated definition.

9. *Exemptions from permit requirements.* Article X, Division 1 (Construction Permits), 5–33, added references to Federal rules to make the SIP more stringent.

10. Article X, Division 1 (Construction Permits), 5–33(18), is a new paragraph for internal combustion engines that exclusively burn natural gas with a brake horsepower rating of less than 100 measured at the shaft. For this exemption, the manufacturer's nameplate rating at full load is defined as the brake horsepower output at the shaft.

11. Article X, Division 2 (Operating Permits), 5–39, added references to Federal rules to make the SIP more stringent.

12. Article X, Division 2 (Operating Permits), 5–39(b)(6) is a new paragraph for internal combustion engines that exclusively burn natural gas with a brake horsepower rating of less than 100 measured at the shaft. For this exemption, the manufacturer's nameplate rating at full load is defined as the brake horsepower output at the shaft.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is approving a revision to the SIP submitted by the state of Iowa, to approve the 2004 update to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These revisions will ensure consistency between the applicable local agency rules and Federally-approved rules, and ensure Federal enforceability of the applicable parts of the local agency air programs.

We are taking direct final action to approve this revision. The revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

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

April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 21, 2005

James B. Gulliford,

Regional Administrator, Region 7.

■ 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 Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for "Chapter V" under the heading "Polk County" to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
*	*	*	*	*
Polk County				
CHAPTER V.	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	1/6/2004	March 30, 2005 [insert FR page number where the document begins].	Article I, Section 5–2, definition of "variance"; Article VI, Sections 5–16(n), (o) and (p); Article VIII, Article IX, Sections 5–27(3) and (4); Article XIII, and Article XVI, Section 5–75 (b) are not a part of the SIP.

* * * * *

[FR Doc. 05–6291 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–162–1–7598; FRL–7892–7]

Limited Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown and Malfunction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes limited approval of revisions to the Texas State Implementation Plan (SIP) concerning excess emissions for which we proposed approval on March 2, 2004. The revisions address reporting, recordkeeping, and enforcement actions for excess emissions during startup, shutdown, and malfunction (SSM) activities. This limited approval action is being taken under section 110 of the Federal Clean Air Act (the Act) to further air quality improvement by strengthening the SIP. See sections 1 and 3 of this document for more information.

DATES: This rule is effective on April 29, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar of the Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6691, *shar.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Statutory and Executive Order Reviews

In this document "we," "us," and "our" refer to EPA.

1. What Actions Are We Taking in This Document?

On March 2, 2004 (69 FR 9776), we proposed approval of revisions and deletions to the Texas SIP pertaining to Texas' excess emissions rule, 30 TAC, General Air Quality Rule 101, Subchapter A, and Subchapter F (September 12, 2002, and January 5, 2004, submittals). Specifically, the revisions address the reporting and recordkeeping, and enforcement actions for excess emissions during SSM activities. The September 12, 2002, and January 5, 2004, submittals primarily address violations of SIP requirements caused by periods of excess emissions due to SSM activities. See section 1 of our March 2, 2004 (69 FR 9776), proposal for additional information.

Generally, since SIPs must provide for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), all periods of emissions in excess of applicable SIP limitations must be considered violations. The EPA cannot approve a SIP revision that provides an automatic exemption for periods of excess emissions violating a SIP requirement. In addition, excess emissions above applicable emission limitations in title V operating permits are deviations subject to title V reporting requirements.

Today, we are finalizing limited approval of the September 12, 2002, and January 5, 2004, revisions and deletions to the Texas SIP. The submitted revisions strengthen the SIP because they clarify that sources are not exempt from underlying SIP emissions limits where there is an emissions activity. Rather, the source may assert an affirmative defense in an action for penalties concerning the emission activity. The revisions also provide: (a) The commission may issue an order finding that a site has chronic "excessive" malfunctions, (b) if the executive director determines that a facility is having "excessive" malfunctions, the owner or operator must take action to reduce the excess emissions activities and obtain either a corrective action plan or a permit reflecting the control device, other measures, or operational changes required for the said reduction, and (c) the affirmative defense approach for malfunctions does not apply if there is a malfunction at a source under a corrective action plan. This limited approval will strengthen the latest federally approved Texas SIP dated November 28, 2000 (65 FR 70792).

As authorized by section 110(k)(3) of the Act, we are taking final action to grant a limited, rather than full, approval of this rule. We are finalizing this limited approval because we have determined that the rule improves the SIP and is largely consistent with the relevant requirements of the Act. The submittal, as a whole, strengthens the existing Texas SIP. For example, the revised affirmative defense provisions are an improvement over the related provisions in the current SIP, which are removed from the SIP by this action. This limited approval incorporates all of the submitted revisions into the Texas SIP. The entire rule becomes part of the State's approved, federally enforceable SIP and may be enforced by EPA and citizens, as well as by the State. We are finalizing a limited approval of this rule after review of adverse comments in response to our proposed approval of the rule, and in order to ensure national SIP consistency with EPA's interpretation of the Act and policy on excess emissions during SSM activities. Sections 101.221, 101.222, and 101.223 will sunset from State law, and therefore from the SIP, by their own terms, on June 30, 2005 without further action by EPA. Upon expiration of the provisions, all emissions in excess of applicable emission limitations during SSM activities remain violations of the Texas SIP, subject to enforcement actions by the State, EPA or citizens.

2. What Documents Did We Use in the Evaluation of This Rule?

The EPA's interpretation of the Act on excess emissions occurring during startup, shutdown or malfunction is set forth in the following documents: A memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions;" EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 1999 Policy); EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977), and EPA's final rule for Idaho's sulfur dioxide control strategy 42 FR 58171 (November 8, 1977); and the latest clarification of EPA's policy issued on December 5, 2001. See the policy or clarification of policy at: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

To find the latest federally approved Texas SIP concerning excess emissions see 65 FR 70792 (November 28, 2000).

3. What Is the Basis for a Limited Rather Than a Full Approval?

Section 101.222(c) addresses excess emissions from scheduled maintenance, startup, or shutdown activities, and section 101.222(e) addresses excess emissions from scheduled maintenance, startup, or shutdown activity from opacity activities. After reviewing the public comments, we believe that these provisions are ambiguous, at best, and inconsistent with the Act, at worst, and could create problems with enforcing the underlying applicable emission limits.

Texas has taken the position that these provisions provide for enforcement discretion by the State. In other words, if the enumerated criteria are met, then the State may exercise its enforcement discretion by choosing not to enforce against periods of excess emissions during scheduled maintenance, startup or shutdown. However, these provisions facially appear to go much further and excuse sources from permitting requirements (101.222(c)) or from the applicable opacity emission limits (101.222(e)) if the criteria are met. Thus, these rules appear to exempt sources from certain applicable SIP requirements. This is inconsistent with the statutory definition of emission limitation. And, if unaccounted for in the SIP, these emissions could interfere, among other things, with the ability of areas within the State to attain and maintain the NAAQS. In addition, to the extent these

provisions create an exemption from compliance, rather than simply explain when the State will exercise enforcement discretion, they would prevent EPA or citizen enforcement.

Moreover, it is unclear whether sections 101.222(c) and (e) may provide for an affirmative defense for certain scheduled maintenance activities. In guidance documents issued by EPA and other final rulemakings, we have indicated that scheduled maintenance activities are predictable events that are subject to planning to minimize releases, unlike malfunctions (emission activities), which are sudden, unavoidable or beyond the control of the owner or operator. The EPA's interpretation of Section 110 of the Act and related policies allows an affirmative defense to be asserted against civil penalties in an enforcement action for excess emissions activities which are sudden, unavoidable or caused by circumstances beyond the control of the owner or operator and where emissions control systems may not be consistently effective during startup or shutdown periods. However, EPA has determined that it is inappropriate to provide an affirmative defense for excess emissions resulting from scheduled maintenance, and to excuse these excess emissions from a penalty action. The State may, however, choose to exercise its enforcement discretion for excess emissions due to predictable events such as scheduled maintenance activities. See 42 FR 21472 (April 27, 1977), 42 FR 58171 (November 8, 1977), and 65 FR 51412 (August 23, 2000).

We are today granting a limited approval of the submitted revisions and deletions to the Texas SIP. We cannot fully approve the rule because sections 101.222(c) and (e): (1) Are ambiguous and unclear as to whether they address only State enforcement discretion, (2) might be interpreted to provide exemptions to SIP permitting requirements, and (3) might be interpreted to provide an affirmative defense for excess emissions from scheduled maintenance activities. Because the provisions found in sections 101.222(c) and (e) are not mandatory requirements of the Act and because section 101.222 will expire from the SIP by its own terms on June 30, 2005, no further action by Texas to correct the rule is necessary. Upon expiration of the provisions, all emissions in excess of applicable emission limitations during SSM activities remain violations of the Texas SIP, subject to enforcement action by the State, EPA or citizens. However, if Texas revises its rules to include an affirmative defense for excess emissions in the Texas SIP in the future, the State should ensure that the revisions do not contain exemptions from permitting or other SIP requirements, that the affirmative defense does not apply to excess emissions from scheduled maintenance activities, and, if the State wishes to codify its enforcement discretion, that terms are clear and do not bar or limit enforcement actions taken by EPA or citizens for excess emissions which exceed applicable SIP emission limitations. Any revisions should continue to recognize that emissions in excess of applicable emission limitations and SIP requirements are violations of the Texas SIP, subject to enforcement actions by the State, EPA or citizens. If the State submits a revised rule addressing excess emissions during SSM activities, EPA will review the rule for consistency with the requirements of the Act and EPA policy. Below, we summarize and respond to comments received during the public comment period on the proposed March 2, 2004 (69 FR 9776), Texas SIP revision.

4. Who Submitted Comments to Us?

We received one set of written comment on the March 2, 2004 (69 FR 9776), proposed Texas SIP revision. The comment was submitted jointly by the Environmental Integrity Project, Environmental Defense, Galveston-Houston Association for Smog Prevention, Refinery Reform, Community InPower and Development Association, Citizens for Environmental Justice, and Public Citizen's Texas Office (the Commenters).

5. What Is Our Response to the Submitted Written Comments?

Our responses to the written comments concerning the proposed March 2, 2004 (69 FR 9776), Texas SIP revision are as follows:

Comment #1: The Commenters state that Texas' rule is an improvement over its previous illegal exemption provisions; however, the rule still creates an affirmative defense which is too broad.

Response to Comment #1: We appreciate the Commenters' statement that the Texas excess emissions rule approved today into the Texas SIP is an improvement over its previous version, which is removed from the SIP by this action. The criteria and conditions constituting the affirmative defense approach, as incorporated in the rule, are those identified in EPA's 1999 policy on excess emissions. This improvement, in part, constitutes our rationale for a limited approval of this Texas SIP revision. However, we agree with Commenters that the affirmative defense may be too broad because, as discussed above, it appears to be available for certain maintenance activities. The EPA's interpretation of Section 110 of the Act and related policies allow an affirmative defense to be asserted against civil penalties in an enforcement action for excess emissions activities which are sudden, unavoidable or beyond the control of the owner or operator and where emissions controls may not be consistently effective during startup or shutdown periods. The State may choose to exercise its enforcement discretion for excess emissions from predictable events such as scheduled maintenance activities.

Comment #2: The Commenters state that EPA should disapprove sections 101.222(c) and (e) of Texas' submittal because these provisions maintain an exemption for excess emissions resulting from scheduled startup, shutdown and maintenance. The Commenters believe that the language in section 101.222(c) exempts certain excess emissions from compliance with permitted limits and thus means that no enforcement action can be taken for those periods of excess emissions. The Commenters cite to previous pronouncements by EPA that excess emissions during periods of startup and shutdown must be treated as violations. In addition, the Commenters reject as unfounded the statement by Texas that these exempted emissions are below the level required for inclusion in permits under the Texas Health and Safety Code. The Commenters note that there is no limit on how large these emissions might be.

Response to Comment #2: Section 101.222(c) generally addresses excess emissions from scheduled maintenance, startup, or shutdown activities and section 101.222(e) addresses excess opacity emissions resulting from scheduled maintenance, startup, or shutdown activities. On its face, both sections 101.222(c) and (e) establish criteria similar to those that EPA established for purposes of an affirmative defense. The Texas rule provides that emissions from scheduled startup, shutdown or maintenance must be included in a permit unless the owner or operator of a source proves that all of the criteria are met. The State has explained to EPA that it construes this provision as establishing enforcement discretion on the part of the State. They have explained that where the criteria are not met, then the State may enforce against a source for a violation of the applicable emissions

limitation for the period of excess emissions.

Upon further reading of the Texas rule, we are not convinced that the State's interpretation of the rule is likely to prevail if challenged. We think it is plausible that if EPA or a citizen group sought to enforce against a source which contends to have met the criteria specified in section 101.222(c), the source would offer a defense that such emissions were not subject to permitting requirements and were therefore not violations. Additionally, we are concerned about the interpretation of section 101.222(e), which also seems to provide an exemption from the applicable emission limits if a source can prove that the specified criteria are met. Again, the State has indicated that it interprets this provision not as excusing the source from compliance, but rather as a tool for the exercise of enforcement discretion on the part of the State. However, upon further review, we think the language is ambiguous at best and could well be construed by a court as excusing a source from compliance for these periods of excess emissions. Thus, even if the State chose not to enforce against a source where it believes the source has met the specified criteria, we believe it is possible that a court would dismiss any suit by EPA or citizens to enforce on the basis that the source was not subject to the underlying emission limit.

We believe that at best these provisions are ambiguous and, at worst, do in fact exempt sources from compliance with underlying emission limits if the specified criteria are met. Based on this conclusion, we have concerns about the effect of these provisions on the enforceability of applicable emission limits, and thus have concluded that we cannot fully approve the SIP. As stated above, however, we believe that the new rule, as a whole, strengthens the SIP and we are granting a limited approval of the SIP revisions.

Comment #3: The Commenters state that EPA should only approve sections 101.222(b) and 101.222(d) with the clarification that affirmative defense does not apply to federally performance-based standards. The Commenters state the Texas' rule will allow the affirmative defense to apply to violations of performance based Federal standards such as NSPS and NESHAP.

Response to Comment #3: Chapter 101 addresses violations of SIP requirements caused by periods of excess emissions due to SSM activities. For clarification and public record purposes, all of the federally promulgated performance or technology-based standards, and other Federal requirements, such as those found in 40 CFR parts 60, 61, and 63; and titles IV, and VI of the Act remain in full effect, and are independent of today's approval of revisions to the Texas SIP. We also want to make clear that today's limited approval of the Texas excess emissions rule into the Texas SIP may not, under any circumstances, be construed as rescinding, replacing, or limiting applicable Federal requirements regardless of the source's category or locality.

Comment #4: The Commenters state the affirmative defense in Texas' rule should not apply where a single source or small group has the potential to cause an exceedance of the NAAQS.

Response to Comment #4: We believe the Texas rule, which places the burden on the source asserting an affirmative defense to demonstrate that the specific activity at issue did not contribute to an exceedance of the NAAQS or PSD increments or to a condition of air pollution, is appropriate. Subsection 101.222(b)(11) requires the source or operator to prove that "unauthorized emissions did not cause or contribute to an exceedance of the NAAQS, prevention of significant deterioration (PSD) increments, or to a condition of air pollution." This provision ensures that an affirmative defense could not be sustained for an emissions activity for which the owner or operator has failed to prove that the event did not cause or contribute to an exceedance of the NAAQS, PSD increments or to a condition of air pollution.

Comment #5: The Commenters state the Texas' rule allows boilers and combustion turbines to escape reporting requirements.

Response to Comment #5: Subsection 101.201(a)(3) concerns notification for reportable emissions activities involving boilers or combustion turbines. Subsection 101.211(a)(2) concerns the notification for a scheduled maintenance, startup, or shutdown activity involving a boiler or combustion turbine. Also see subsection 101.201(d) of the rule. We do not believe that Texas' reporting requirements for excess emissions exclude boilers or combustion turbines. For these reasons we disagree with the Commission.

Comment #6: The Commenters state that EPA should announce its intent to automatically re-issue a Notice of Deficiency (NOD) to the State should Texas adopt revised rules prior to June 30, 2005, that do not comply with the Act and EPA's guidance. The Commenters are concerned that Texas may rescind the existing rules and adopt new rules before June 30, 2005 and once again be in the position of being unable to enforce the excess emissions provision in the SIP.

Response to Comment #6: The present record does not provide sufficient information to enable the Agency to make a determination of whether a notice of deficiency under title V of the Act would be warranted for the circumstances forecast by petitioners.[1] The Agency would need to review the rule allegedly causing the title V program deficiency to determine whether a violation of title V has occurred. However, at this stage, Commenters are only speculating as to future revisions to the rules that the State might or might not adopt. The Agency also balances a number of other factors in determining whether to issue a notice of deficiency, including allocation of agency resources, likelihood of success in pursuing enforcement through an NOD, likelihood of resolving a program flaw through other mechanisms, and how enforcement in a particular situation fits within the Agency's overall policies. It is not practicable to review these factors prior to the time a revision to the Texas rules would warrant such review.

This concludes our responses to the written comments we received during public comment period concerning March 2, 2004 (69 FR 9776), Texas proposed SIP revision.

6. What Areas in Texas Will These Rule Revisions Affect?

These rule revisions affect all sources of air emissions operating within the State of Texas.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic

[1] The Agency previously issued an NOD to Texas on January 7, 2002, based on different issues. See 67 FR 732. The State also revised and renumbered its rules relating to reporting, recordkeeping, and enforcement actions for SSM excess emissions, which are the rules at issue in the present action.

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 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, Excess Emissions, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 18, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended as follows:

(a) Under Chapter 101, Subchapter A, by revising the entry for Section 101.1;

(b) Under Chapter 101, Subchapter A, by removing the entry for Section 101.1 Table II, "Definitions—List of Synthetic Organic Chemicals;"

(c) Under Chapter 101, Subchapter A, by removing the entries for the following Sections: 101.6, 101.7, 101.11, 101.12, 101.15, 101.16, and 101.17;

(d) Under Chapter 101, Subchapter A, immediately following the entry for Section 101. Rule 19, "Initiation of Review," by adding a new centered heading "Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities" followed by new entries for Sections 102.201, 101.211, 101.221, 101.222, 101.223, 101.224, 101.231, 101.232, and 101.233.

The revision and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 101—General Air Quality Rules Subchapter A—General Rules				
Section 101.1	Definitions	08/21/02	03/30/05 [Insert FR citation from published date].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities Division 1—Emissions Events				
Section 101.201	Emissions Event Reporting and Recordkeeping Requirements.	08/21/02	03/30/05 [Insert FR citation from published date].	
Division 2—Maintenance, Startup, and Shutdown Activities				
Section 101.211	Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements.	08/21/02	03/30/05 [Insert FR citation published date].	
Division 3—Operational Requirements, Demonstrations, and Actions to Reduce Excessive Emissions				
Section 101.221	Operational Requirements	12/17/03	03/30/05 [Insert FR citation from published date].	
Section 101.222	Demonstrations	12/17/03	03/30/05 [Insert FR citation from published date].	
Section 101.223	Actions to Reduce Excessive Emissions	12/17/03	03/30/05 [Insert FR citation from published date].	
Section 101.224	Temporary Exemptions During Drought Conditions.	08/21/02	03/30/05 [Insert FR citation from published date].	
Division 4—Variances				
Section 101.231	Petition for Variance	08/21/02	03/30/05 [Insert FR citation from published date].	
Section 101.232	Effect of Acceptance of Variance or Permit	08/21/02	03/30/05 [Insert FR citation from published date].	
Section 101.233	Variance Transfers	08/21/02	03/30/05 [Insert FR citation from published date].	
*	*	*	*	*

[FR Doc. 05–6313 Filed 3–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–154–2–7609; FRL–7892–6]

Approval of Revisions and Notice of Resolution of Deficiency for Clean Air Act Operating Permit Program in Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas Title V operating permits program submitted by the Texas Commission on Environmental Quality (TCEQ) on December 9, 2002. In a Notice of Deficiency (NOD) published on January 7, 2002, EPA notified Texas of EPA's finding that the State's periodic monitoring regulations, compliance assurance monitoring (CAM) regulations, periodic monitoring and CAM general operating permits (GOP), statement of basis requirement, applicable requirement definition, and potential to emit (PTE) registration regulations did not meet the minimum Federal requirements of the Clean Air Act and the regulations for State operating permits pfrograms. This action approves the revisions that TCEQ submitted to correct the identified deficiencies. Today's action also approves other revisions to the Texas Title V Operating Permit Program submitted on December 9, 2002, which relate to concurrent review and credible evidence. The December 9, 2002, submittal also included revisions to the Texas State Implementation Plan (SIP). We published our final SIP approval in the **Federal Register** on November 14, 2003 (68 FR 64543). These revisions to Texas' operating permits program resolve all deficiencies identified in the January 7, 2002, NOD and removes the potential for any resulting consequences under the Act, including sanctions, with respect to the January 7, 2002, NOD.

DATES: This final rule is effective on April 29, 2005.

ADDRESSES: Copies of the documents relevant to this action, including EPA's Technical Support Document, are in the official file which is available at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in

the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact Mr. Stanley M. Spruiell at 214–665–7212 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212, ; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout the document "we," "us," or "our" means EPA.

Outline

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I. Background

The Clean Air Act (the Act) Amendments of 1990 required all States to develop operating permits programs that meet Title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Texas' operating permit program was submitted in response to this directive on November 15, 1993. We promulgated interim approval of the Texas Title V program on June 25, 1996 (61 FR 32693) and the program became effective on July 25, 1996. Subsequently, we promulgated full approval of the Texas Title V program effective November 30, 2001 (66 FR 63318, December 6, 2001). As explained in the proposed and final full approval, we granted full approval based on our finding that Texas had corrected the deficiencies identified at the time of the interim approval (66 FR at 51897 (October 11, 2001); 66 FR 63319). See also *Public Citizen* v. *EPA*, 343 F.3d 449 (5th Cir. 2003) (denying petitions for review challenging full approval).

Since the interim approval, members of the public filed comments with EPA alleging other deficiencies in the Texas Title V program, and EPA conducted a review of the issues raised. Section 502(i) of the Act and 40 CFR 70.10(b)(1) provide that whenever EPA makes a determination that a State is not adequately administering and enforcing its program in accordance with the requirements of Title V, EPA shall issue a notice to the State.

EPA published a notice of deficiency (NOD) for Texas' Title V Operating Permit Program on January 7, 2002 (67 FR 732). The NOD was based upon our finding that several State requirements did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. TCEQ adopted rule revisions to resolve the deficiencies identified in the January 7, 2002, NOD. These rule revisions became effective, as a matter of State law, on December 11, 2002. TCEQ submitted these rule changes to EPA as a revision to its Title V Operating Permit Program on December 9, 2002. TCEQ also included, in the December 9, 2002, submittal, other regulatory revisions that strengthen Texas' program. On July 9, 2003 (68 FR 40871), we proposed to approve the revisions submitted December 9, 2002, as revisions to Texas Title V operating permits program. We received one comment letter in response to the proposal and our consideration of those comments is summarized in section IV of this preamble. We are approving the Texas rule revisions included in the December 9, 2002, submittal in today's action. The December 9, 2002, submittal also included provisions which TCEQ requested that we approve as revisions to its SIP. We approved those SIP revisions submitted December 9, 2002, on November 14, 2003 (68 FR 64543). We have prepared a Technical Support Document which contains a detailed analysis of our evaluation of this action. The Technical Support Document is available at the address listed above. Elsewhere in today's **Federal Register**, we are also taking final action to grant limited SIP approval of revisions to Title 30 of the Texas Administrative Code (30 TAC) 101.211, 101.221, 101.222, and 101.223, addressing the reporting, recordkeeping and enforcement requirements for excess emissions during startup, shutdown, and malfunction activities. The State has incorporated these provisions into its definition of "applicable requirement" for the Title V program.

II. What Is Being Addressed in This Action?

In today's action, we are approving revisions as identified below which TCEQ adopted November 20, 2002 (submitted to EPA December 9, 2002) and find that those revisions and final SIP approval of revisions published on November 14, 2003 and elsewhere in today's **Federal Register** resolve the deficiencies identified in the January 7, 2002, NOD.

A. Periodic Monitoring Regulations

The requirement for periodic monitoring set forth in 40 CFR 70.6(a)(3)(i)(B) states that each Title V permit must include periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring.

TCEQ previously implemented periodic monitoring requirements through a phased approach which used either a periodic monitoring GOP or on a case-by-case determination. As a result, all permits did not have periodic monitoring when they were issued. To address the NOD, TCEQ has revised 30 TAC 122.132 and 122.142, and repealed 30 TAC 122.600, 122.604, 122.606, 122.608, 122.610, and 122.612 to ensure that all Title V permits, including all GOPs, contain periodic monitoring requirements that meet the requirements of 40 CFR 70.6(a)(3)(i)(B) when issued. TCEQ has repealed the periodic monitoring and CAM GOPs identified in the NOD and adopted 30 TAC 122.132(e)(13) to require permit applications to include periodic monitoring requirements consistent with part 70. TCEQ has amended 30 TAC 122.142(c) and 30 TAC 122.602 to require periodic monitoring which is consistent with part 70 to be included in all Title V permits, including GOPs, when the permit is issued. The revisions require that periodic monitoring be included in Title V permits at initial issuance under 30 TAC 122.201, permit renewals under 30 TAC 122.243, permit reopenings under 30 TAC 122.231(a) and (b), significant revisions under 30 TAC 122.221, and at minor permit revisions under 30 TAC 122.217. We are

today approving the revised rules and the State's repeals as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

B. Compliance Assurance Regulations

CAM is implemented through 40 CFR part 64 and 40 CFR 70.6(a)(3)(i)(A) and requires Title V permits to include "all monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including [40 CFR part] 64 . . ." 40 CFR 64.5 provides that CAM applies at permit renewal unless the permit holder has not filed a Title V permit application by April 20, 1998, or the Title V permit application has not been determined to be administratively complete by April 20, 1998. CAM also applies to a Title V permit holder who filed a significant permit revision under Title V after April 20, 1998.

TCEQ previously implemented CAM through either a CAM GOP or a case-by-case CAM determination. TCEQ's use of a phased approach did not ensure that all permits would include CAM required by 40 CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5, because a facility did not have to apply for a CAM GOP until two years after the CAM GOP had been issued. To address the NOD, TCEQ has revised the sections of Chapter 122 relating to application content and permit content, to ensure that all permits, including GOPs, include CAM requirements according to the schedule in 40 CFR 64.5. TCEQ amended 30 TAC 122.132(e)(12) to specify that applications for units subject to CAM must be submitted according to the schedule specified in 40 CFR 64.5. TCEQ amended 30 TAC 122.142(h) to require that permits contain CAM in accordance with the schedule in 40 CFR 64.5. TCEQ adopted new 30 TAC 122.221(b)(4) to specify that the Executive Director may issue a significant permit revision if CAM is included for large pollutant-specific emission units, consistent with 40 CFR 64.5(a)(2). TCEQ also adopted 30 TAC 122.147, which specifies the terms and conditions that apply to units subject to CAM requirements, and 30 TAC 122.604 which address CAM applicability. These new and revised rules require that all permits issued after the effective date of the rule include CAM according to the schedule in 40 CFR part 64. We are today approving the revised, amended, and new rules as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

C. Periodic Monitoring and Compliance Assurance Monitoring General Operating Permits

The content requirements for part 70 permits are set forth in 40 CFR 70.6 and include periodic monitoring and CAM as permit conditions of all Title V permits. Also, 40 CFR 70.6(d)(1) provides that "any general permit shall comply with all requirements applicable to other part 70 permits." TCEQ previously implemented CAM and periodic monitoring requirements through CAM and periodic monitoring GOPs which did not meet Title V's definition of, or requirements for, general permits. The terms and conditions of Texas' periodic monitoring GOPs and CAM GOPs contained only monitoring requirements, monitoring options, and related monitoring requirements for certain applicable requirements and therefore were missing a number of the requirements of 40 CFR 70.6.

To address the NOD, TCEQ amended Chapter 122 to require that all GOPs include periodic monitoring and CAM, and to eliminate the monitoring GOP process. To ensure that all permits are issued containing periodic monitoring and CAM, the TCEQ adopted amendments requiring periodic monitoring and CAM to be addressed in permit applications and to be included in issued permits. As discussed above, revised 30 TAC 122.132(e)(12) specifies that applications for units subject to CAM must contain elements specified in 40 CFR 64.3, Monitoring Design Criteria, and 40 CFR 64.4, Submittal Requirements. As revised, 30 TAC 122.132(e)(13) requires that applications for all initial permit issuances, renewals, reopenings, and significant and minor permit revisions include periodic monitoring requirements. TCEQ amended 30 TAC 122.142(c), which previously specified that periodic monitoring is only included as required by the Executive Director, and 30 TAC 122.142(h), which previously specified that permits include CAM as specified in Subchapter H. The amendments state that permits must contain periodic monitoring and CAM in accordance with the schedule in 40 CFR 64.5. These amendments will require permits to contain all requirements specified in 40 CFR 70.6. TCEQ eliminated the monitoring GOP process by adopting the repeal of all sections from Subchapters G and H that implemented monitoring through the GOP process. In addition to the previously mentioned periodic monitoring sections that were repealed, TCEQ repealed all of the CAM requirements contained in Subchapter H. The CAM applicability section and the section pertaining to quality improvement plans are adopted under Subchapter G, renamed Periodic Monitoring and Compliance Assurance Monitoring. TCEQ also adopted several amendments to Chapter 122 to clarify periodic monitoring and CAM implementation and to delete any reference to the monitoring GOP process.

TCEQ also amended the GOP definition at 30 TAC 122.10(11) to specify that multiple similar sources may be authorized to operate under a GOP, consistent with the requirement at 40 CFR 70.6(d) that general permits are limited to numerous similar sources. 30 TAC 122.501(a)(1) requires the Executive Director to issue GOPs with conditions that provide for compliance with all requirements of Chapter 122. TCEQ also revised 30 TAC 122.161 to make related miscellaneous changes.

We are today approving the new and revised rules and the repeals as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

D. Statement of Basis Requirement

40 CFR 70.7(a)(5) requires that "[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it." TCEQ regulations previously had no State regulation directly corresponding to 40 CFR 70.7(a)(5), and no other State regulations were identified that otherwise gave effect to this requirement. To address the NOD, TCEQ adopted new 30 TAC 122.201(a)(4), which requires that all permits issued by the Executive Director must include a statement that sets forth the legal and factual basis for the conditions of the permit, including references to the applicable statutory or regulatory provisions. The Executive Director will send this statement to EPA and any person who requests it. The statement of basis is required for all initial issuances, revisions, renewals and reopenings of permits. We are today approving the new rule as a revision to Texas' Title V program and find that the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

E. Definition of Applicable Requirement

Texas' definition of "applicable requirement" in 30 TAC 122.10(2) previously did not include all the applicable provisions of its SIP that implemented relevant requirements of the Act as required by 40 CFR 70.2. To address the NOD, TCEQ has amended its definition of "applicable requirement" in 30 TAC 122.10(2) to include citations to the relevant requirements of the Act which were identified in the NOD and others identified after issuance of that notice. The applicable requirement definition now includes 30 TAC 101.1, which relates to definitions; 30 TAC 101.3, which relates to circumvention; 30 TAC 101.201, 101.211, 101.221, 101.222, and 101.223, which relate to emissions events and maintenance, startup, and shutdown ("MSS") reporting requirements; 30 TAC 101.8 and 101.9, which relate to sampling and sampling ports, and 30 TAC 101.10, which relates to emissions inventory requirements.[1] We are today approving the revised rule as a revision to Texas' Title V program and find that, together with the final SIP approval published elsewhere in this **Federal Register**, the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

F. Potential To Emit Registration Requirements

Major sources subject to the requirement to obtain a Title V permit are those sources whose potential to emit certain air pollutants exceed threshold emissions levels specified in the Act. A source may legally avoid the requirement to obtain a Title V permit by limiting its potential to emit to levels below the applicable major source threshold. This can be done by taking a federally enforceable limit on the PTE, which ensures that the conditions placed on the emissions to limit a source's PTE are enforceable as both a legal and practical matter, or through PTE limits that are legally and practically enforceable by a State or local air pollution control agency.[2] Those permit conditions, if violated, are subject to enforcement by EPA, the State or local agency, or by citizens.

Texas' Title V regulations previously allowed a facility to keep all documentation of its PTE limitation registrations on site without providing those documents to the State or to EPA; therefore, the PTE limitations were not practically enforceable. Also, the limitations were not federally enforceable because the Texas regulations at issue were not part of the Texas SIP. TCEQ has revised 30 TAC 122.122, and, though not required by the NOD, also revised similar PTE registration rules in its preconstruction review program (30 TAC 106.6, 116.115, 116.611). These changes require registrations to be submitted to the Executive Director, to the appropriate Commission regional office, and all local air pollution control agencies, and a copy shall be maintained on-site of the facility. TCEQ is also required to make the records available to the public upon request. Thus, these changes cure the previous deficiency regarding practicable enforceability caused by the lack of notice to the State. TCEQ also submitted these changes for approval as a SIP revision. We approved the amended 30 TAC 106.6, 116.115, 116.611, and 122.122 as revisions to the Texas SIP on November 14, 2003 (68 FR 64543). Our final SIP approval of these changes made the PTE limits in the certified registrations legally enforceable by EPA. We are also today approving the revised rules in 30 TAC 122 as a revision to Texas' Title V program and find that, together with the final SIP approval which was published November 14, 2003, the revisions satisfy Texas' requirement to correct the program deficiency identified in the January 7, 2002, NOD.

III. What Other Program Changes Are We Approving?

TCEQ also included in the December 9, 2002, submittal other regulatory revisions that strengthen Texas' program. Today's action also approves these revisions to the Texas Title V Operating Permit Program submitted on December 9, 2002, which relate to credible evidence and concurrent review.

A. Credible Evidence

TCEQ has revised its definition of "deviation" at 30 TAC 122.10(5) and 122.132(e)(4)(B) to require sources to consider "any credible evidence or information" to certify compliance. We are today approving this revision as consistent with part 70 and EPA's credible evidence rule, 62 FR 8314 (February 24, 1997).

B. Concurrent Review

TCEQ has revised its regulations concerning EPA review of Title V permits at 30 TAC 122.350(B)(1) to provide that EPA's review period may not run concurrently with the State public review period if any comments are submitted or if a public hearing is requested. We are today approving this revision as consistent with section 505(b) of the Act and 40 CFR 70.8.

IV. What Is Our Response to Comments Received in Response to Our Proposed Rulemaking?

On July 9, 2003 (68 FR 40871), we proposed to approve the revisions submitted December 9, 2002, as revisions to Texas Title V operating permits program. In the proposal, we requested that the public submit comments no later than August 8, 2003. We received one comment letter submitted jointly by Public Citizen, Inc., SEED Coalition, Galveston-Houston Association for Smog Prevention, Sierra Club and Hilton Kelley with four comments. Our response to those comments follows:

Comment 1. Lack of Monitoring in General Operating Permits (GOPs). The commenters provided the following comments relating to lack of monitoring in GOPs that are applicable to certain categories of sources.

Comment 1A. Commenters stated that Texas has not acted to revise its existing GOPs which fail to include applicable requirements and fail to include required monitoring for those requirements. Commenters also note that Texas issues GOPs to facilities that have site-specific requirements that are not included in the GOP, such as minor or major new source review (NSR) or prevention of significant deterioration (PSD) permit terms. Therefore, those applicable requirements cannot be reviewed by EPA or the public to ensure that monitoring sufficient to assure compliance with those permit terms is included in the Title V operating permit.

Response 1A. This comment raises an issue beyond the scope of the deficiency identified in the NOD. EPA identified the deficiency regarding periodic

[1] The NOD identified the emissions event and MSS reporting requirements at 30 TAC 101.6, 101.7, and 101.11 as SIP provisions that must be included in the definition of "applicable requirement." TCEQ has revised those rules and recodified them at 30 TAC 101.201, 101.211, 101.221, 101.222, and 101.223 and submitted the rules to EPA for approval as a SIP revision. Our limited approval of these rules is published elsewhere in today's **Federal Register**. By incorporating the current SIP-approved emissions event and MSS reporting rules into the definition of "applicable requirement," Texas has corrected the program deficiency identified in the January 7, 2002, NOD.

[2] Seitz and Van Heuvelen, Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit (January 22, 1996); Stein, Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and section 112 Rules and General Permits (January 25, 1995).

monitoring and compliance assurance monitoring as a deficiency in the regulations. EPA stated: "Texas's periodic monitoring *regulations* do not meet the requirements of part 70 and must be revised," citing problems with the approach of implementing the requirement through a monitoring GOP and use of a phased approach which could delay implementation of periodic monitoring after issuance of a Title V permit. 67 FR at 733. We then concluded that the State "*must revise its regulations* to ensure that all Title V permits, including all GOPs, when issued, contain periodic monitoring that meets the requirements of 70.6(a)(3)(i)(B)." *Id.* (emphasis added). EPA made parallel findings for the State's CAM regulations. 67 FR at 734 ("The TNRCC[3] *regulations* do not meet the requirements of the Act and part 70, and TNRCC *must revise its regulations* to ensure that all Title V permits, including all GOPs, will have the CAM required by [40] CFR 70.6(a)(3)(i)(A), according to the schedule in 40 CFR 64.5"). EPA also provided instructions to the State on proper implementation of the periodic monitoring and CAM requirements in individual Title V permits.[4] However, these instructions did not render the monitoring provisions of all Title V permits in the State subject to the NOD. The NOD is clear on its face that only the monitoring regulations were the subject of the NOD and thus were required to be revised.

Nonetheless, EPA notes that it is exercising its oversight authority to ensure that the existing GOPs are corrected. Thus, EPA obtained a commitment and time line from the TCEQ Executive Director in December 2003 to revise all existing GOPs to include periodic monitoring and compliance assurance monitoring. Under this commitment and time line, TCEQ will revise all existing GOPs to ensure the applicability requirements for existing GOPs exclude sources with site-specific requirements. On February 27, 2004 Texas revised the Bulk Fuel Terminal GOP 515 and the Site-Wide GOP 516 to require all affected sources to submit an application for a site operating permit ("SOP") by September 1, 2004. Facilities subject to these GOPs generally have site-specific applicable requirements. Once all SOPs are issued, the GOPs No. 515 and 516 will be rescinded. The Oil and Gas GOPs 511–514 and Municipal Solid Waste Landfill GOP 517 will also be revised in 2005 to include the specific permits by rule and standard permits that apply to those facilities and to exclude sources with site-specific requirements from the applicability criteria for those GOPs.

Comment 1B. Commenters also requested that their comments and attachments be treated as a Petition to Reopen all existing GOPs pursuant to 40 CFR 70.7(g) to clarify that no source with case or permit-specific applicable requirements may be covered by a GOP if EPA failed to resolve this issue during our review of changes to the Texas operating permits program in response to the NOD.

Response 1B. In light of the State's commitment to make the required changes to its GOPs and the State's actions to initiate those changes, EPA believes there is no need to reopen the existing GOPs as commenter requests. EPA has reviewed and provided comments on the first revision to the Bulk Fuel Terminal and Site-Wide GOPs. Also, commenters have the opportunity to review and comment on the draft GOP permits under 40 CFR 70.7(h), and if necessary, petition EPA to object to a proposed permit under 40 CFR 70.8(a) and (c).

Comment 2. Statement of Basis. Commenters state that the current statements of basis being drafted by TCEQ do not provide the public with an understanding of the decision-making that went into development of the Title V permit. Because Texas is still not implementing the statement of basis requirement as specified in EPA's rules and guidance, this deficiency has not been corrected.

Response 2. By adopting regulatory language which tracks the requirement in 40 CFR 70.7(a)(5), Texas has satisfied the requirement to revise its regulations consistent with 70.7(a)(5). Whether any individual Title V permit contains an inadequate statement of basis is beyond the scope of the deficiency identified in the NOD. EPA intends to address concerns about the adequacy of individual statements of basis through the permit review process. This process includes opportunity for the public to review and comment on the draft permit under 40 CFR 70.7(h), EPA's review, and, if necessary, EPA objection to a proposed permit under 40 CFR 70.8(a) and (c), affected state review under 40 CFR 70.7(b), and the public petition process under 40 CFR 70.8(d).

Comment 3. PTE Limits in Registrations. Commenters submitted the following comments related to PTE registrations:

Comment 3A. The commenters believe that the rules should require that registrations used to limit PTE below any federal limit, including nonattainment NSR and PSD, be submitted to the agency. As EPA noted in the NOD, if PTE limits are merely kept on site, they are not practically enforceable. Because NSR and PSD are applicable requirements under Title V, Title V must assure compliance with these requirements.

Response to Comment 3A. Although the NOD cited only the deficiency in the PTE registration requirements in Chapter 122, the State made conforming changes in its preconstruction review provisions which address the commenter's concerns. The regulations require such PTE registrations to be incorporated into the Title V permit as applicable requirements. The PTE registrations under 30 TAC 106.6 and 116.611 are approved as part of the SIP and are applicable requirements under the part 70[5]. As applicable requirements, these PTE registrations must be submitted to the reviewing agency (the TCEQ) for incorporation into the source's Title V operating permit. In order to be incorporated into the Title V permit, the owner or operator must provide the relevant information concerning the registration to the permitting authority for incorporation into the Title V permit. Such information must be subject to public participation and review by EPA under 40 CFR 70.7(h) and 70.8.

For permits by rule, relevant information that must be incorporated includes all representations with regard to construction plans, operating procedures, and maximum emission rates, which become conditions upon which the facility permitted by rule shall be constructed and operated. See 30 TAC 106.6(b). This includes certification of maximum emission rates which establish federally enforceable allowable emission rates which are below the emission limitations in 30 TAC 106.4.

For standard permits, relevant information that must be incorporated include the basis of emission rates,

[3] On September 1, 2002, the Texas Natural Resource Commission (TNRCC) changed its name to the Texas Commission on Environmental Quality.

[4] To the extent that this portion of the NOD suggested the implementation of enhanced monitoring beyond that required by 70.6(a)(3)(i)(B) or beyond monitoring required by "applicable requirements" under the Act (as described in 69 FR 3202 (January 22, 2004)), this part of the NOD has been superceded by the January 22, 2004, action.

[5] 30 TAC 106.6 and 116.611 were approved as revisions to the SIP on November 14, 2003 (68 FR 64543). SIP provisions are applicable requirements under Title V under 40 CFR 70.2 (paragraph (1) under definition of "applicable requirement") and under 30 TAC 122.10(2)(F), which include the requirements of Chapter 106—Permits by Rule and Chapter 116—Control of Air Pollution by Permits for New Construction or Modification.

quantification of all emission increases and decreases associated with the project being registered, sufficient information as may be necessary to demonstrate that the project will comply with 30 TAC 116.610(b)[6], information that describes efforts being taken to minimize any collateral emissions increases that will result from the project, a description of the project and related process, and a description of any equipment being installed. See 30 TAC 116.611(a).

Thus, the registrations which limit a source's PTE to below a threshold which triggers applicability of PSD or NSR under 30 TAC 106.6 and 116.611 are applicable requirements under Title V and must be documented in each Title V permit as described above.

Comment 3B. The rules should include a short-term limit on emissions so that compliance can be determined in a timely manner (not a tons per year limit). The rules should include production or operational limits (not just emission limits) and specific monitoring and reporting to demonstrate compliance with the limit. The general requirement to keep records necessary to demonstrate compliance is not practically enforceable because it is too vague.

Response to Comment 3B. This comment raises issues beyond the scope of the deficiency identified in the NOD. The NOD identified the lack of practicably enforceable PTE limits as being caused by the lack of notice of PTE registrations to the State. We stated: "One of the requirements for practicable enforceability is notice to the State. Under 30 TAC 122.122, there is no requirement that the State be notified and the registrations are kept on site. Therefore, neither the public, TNRCC, or EPA know what the PTE limit is without going to the site. A facility could change its PTE limit several times without the public or TNRCC knowing about the change. Therefore, these limitations are not practically enforceable, and TNRCC must revise this regulation to make the regulation practically enforceable." Thus, the State has cured the deficiency by providing that PTE registrations must be submitted to the State. Nevertheless, EPA notes that the rules under these citations require that a source be able to demonstrate compliance with a certification in a manner that is practically enforceable. This includes information that enables the enforcement authority to verify at any time that the source is in compliance with the terms of its registration. TCEQ rules require registrations to "include documentation of basis of emission rates." See 30 TAC 122.122(c). Such documentation may include appropriate restrictions on operation and/or production which the source relies upon to limit its PTE below major source threshold. Similar requirements are also in 30 TAC 106.6(d) (for permits by rule) and 30 TAC 116.611(a)(1)–(6) (for standard permits).The monitoring and reporting are generally required in 30 TAC 106.8 (for permits by rule), 30 TAC 116.115(8) (for standard permits), and 30 TAC 122.122(f) (for Title V PTE registrations). Furthermore, a specific permit by rule, standard permit, or registration will also contain additional requirements for monitoring and recordkeeping which the source is required to maintain and which is sufficient to limit the source's PTE.

In summary, the regulations which pertain to the registration of emissions in 30 TAC 106.6, 116.115, 116.611, and 122.122 were approved on November 14, 2003 (68 FR 64543).[7] The regulations allow a source limit its PTE of a pollutant below the level of a major source defined in the Act. This includes regulations which Texas revised to allow an owner or operator of a source to register and certify restrictions and limitations that the owner or operator will meet to maintain its PTE below the major source threshold. The changes require the owner or operator to submit the certified registrations to the Executive Director of TCEQ, the appropriate TCEQ regional office, and all local air pollution control agencies having jurisdiction over the site. The changes to 30 TAC 122.122 satisfactorily address the NOD by requiring that PTE registrations are submitted to the State.

Comment 4. "Applicable requirement" Definition. Commenters believe that Texas' applicable requirement definition at 30 TAC 122.10(2) does not incorporate all of the relevant provisions of the Texas SIP because it defines the term by reference to specific State regulations, instead of a general reference to the "relevant requirements of the SIP." There is not a one-to-one correlation between the State's regulation and the SIP provisions. Thus, some SIP provisions that implement the CAA requirements are excluded from the Texas definition of "applicable requirement." Commenters cite as an example the State's newly adopted regulation for the definition of reportable quantities at 30 TAC 101.1(84)(p) and (q) rather than the SIP-approved rule. Texas submitted its new definition of reportable quantities to EPA for approval as a SIP revision on September 12, 2002.

Commenters also disagree with EPA's decision in the NOD to confine applicable requirements to those requirements that implement the relevant requirements of the Act, on the ground that it is at odds with Title V, citing 42 U.S.C. 7661a(b)(5)(C). They state that SIPs may include emission limits that transcend the requirements of the Act.

Response 4. EPA disagrees with the commenter. As a threshold matter, EPA reasonably determined in the NOD that "there is no requirement that the State adopt a definition to generally state that any current provision of the SIP is an applicable requirement. A State may cite to specific provisions of its administrative code. * * *" We described the SIP provisions that must be included in the definition of "applicable requirement" as those that "implement the relevant requirements of the Act," the standard set forth in 40 CFR 70.2. It is inappropriate to revisit those determinations here, as the time for a challenge to 30 TAC 70.2 or the NOD has expired [and the State has reasonably relied on the standards set forth in 30 TAC 70.2 and the NOD in undertaking its corrective action].

Furthermore, EPA has reviewed the rule cited by commenters (30 TAC 101.1(84)(p) and (q)) and found it to be approvable. The proposed approval was published in the **Federal Register** on March 2, 2004 (41 FR 9776). We are today granting limited approval of the SIP revision elsewhere in this **Federal Register** which ensures that Texas' definition of "applicable requirement" is complete with respect to the SIP-approved emissions event and MSS reporting rules. Because Texas has chosen to adopt a definition of applicable requirement that lists SIP citations rather than the general definition as set forth in 40 CFR 70.2, the State will be required to revise its Title V program in the future as it adopts an applicable requirement elsewhere in the SIP that is not listed in the definition of applicable requirement in its Title V regulations.

[6] 30 TAC 116.610(b) provides that "[a]ny project * * * which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder is subject to the requirements of 30 TAC 116.110 of this title (relating to Applicability) rather than this subchapter."

[7] We note that we proposed approval of the PTE registration requirements as SIP revisions, and received no comments. See 68 FR 40865 (July 9, 2003); 68 FR 64543 (November 14, 2003).

What Is Our Final Action?

We are approving revisions to Texas' regulations for periodic monitoring regulations, CAM regulations, periodic monitoring and CAM GOPs, statement of basis requirement, applicable requirement definition, and PTE registration regulations as revisions to Texas' Title V air operating permits program. We are also approving revisions to the Texas Title V operating permits program submitted on December 9, 2002, which relate to credible evidence and concurrent review. The rule revisions submitted by Texas, as stated above, are in response to the NOD. Based upon our limited approval of the revisions to Chapter 101 elsewhere in today's **Federal Register**, our approval today of the December 9, 2002 revisions to the Texas operating permits program, and our November 14, 2003, final SIP approval of potential to emit requirements, Texas has satisfactorily addressed the deficiencies identified by EPA in the January 7, 2002 NOD. This final action also removes any resulting consequences under the Act, including sanctions, with respect to the January 7, 2002 NOD.

This approval does not extend to "Indian Country", as defined in 18 U.S.C. 1151. In its operating permits program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent Title V program in the State. On February 12, 1998, EPA promulgated regulations under which Indian tribes could apply and be approved by EPA to implement a Title V operating permit program (40 CFR part 49). For those Indian tribes that do not seek to conduct a Title V operating permit program, EPA has promulgated regulations (40 CFR part 71) governing the issuance of Federal operating permits in Indian country. 64 FR 8247, February 19, 1999.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (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 (OMB). Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it approves pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. 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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The action merely approves existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing State Operating Permit Programs submitted pursuant to Title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. 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 such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the NTTAA do not apply.

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 May 31, 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 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 18, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ For the reasons set out in the preamble, appendix A of part 70 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended under the entry for Texas by adding paragraph (c) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Texas

(c) The Texas Commission on Environmental Quality: program revisions submitted on December 9, 2002, and supplementary information submitted on December 10, 2003, effective on April 29, 2005. The rule amendments contained in the submissions adequately addressed the deficiencies identified in the notice of deficiency published on January 7, 2002.

[FR Doc. 05–6314 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 01–92; FCC 05–42]

Intercarrier Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communication Commission (Commission) denies a petition for declaratory ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners, which asked the Commission to find that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of traffic. Because negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act than unilaterally imposed tariffs, however, the Commission also amends its rules to prohibit the use of tariffs in the future to impose compensation obligations with respect to non-access Commercial Mobile Radio Service (CMRS) traffic. Additionally, to ensure that incumbent local exchange carriers (LECs) are able to obtain a negotiated agreement, the Commission adds new rules to clarify that an incumbent local exchange carrier (LEC) may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Communications Act and that during the period of negotiation and arbitration, the parties will be entitled to compensation in accordance with the interim rate provisions set forth in § 51.715 of the Commission's rules, 47 CFR 51.715. These rules will ensure that both incumbent and competitive carriers can obtain compensation terms consistent with the Act's standards through negotiated or arbitrated agreements.

DATES: Effective April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, 202–418–7353, or Peter Trachtenberg, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, 202–418–7369.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling and Report and Order in CC Docket 01–92, adopted February 17, 2005, and released February 24, 2005. The full text of this document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Declaratory Ruling and Report and Order

Background: On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners jointly filed a petition for declaratory ruling asking the Commission to affirm that wireless termination tariffs are inconsistent with federal law governing reciprocal compensation arrangements for the transport and termination of traffic and, therefore, not a proper mechanism for establishing such arrangements. In a public notice published in the **Federal Register**, 67 FR 64120–01, October 17, 2002, the Commission sought comment on the issues raised in the T-Mobile Petition. Further, the Commission determined that the T-Mobile Petition raised issues under consideration in an ongoing rulemaking proceeding, CC Docket 01–92, Developing a Unified Intercarrier Compensation Regime. In this proceeding, the Commission had released a Notice of Proposed Rulemaking (*Intercarrier Compensation NPRM*), 66 FR 28410, May 23, 2001, which initiated a comprehensive review of interconnection compensation issues and raised questions concerning, among other things, the appropriate regulatory framework to govern interconnection, including compensation arrangements, between LECs and CMRS providers. The Commission therefore incorporated the T-Mobile Petition and responsive comments into the rulemaking record.

Discussion: Because the Act and the existing rules do not preclude tariffed compensation arrangements, and because wireless termination tariffs that apply only in the absence of an interconnection agreement are not inconsistent with the compensation standards of sections 251 and 252 of the Act or of § 20.11 of the Commission's rules, and because the tariffs do not prevent a competitive carrier from obtaining a compensation agreement through the negotiation and arbitration procedures of section 252, we find that incumbent LECs were not prohibited under federal law from filing such tariffs. Going forward, however, we amend our rules to make clear our preference for contractual arrangements by prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff. In addition, we amend our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.

We find that negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act. Accordingly, we amend § 20.11 of the Commission's rules to prohibit LECs from imposing compensation obligations for non-access traffic pursuant to tariff. Therefore, any existing wireless termination tariffs shall no longer apply upon the effective date of these amendments to our rules. After that date, in the absence of a request for an interconnection agreement, no compensation will be owed for termination of non-access traffic. We take this action pursuant to our plenary authority under sections 201 and 332 of the Act.

In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly, we amend § 20.11

of our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act. A CMRS provider receiving such a request must negotiate in good faith and must, if requested, submit to arbitration by the state commission. In recognition that the establishment of interconnection arrangements may take more than 160 days, we also establish interim compensation requirements under § 20.11 of the Commission's rules consistent with those already provided in § 51.715 of the Commission's rules.

Procedural Matters

Paperwork Reduction Act Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, see 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Intercarrier Compensation NPRM* in CC Docket No. 01–92. The Commission sought written public comment on the proposals in the *Intercarrier Compensation NPRM,* including comment on the issues raised in the IRFA. Relevant comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the order preceding the FRFA, the rules and statements set forth in those preceding sections are controlling.

A. Need for, and Objectives of, the Rules

In the *Intercarrier Compensation NPRM,* the Commission acknowledged a number of problems with the current intercarrier compensation regimes (access charges and reciprocal compensation) and discussed a number of areas where a new approach might be adopted. Among other issues, the Commission asked commenters to address the appropriate regulatory framework governing interconnection, including compensation arrangements, between LECs and CMRS providers. Subsequently, the Commission received a petition for declaratory ruling filed by CMRS providers (T-Mobile Petition) asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between incumbent LECs and CMRS providers. The T-Mobile Petition was incorporated into the Commission's intercarrier compensation rulemaking proceeding, along with the comments, replies, and *ex partes* filed in response to the petition.

In this Declaratory Ruling and Report and Order (Order), the Commission denies the T-Mobile Petition because neither the Act nor the existing rules preclude an incumbent LEC's use of tariffed compensation arrangements in the absence of an interconnection agreement or a competitive carrier's request to enter into one. On a prospective basis, however, the Commission amends its rules to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act, and that during the period of negotiation and arbitration, the parties will be entitled to compensation in accordance with the interim rate provisions set forth in § 51.715 of the Commission's rules. By clarifying these interconnection and compensation obligations, the Commission will resolve a significant carrier dispute pending in the marketplace that has provoked a substantial and increasing amount of litigation, and will facilitate the exchange of traffic between wireline LECs and CMRS providers and encourage the establishment of interconnection and compensation terms through the negotiation and arbitration processes contemplated by the 1996 Act.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

In the IRFA, the Commission noted the numerous problems that had developed under the existing rules governing intercarrier compensation, and it sought comment on whether proposed new approaches would encourage efficient use of, and investment in the telecommunications network, and whether the transition would be administratively feasible. In response to the *Intercarrier Compensation NPRM,* the Commission received 75 comments, 62 replies, and numerous *ex parte* submissions. In addition, a number of additional comments, replies, and *ex partes* were submitted in this proceeding in connection with the T-Mobile petition. Those comments expressly addressed to the IRFA raised concerns regarding the more comprehensive reform proposals discussed in the *Intercarrier Compensation NPRM* rather than the more narrow LEC–CMRS issues addressed in this Order.

In connection with the issues we address here, several parties commenting on the T-Mobile Petition expressed concern that striking down tariffs would impose a burden on rural incumbent LECs. They argued that LECs lacked the ability under the law to obtain a compensation agreement with CMRS providers without the inducement to negotiate provided by tariffs, and further asserted that small carriers would be adversely impacted by any obligation to terminate CMRS traffic without compensation. Conversely, some carriers expressed a concern that the negotiation and arbitration process was an inefficient method of establishing a compensation arrangement between two carriers where the traffic volume between them was small, and argued that non-negotiated arrangements were therefore a better method of imposing compensation obligations. We address these issues in section E of the FRFA.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers

nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

Local Exchange Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 37 carriers reported that they were "Other Local Exchange Carriers." Of the 37 "Other Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

Incumbent Local Exchange Carriers (LECs). We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operations." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We therefore include small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers." Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and

specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 245 of these are small under the SBA small business size standard.

Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 245 of these are small, under the SBA small business size standard.

D. Description of Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities

In this Order, the Commission adopts new rules that prohibit incumbent LECs from imposing non-access compensation obligations pursuant to tariff, and permit LECs to compel interconnection and arbitration with CMRS providers. Under the new rules, CMRS providers and LECs, including small entities, must engage in interconnection agreement negotiations and, if requested, arbitrations in order to impose compensation obligations for non-access traffic. The record suggests that many incumbent LECs and CMRS providers, including many small and rural carriers, already participate in interconnection negotiations and the state arbitration process under the current rules. For these carriers, our new rules will not result in any additional compliance requirements. For LECs that have imposed compensation obligations for non-access traffic pursuant to state tariffs, however, the amended rules require that these LECs, including small entities, participate in interconnection negotiations and, if requested, the state arbitration process in order to impose compensation obligations. Conversely, the new rules obligate CMRS providers, including small entities, to participate in a negotiation and arbitration process upon a request by incumbent LECs.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."

The Commission denies a petition for declaratory ruling filed by CMRS providers asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers. The Commission considered and rejected a finding that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers because the current rules do not explicitly preclude such arrangements and these tariffs ensure compensation where the rights of incumbent LECs to compel negotiations with CMRS providers are unclear. On a prospective basis, however, the Commission amends its rule to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.

As a general matter, our actions in this Order should benefit all interconnected LECs and CMRS providers, including small entities, by facilitating the exchange of traffic and providing greater regulatory certainty and reduced litigation costs. Further, we directly address the concern of small incumbent LECs that they would be unable to obtain a compensation arrangement without tariffs by providing them with a new right to initiate a section 252 process through which they can obtain a reciprocal compensation arrangement with any CMRS provider.

The Commission considered and rejected the possibility of permitting wireless termination tariffs on a prospective basis. Although establishing contractual arrangements may impose burdens on CMRS providers and LECs, including some small entities, that do not have these arrangements in place, we find that our approach in the Order best balances the needs of incumbent LECs to obtain terminating compensation for wireless traffic and the pro-competitive process and policies reflected in the 1996 Act. We also note that, during this proceeding, both CMRS providers and rural incumbent LECs have repeatedly emphasized their willingness to engage in a negotiation and arbitration process to establish compensation terms. In the Further Notice of Proposed Rulemaking adopted by the Commission on February 10, 2005, we seek further comment on ways to reduce the burdens of such a process.

F. Report to Congress

The Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Declaratory Ruling and Report and Order, including this FRFA—or summaries thereof—will be published in the **Federal Register**.

Ordering Clauses

Pursuant to the authority contained in sections 1–5, 7, 10, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–55, 157, 160, 201–05, 207–09, 214, 218–20, 225–27, 251–54, 256, 271, 303, 332, 403, 405, 502, and 503, and §§ 1.1, 1.421 of the Commission's rules, 47 CFR 1.1, 1.421, this Declaratory Ruling and Report and Order in CC Docket No. 01–92 is adopted, and that part 20 of the Commission's rules, 47 CFR Part 20, is amended as set forth below.

The rule revisions adopted in this Declaratory Ruling and Report and Order shall become effective April 29, 2005.

The Petition for Declaratory Ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners is denied as set forth herein.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Declaratory Ruling and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Commercial mobile radio services, Interconnection, Intercarrier compensation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 2. Section 20.11 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 20.11 Interconnection to facilities of local exchange carriers.

* * * * *

(d) Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

(e) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in § 51.715 of this chapter shall apply.

[FR Doc. 05–6318 Filed 3–29–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 401, 403, 404, 405, 406, 407, 408, 410, 411, 413, 414, 415, 416, 419, 422, 423, 424, 425, 426, 428, 432, 433, 434, 436, 439, 445, 450, 452, 453

RIN 0599–AA11

Agriculture Acquisition Regulation: Miscellaneous Amendments (AGAR Case 2004–01)

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Direct final rule; Confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule that makes miscellaneous amendments to the Agriculture Acquisition Regulation (AGAR), 48 CFR ch 4.

DATES: *Effective Date:* The direct final rule published on January 3, 2005 (70 FR 41–50), is effective April 4, 2005.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, USDAOffice of Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue, SW., Washington, DC 20250–9303, (202) 720–5729.

SUPPLEMENTARY INFORMATION: In a direct final rule published on January 3, 2005 (70 FR 41–50), we notified the public of our intent to amend the AGAR to reflect changes in the FAR made by Federal Acquisition Circulars (FACs) 97–02 through 2001–24 and to implement changes in USDA delegated authorities and internal procedures since October 2001.

We solicited comments concerning the direct final rule for a 30 day comment period ending February 2, 2005. We stated that the effective date of the proposed amendment would be April 4, 2005, unless we received adverse comments or notice of intent to submit adverse comments by the close of the comment period.

We received neither adverse comments nor notice of intent to submit adverse comments by February 2, 2005. We received one comment objecting to USDA marketing programs and to the burden on taxpayers of rulemaking. This comment is not considered adverse because it raises no objection germane to the substance of the proposed direct final rule. The rule does not address marketing programs, marketing studies or agricultural studies, but establishes procedures for acquisition personnel to follow in researching sources of supply prior to acquiring supplies or services. The general comment concerning taxpayer burden does not relate to this rule or the rulemaking procedures USDA followed in promulgating the rule. Therefore, the direct final rule is effective on April 4, 2005, as scheduled.

Done in Washington, DC, this 21st day of March, 2005.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 05–6261 Filed 3–29–05; 8:45 am]

BILLING CODE 3410–96–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040830250–5062–03; I.D. 032205B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments; Corrections

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

ACTION: Inseason adjustments to management measures; corrections; request for comments.

SUMMARY: NMFS announces changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks. This action also contains corrections to the Pacific Coast groundfish management measures.

DATES: Effective 0001 hours (local time) April 1, 2005. Comments on this rule will be accepted through April 29, 2005.

ADDRESSES: You may submit comments, identified by I.D. 032305B, by any of the following methods:

• E-mail: *GroundfishInseason1.nwr@noaa.gov*. Include I.D. number in the subject line of the message.

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

• Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070;

or Rod McInnis, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

• Fax: 206–526–6736, Attn: Jamie Goen.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region website at: *www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for 2005–2006 were codified in the CFR (50 CFR Part 600, Subpart G) and published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012).

Most of the following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its March 6–11, 2005, meeting in Sacramento, CA. The changes recommended by the Pacific Council include: (1) a reduction in the limited entry fixed gear sablefish fishery Tier 1 limit, (2) a revision to the language in 660.381 and in the limited entry trawl trip limit table (Table 3 (North)) regarding more than one type of trawl gear onboard a vessel north of 40°10′ N. lat., (3) the addition of a row in the trip limits tables mentioning that the states may have trip limits that are more restrictive than Federal trip limits, (4) a reduction in the marine fish bag limit off Oregon, (5) a reduction in the (rockfish, cabezon, greenling complex) (RCG complex), bag limits for cabezon and greenling off California, (6) minor corrections to individual coordinates for the RCA boundaries approximating the 40 fm (73 m), 150 fm (274 m), and 200 fm (366 m) curves.

Additional changes implemented by NMFS through this inseason action include: (1) the addition of Pt. Chehalis, Washington (46°53.30′ N. lat.) to the list of "commonly used geographic coordinates" at 660.302, (2) a correction to references to 660.310 (gear restrictions and gear identification) in 660.306, (3) the addition of language in the trip limit tables to specifically refer to conservation areas, (4) the addition of language in the limited entry fixed gear and open access trip limit tables south of 40°10′ N. lat. to clarify regulations for the rockfish conservation areas (RCAs) around islands. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding, optimum yields (OYs).

Limited Entry Fixed Gear Sablefish Fishery Tier 1 Limit

At the Pacific Council's March meeting, NMFS released an updated analysis of the 2005 limited entry fixed gear fishery for sablefish. NMFS conducted this analysis using the same modeling approach as used for the 2004 fishery, but updated the analysis with more recent observer data. NMFS had conducted preliminary analysis of tier limits in the primary fishery and bycatch associated with all limited entry fixed gear sablefish fishing in advance of the 2005 fishing season. Since that 2004 analysis, an additional year of observer and fishticket data has been incorporated into the model. The model now uses data from 2001 through 2004, with progressively lower weight given to data from earlier years. For further information on the bycatch model, the West Coast Observer Program, and bycatch mitigation in the groundfish fisheries, see the preamble to the proposed rule for the 2005–2006 fishery specifications and management measures (69 FR 56550, September 21, 2004).

As in 2004, coastwide annual ratios of sablefish discard and overfished species bycatch in the sablefish tier fishery were calculated for two depth strata: greater than 100 fm (183 m) and greater than 150 fm (274 m). These strata reflect the seaward boundaries of the non-trawl RCAs, as currently specified for the areas north and south of 40°10′ N. lat., respectively. Sablefish discard, as a percentage of estimated total catch compared to prior years' estimates, increased for pot gear and decreased for line gear with the inclusion of observer and fishticket data from the 2004 fishery. The differences in the sablefish discard ratios between longline and pot gear largely offset each other, resulting in a minor change in the available tier cumulative limits. For most overfished species, bycatch ratios remained roughly the same. However, estimates of lingcod bycatch increased over 2004 estimates for both gear types within both depth strata. This result may be due to the trend of increasing biomass for northern lingcod evident in the most recent stock assessment for lingcod and because most observed sablefish trips occurred off Oregon and Washington. Projected incidental catch of lingcod changes by the largest amount of any of the depleted species, increasing by 2.4 mt. Projected canary rockfish incidental catch is estimated to increase by 0.2 mt. None of the remaining incidental catch estimates changed by more than 0.1 mt from the original projections for this fishery. These changes in estimates of incidental catch are within the OYs for those species.

Therefore, the Pacific Council recommended and NMFS is implementing a reduction in the limited entry fixed gear sablefish fishery Tier 1 cumulative limit from 64,100 lb (29,075 kg) to 64,000 lb (29,030 kg) to keep the harvest of sablefish within harvest targets for this fishery.

Limited Entry Trawl Fishery- More Than One Gear Type Onboard Requirements

Federal regulations at 50 CFR 660.381(c)(4) address the question of which trawl trip limits apply to vessels that are carrying more than one type of trawl gear on board. Table 3 of part 660, subpart G provides trawl trip limits that vary by trawl gear type—large and small footrope gear, versus selective flatfish gear. North of 40°10′ N. lat., only selective flatfish trawl gear is permitted shoreward of the trawl RCA. Because the trip limits differ for the different gear types, NMFS must provide regulations on which trip limits apply to a vessel that uses more than one type of trawl gear during a cumulative limit period, or that carries more than one type of trawl gear on board during a fishing trip. The regulations NMFS implemented on January 1, 2005 (69 FR 77012) for more than one type of trawl gear on board have proven to be confusing for the public; thus, the agency worked with the Pacific Council at its March 2005 meeting on clarifying regulatory language for trawl fishery participants.

Federal regulations for the "more than one type of trawl gear on board" allowance (50 CFR Part 660.381) in the limited entry trawl regulations for the area between the U.S./Canada border and 40°10′ N. lat. implemented at the beginning of 2005 have been interpreted in a more liberal manner than the Council had originally intended. Federal regulations could have been interpreted to mean that more restrictive trip limits only apply to the gear used for a species or species group, rather than for all species included in the trip limit table for the entire cumulative period. Thus, the regulations could have been interpreted to mean that if selective flatfish gear were the most restrictive gear for flatfish but were the least restrictive for DTS species (Dover sole, thornyheads, and sablefish), a vessel that only fished for flatfish with selective flatfish trawl gear could then, on a separate trip, use selective flatfish trawl gear to catch the more liberal DTS limits. This more liberal regulatory interpretation was not compatible with the bycatch model the Pacific Council had used to craft the 2005–2006 groundfish trip limit recommendations. To be compatible with the bycatch model for this fishery, the regulations should have read that if fishers have more than one type of trawl gear on board, at any time during the cumulative limit period, they are limited to harvesting (for the entire cumulative limit period) the more restrictive trip limit associated with the gear they had on board. This requirement provides flexibility to fishers while taking into consideration what was modeled in the trawl bycatch model and what is enforceable.

The original intent of the regulation is as follows: (1) If a vessel only has selective flatfish gear on board during a cumulative limit period, the vessel can only access selective flatfish limits during the entire cumulative limit period, (2) If a vessel has only has large or small footrope gear on board during a cumulative limit period, the vessel can only access large or small footrope limits during the entire cumulative limit period, and (3) If a vessel has both selective flatfish and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the vessel can only access the lower limits during the entire cumulative limit period.

Thus, the Pacific Council recommended the following language to restore the original intent of the requirement: "North of 40°10′ N. lat., a vessel may have more than one type of limited entry trawl gear on board, either simultaneously or successively, during a cumulative limit period. If only selective flatfish trawl gear is on board during the entire cumulative limit period, then a vessel is only permitted to access the selective flatfish trawl gear cumulative limits, regardless of whether the vessel is fishing shoreward or seaward of the RCA. If only large or small footrope trawl gear is on board during an entire cumulative limit period, a vessel is only permitted to access the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA. If more than one type of bottom trawl gear (selective flatfish versus large footrope or small footrope) is on board, either simultaneously or successively, during a cumulative limit period, a vessel is only permitted to access the most restrictive cumulative bottom trawl limit associated with any of these gears. The most restrictive cumulative bottom trawl limit associated with any gear applies for that trip and for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA." In implementing this provision, NMFS has slightly modified the Pacific Council's language to use the regulatory term "subject to" cumulative limits, rather than the more informal term regarding "access to" cumulative limits. NMFS also removed language regarding a limit applying for a trip as unnecessary because the limits apply for the entire cumulative period.

In addition, the Pacific Council recommended and NMFS is implementing a change to the limited entry trawl trip limit table North of 40°10′ N. lat. (Table 3 (North)) to add a "multiple bottom trawl gear" category which specifies the trip limits that apply when multiple bottom gears are onboard, either simultaneously or successively, during a cumulative limit period.

Pt. Chehalis, Washington

In 50 CFR part 660.302, Definitions, under the definition for "North-South management area" there is a list of geographic coordinates commonly used in groundfish management. Pt. Chehalis, Washington, 46°53.30′ N. lat., is commonly used in the Pacific Coast groundfish fishery as a southern boundary for retention of halibut caught incidentally to the primary sablefish fishery during certain times of year. However, this coordinate is not currently included in the list of commonly used geographic coordinates. Thus, NMFS is adding Pt. Chehalis, Washington, 46°53.30′ N. lat., to the list at 50 CFR 660.302 under "North-South management area."

Oregon's Recreational Marine Fish Bag Limit

Following the adoption of the 2005–06 management measures, Oregon's Fish and Wildlife Commission adopted changes to their recreational fishery regulations that reduced the daily bag limit of marine fish (all marine fish species except Pacific halibut, lingcod, sanddab, surf perch, bait fish, offshore pelagic species, striped bass, hybrid bass, and salmonids) from 10 fish to 8 fish in aggregate. This change in state regulations was designed to keep catch within state harvest guidelines and does not affect the current Federal estimated impacts. Thus, to ensure consistency between Federal and state regulations, the Pacific Council recommended and NMFS is implementing a reduction in the daily bag limit for the recreational fishery off Oregon for marine fish from ten fish to eight fish in aggregate.

California's Recreational RCG (Rockfish, Cabezon, Greenling) Complex Bag Limit

Following the adoption of the 2005–06 management measures, California's Fish and Game Commission adopted changes to their recreational fishery regulations, in October 2004, that changed the cabezon sub-bag limit from three fish to one fish and the greenlings (all species of the genus Hexagrammos combined) sub-bag limit from two fish to one fish. The cabezon and greenling sub-bag limits are part of the "RCG complex" recreational fishery off California. These changes to state regulations were intended to help keep total fishing mortality within their respective 2005 state harvest targets. Thus, to ensure consistency between federal and state regulations, the Pacific Council recommended and NMFS is implementing a reduction in the cabezon sub-bag limit from three fish to one fish and the greenling (all species of the genus Hexagrammos combined) sub-bag limit from two fish to one fish in the recreational fishery off California.

Corrections and Clarifications

The following corrections and clarifications are being made to the 2005–2006 management measures.

In the final rule for the 2005–2006 specifications and management measures, § 660.310. Gear restrictions and gear identification, was removed because the paragraphs contained in that section were moved to §§ 660.381 through 660.384. Therefore, references to § 660.310 in § 660.306 are being corrected to match the current locations

of the gear restrictions and gear identification regulations.

Current Federal regulations at §§ 660.381 through 660.384, state that state regulations can be more restrictive than Federal regulations. In order to emphasize this to the regulated public, a row is being added to the trip limit tables stating that state trip limits may be more restrictive than Federal trip limits, particularly in waters off Oregon and California.

Language is being added in a row near the beginning of the trip limit tables to clarify that §§ 660.390 through 660.394 refer to conservation areas, not just § 660.390.

For the limited entry fixed gear and open access trip limits tables south of 40°10′ N. lat. (Table 4 (South) and Table 5 (South)), language is being added to clarify that RCA boundaries apply around specific islands south of 34°27′ N. lat., as already stated in the regulatory text in §§ 660.391 through 660.394.

In addition, there are minor corrections to some coordinates for the RCA boundaries approximating the 40 fm (73 m), 150 fm (274 m), and 200 fm (366 m) depth contours. These corrections prevent RCA boundaries from crossing each other and better align the boundaries to their respective depth contours.

Classification

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The data upon which these recommendations were based was provided to the Pacific Council and the Pacific Council made its recommendations at its March 6–11, 2005 meeting in Sacramento, CA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect as explained below. For the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable and contrary to the public interest because affording the time necessary for prior notice and opportunity for public comment would impede the Agency's function of managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document include changes to the commercial and recreational groundfish fisheries, including corrections and clarifications. Changes to the limited entry fixed gear sablefish fishery's tier 1 limit and revisions to the limited entry trawl language regarding more than one gear type onboard a vessel must be implemented in a timely manner, and by the time the tier season starts on April 1, 2005, so that harvest of groundfish, including overfished species, stays within the harvest levels projected for 2005 based on modeling and the most current catch projections available. Changes to Oregon and California's recreational fishery management measures to reduce the bag limits for certain species must be implemented by April 1, 2005, the next recreational fishery management month, in order to conform Federal and state recreational regulations, to protect overfished groundfish species and to keep the harvest of other groundfish species within the harvest levels projected for 2005. Delaying any of these changes would result in management measures that fail to use the best available science and could lead to early closures of the fishery if harvest of groundfish exceeds levels projected for 2005. This would be contrary to the public interest because it would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

NMFS has also provided corrections and clarifications to Federal regulations that: correct mis-referenced sections of the regulations, clarify for the public that the states may implement trip limits that are more restrictive than those implemented by the Federal government; correct the trip limit tables to properly reference conservation area regulations as occurring in 660.390–660.394, not just in 660.390; augment the trip limit tables with references to regulatory text concerning RCA boundaries around islands; and correct mis-placed coordinates for the 40 fm (73 m), 150 fm (274 m), and 200 fm (366 m) depth contours. Affording an opportunity for prior notice and comment on these corrections and clarifications is unnecessary because they are not substantive changes to the regulations and contrary to the public interest because they clarify regulations that might otherwise be confusing to the public.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: March 25, 2005.

Regina L. Spallone,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.302, in the definition of "North-South management area," paragraphs (2)(iii) through (2)(xxi) are redesignated as paragraphs (2)(iv) through (2)(xxii) and a new paragraph (2)(iii) is added to read as follows:

§ 660.302 Definitions.

* * * * *

(2) * * *

(iii) Pt. Chehalis, WA—46°53.30′ N. lat.

* * * * *

■ 3. In § 660.306, paragraphs (a)(3), (a)(5), (a)(8), and (h)(2) are revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(a) * * *

(3) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.305 or §§ 660.382 and 660.383.

* * * * *

(5) Fish for groundfish using gear not authorized in this subpart or in violation of any terms or conditions attached to an EFP under § 660.350 or part 600 of this chapter.

* * * * *

(8) Possess, deploy, haul, or carry onboard a fishing vessel subject to this subpart a set net, trap or pot, longline, or commercial vertical hook-and-line

that is not in compliance with the gear restrictions in §§ 660.382 and 660.383, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

* * * * *

(h) * * *

(2) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in a Trawl Rockfish Conservation Area or a Cowcod Conservation Area (as defined at § 660.302), except for purposes of continuous transiting, with all groundfish trawl gear stowed in accordance with § 660.381(d)(4)(ii), or except as otherwise authorized in the groundfish management measures published at § 660.381(d)(4).

* * * * *

■ 4. In § 660.372, the second to the last sentence in paragraph (b)(3)(i) is revised to read as follows:

§ 660.372 Fixed gear sablefish fishery management.

* * * * *

(b) * * *

(3) * * *

(i) * * * For 2005, the following limits are in effect: Tier 1 at 64,000 lb (29,030 kg), Tier 2 at 29,100 lb (13,200 kg), and Tier 3 at 16,600 lb (7,530 kg). * * *

* * * * *

■ 5. In § 660.381, paragraph (c)(4)(i) is revised to read as follows:

§ 660.381 Limited entry trawl fishery management measures.

* * * * *

(c) * * *

(4) * * *

(i) North of 40°10′ N. lat., a vessel may have more than one type of limited entry trawl gear on board, either simultaneously or successively, during a cumulative limit period. If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA. If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA during that limit period. If more than one type of bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom trawl gears on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA. Midwater trawl gear is allowed only for vessels participating in the primary whiting season. On non-whiting trips (defined as any fishing trip that takes, retains, possess, or lands less than 10,000 lb (4,536 kg) of whiting), vessels with both large footrope and midwater trawl gear on board during a trip are subject to the large footrope limits while fishing with large footrope gear seaward of the RCA.

* * * * *

■ 6. In § 660.384, paragraphs (c)(2)(iii), and (c)(3)(ii)(B) are revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(2) * * *

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 8 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm) and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited.

* * * * *

(3) * * *

(ii) * * *

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for rockfish. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish and cowcod is prohibited. North of 40°10′ N. lat., within the 10 RCG Complex fish per day limit, no more than 2 may be bocaccio, no more than 1 may be greenling (kelp and/or other greenlings) and no more than 1 may be cabezon. South of 40°10′ N. lat., within the 10 RCG Complex fish per day limit, no more than 1 may be bocaccio, no more than 1 may be greenling (kelp and/or other greenlings) and no more than 1 may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

■ 7. In § 660.391, paragraph (k)(23) is revised to read as follows:

§ 660.391 Latitude/longitude coordinates defining the 27 fm (49 m) through 40 fm (73 m) depth contours.

* * * * *

(k) * * *

(23) 33°28.90′ N. lat., 118°36.43′ W. long.

* * * * *

■ 8. In § 660.393, paragraphs (h)(234) through (h)(258) are redesignated as paragraphs (h)(235) through (h)(259) and a new paragraph (h)(234) is added to read as follows:

§ 660.393 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *

(h) * * *

(234) 36°01.00′ N. lat., 121°36.95′ W. long.

* * * * *

■ 9. In § 660.394, paragraphs (f)(73) and (f)(142) are revised to read as follows:

§ 660.394 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(f) * * *

(73) 46°17.73′ N. lat., 124°39.58′ W. long.

* * * * *

(142)40°30.00′ N. lat., 124°38.58′ W. long.

* * * * *

■ 10. In part 660, subpart G, Tables 3–5 are revised to read as follows:

BILLING CODE 3510–22–S

Table 3 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 032005

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]: North of 40°10' N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm				75 fm - modified 200 fm [7/]

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.
See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).

State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish						
5	large & small footrope gear	9,500 lb/ 2 months		17,000 lb/ 2 months			8,000 lb/ 2 months
6	selective flatfish trawl gear	1,500 lb/ 2 months	10,000 lb/ 2 months				1,500 lb/ 2 months
7	multiple bottom trawl gear [8/]	1,500 lb/ 2 months	9,500 lb/ 2 months	10,000 lb/ 2 months			1,500 lb/ 2 months
8	Longspine thornyhead						
9	large & small footrope gear	15,000 lb/ 2 months		23,000 lb/ 2 months			15,000 lb/ 2 months
10	selective flatfish trawl gear	1,000 lb/ 2 months					
11	multiple bottom trawl gear [8/]	1,000 lb/ 2 months					
12	Shortspine thornyhead						
13	large & small footrope gear	3,500 lb/ 2 months		4,900 lb/ 2 months			3,500 lb/ 2 months
14	selective flatfish trawl gear	1,000 lb/ 2 months		3,000 lb/ 2 months			1,000 lb/ 2 months
15	multiple bottom trawl gear [8/]	1,000 lb/ 2 months		3,000 lb/ 2 months			1,000 lb/ 2 months
16	Dover sole						
17	large & small footrope gear	69,000 lb/ 2 months		30,000 lb/ 2 months			69,000 lb/ 2 months
18	selective flatfish trawl gear	20,000 lb/ 2 months	35,000 lb/ 2 months	50,000 lb/ 2 months			20,000 lb/ 2 months
19	multiple bottom trawl gear [8/]	20,000 lb/ 2 months	35,000 lb/ 2 months	30,000 lb/ 2 months			20,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

20	**Flatfish** (except Dover sole)				TABLE 3 (North) con't
21	Other flatfish [3/], English sole & Petrale sole				
22	large & small footrope gear for Other flatfish [3/] & English sole	110,000 lb/ 2 months	Other flatfish, English sole, & Petrale sole: 110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months	
23	large & small footrope gear for Petrale sole	Not limited		Not limited	
24	selective flatfish trawl gear	100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	
25	multiple bottom trawl gear [8/]	100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	
26	Arrowtooth flounder				
27	large & small footrope gear	Not limited	150,000 lb/ 2 months	Not limited	
28	selective flatfish trawl gear	70,000 lb/ 2 months			
29	multiple bottom trawl gear [8/]	70,000 lb/ 2 months			
30	**Whiting**	Before the primary whiting season: 20,000 lb/trip -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip			
31	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**				
32	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED			
33	large & small footrope gear	300 lb/ 2 months			
34	selective flatfish trawl gear	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month	
35	multiple bottom trawl gear [8/]	300 lb/ month	300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month	

Table 3 (North). Continued

36	**Canary rockfish**				
37	large & small footrope gear	CLOSED			
38	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
39	multiple bottom trawl gear [8/]	CLOSED			
40	**Yellowtail**				
41	midwater trawl	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED			
42	large & small footrope gear	300 lb/ 2 months			
43	selective flatfish trawl gear	2,000 lb/ 2 months			
44	multiple bottom trawl gear [8/]	300 lb/ 2 months			
45	**Minor nearshore rockfish & Black rockfish**				
46	large & small footrope gear	CLOSED			
47	selective flatfish trawl gear	300 lb/ month			
48	multiple bottom trawl gear [8/]	CLOSED			
49	**Lingcod** [4/]				
50	large & small footrope gear	500 lb/ 2 months			
51	selective flatfish trawl gear	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
52	multiple bottom trawl gear [8/]	500 lb/ 2 months			
53	**Other Fish** [5/] **& Pacific cod**	Not limited			

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 032005

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:						
40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm				75 fm - modified 200 fm [7/]
38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm				75 fm - 150 fm
South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands				75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands

Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.
See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).

State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	**Minor slope rockfish[2/] & Darkblotched rockfish**			
2	40°10' - 38° N. lat.	4,000 lb/ 2 months		
3	South of 38° N. lat.	40,000 lb/ 2 months		
4	**Splitnose**			
5	40°10' - 38° N. lat.	4,000 lb/ 2 months		
6	South of 38° N. lat.	40,000 lb/ 2 months		
7	**DTS complex**			
8	Sablefish	14,000 lb/ 2 months		
9	Longspine thornyhead	19,000 lb / 2 months		
10	Shortspine thornyhead	4,200 lb/ 2 months		
11	Dover sole	50,000 lb/ 2 months		
12	**Flatfish (except Dover sole)**			
13	Other flatfish[3/] & English sole	110,000 lb/ 2 months	Other flatfish, English sole & Petrale sole: 110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole	110,000 lb/ 2 months
14	Petrale sole	No limit		No limit
15	Arrowtooth flounder	No limit	10,000 lb/ 2 months	No limit
16	**Whiting**	Before the primary whiting season: 20,000 lb/trip -- During the primary whiting season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: 10,000 lb/trip		

TABLE 3 (South)

Table 3 (South). Continued

17	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**				TABLE 3 (South) con't
18	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month			
19	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months	
20	large footrope or midwater trawl for Widow & Yelloweye	CLOSED			
21	small footrope trawl	300 lb/ month			
22	**Bocaccio**				
23	large footrope or midwater trawl	300 lb/ 2 months			
24	small footrope trawl	CLOSED			
25	**Canary rockfish**				
26	large footrope or midwater trawl	CLOSED			
27	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
28	**Cowcod**	CLOSED			
29	**Minor nearshore rockfish & Black rockfish**				
30	large footrope or midwater trawl	CLOSED			
31	small footrope trawl	300 lb/ month			
32	**Lingcod[4/]**				
33	large footrope or midwater trawl	500 lb/ 2 months			
34	small footrope trawl	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
35	**Other Fish[5/] & Cabezon**	Not limited			

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 032005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:							
North of 46°16' N. lat.		shoreline - 100 fm					
46°16' N. lat. - 40°10' N. lat.		30 fm - 100 fm					
See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).							
State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
1	Minor slope rockfish[2/] & Darkblotched rockfish	4,000 lb/ 2 months					
2	Pacific ocean perch	1,800 lb/ 2 months					
3	Sablefish	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
4	Longspine thornyhead	10,000 lb/ 2 months					
5	Shortspine thornyhead	2,000 lb/ 2 months					
6	Dover sole	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
7	Arrowtooth flounder						
8	Petrale sole						
9	English sole						
10	Other flatfish[1/]						
11	Whiting	10,000 lb/ trip					
12	Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
13	Canary rockfish	CLOSED					
14	Yelloweye rockfish	CLOSED					
15	Minor nearshore rockfish & Black rockfish	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
16	Lingcod[4/]	CLOSED		800 lb/ 2 months			CLOSED
17	Other fish[5/] & Pacific cod	Not limited					

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 032005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]: 40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	Minor slope rockfish[2/] & Darkblotched rockfish	40,000 lb/ 2 months					
2	Splitnose	40,000 lb/ 2 months					
3	Sablefish						
4	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
5	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
6	Longspine thornyhead	10,000 lb / 2 months					
7	Shortspine thornyhead	2,000 lb/ 2 months					
8	Dover sole	5,000 lb/ month When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 fb (0.45 kg) of weight per line are not subject to the RCAs.					
9	Arrowtooth flounder						
10	Petrale sole						
11	English sole						
12	Other flatfish[1/]						
13	Whiting	10,000 lb/ trip					
14	Minor shelf rockfish[2/], Shortbelly, & Widow rockfish						
15	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
16	South of 34°27' N. lat.	2,000 lb/ 2 months		2,000 lb/ 2 months			
17	Chilipepper rockfish	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
18	Canary rockfish	CLOSED					
19	Yelloweye rockfish	CLOSED					
20	Cowcod	CLOSED					
21	Bocaccio						
22	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months	300 lb/ 2 months		
23	South of 34°27' N. lat.	300 lb/ 2 months		300 lb/ 2 months			
24	Minor nearshore rockfish & Black rockfish						
25	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
26	Deeper nearshore						
27	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/ 2 months	500 lb/ 2 months
28	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
29	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months
30	Lingcod[3/]	CLOSED		800 lb/ 2 months			CLOSED
31	Other fish[4/] & Cabezon	Not limited					

TABLE 4 (South)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, roc sand sole, and starry flounder.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Part 660, Subpart G – 2005-2006 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply – Read § 660.301 - § 660.390 before using this table 032005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	Minor slope rockfish[1/] & Darkblotched rockfish	Per trip, no more than 25% of weight of the sablefish landed					
2	Pacific ocean perch	100 lb/ month					
3	Sablefish	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
4	Thornyheads	CLOSED					
5	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
6	Arrowtooth flounder						
7	Petrale sole						
8	English sole						
9	Other flatfish[2/]						
10	Whiting	300 lb/ month					
11	Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
12	Canary rockfish	CLOSED					
13	Yelloweye rockfish	CLOSED					
14	Minor nearshore rockfish & Black rockfish	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
15	Lingcod[4/]	CLOSED		300 lb/ month			CLOSED
16	Other Fish[5/] & Pacific cod	Not limited					
17	PINK SHRIMP NON-GROUNDFISH TRAWL *(not subject to RCAs)*						
18	North	Effective April 1 - October 31: groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
19	SALMON TROLL						
20	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.					

TABLE 5 (North)

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 032005

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[5/]:						
40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					

See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.
See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (Including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).

State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	**Minor slope rockfish[1/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
18	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat.	500 lb/ 2 months		500 lb/ 2 months			
20	**Canary rockfish**	CLOSED					
21	**Yelloweye rockfish**	CLOSED					
22	**Cowcod**	CLOSED					
23	**Bocaccio**						
24	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			
26	**Minor nearshore rockfish & Black rockfish**						
27	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
28	Deeper nearshore						
29	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/ 2 months	500 lb/ 2 months
30	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
31	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months
32	**Lingcod[3/]**	CLOSED		300 lb/ month, when nearshore open			CLOSED
33	**Other Fish[4/] & Cabezon**	Not limited					

TABLE 5 (South)

Table 5 (South). Continued

34	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*			
35	South	**Effective April 1 - October 31:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		
36	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**			
37	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut and Sea Cucumber:**			
38	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	75 fm - modified 200 fm [7/]
39	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm	75 fm - 150 fm
40	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for Ridgeback Prawn:**			
42	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	75 fm - modified 200 fm [7/]
43	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm	75 fm - 150 fm
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		
45		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).		

TABLE 5 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 05–6323 Filed 3–29–05; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 04112633–5040–02; I.D. 032505B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of pollock specified for the West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the 2005 TAC of pollock specified for the West Yakutat District of the GOA is 1,688 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 TAC of pollock specified for the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,638 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in the West Yakutat District of the GOA.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 25, 2005.

Regina L. Spallone,

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

[FR Doc. 05–6302 Filed 3–25–05; 4:11 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 60
Wednesday, March 30, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM303; Notice No. 25–05–02–SC]

Special Conditions: Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express Airplanes; Enhanced Flight Visibility System (EFVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplanes. These airplanes, as modified by Bombardier Aerospace Corporation, will have an Enhanced Flight Visibility System (EFVS). The EFVS is a novel or unusual design feature which consists of a head up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The regulations applicable to pilot compartment view do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: Comments must be received on or before April 19, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM303, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at that address. All comments must be marked: Docket No. NM303. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Transport Standards Staff, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2239; fax (425) 227–1320; e-mail: *dale.dunford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

On February 26, 2003, Bombardier Aerospace, applied for an amendment to the type certificate to modify Bombardier Model BD–700–1A10 and BD–700–1A11 Global Express airplanes. The Model BD–700–1A10 is a transport category airplane certified to carry a maximum of 19 passengers and a minimum of 2 crew members. The Model BD–700–1A11 is a smaller version of the BD–700–1A10. The modification involves the installation of an Enhanced Flight Vision System (EFVS). This system consists of a Thales HUD system, modified to display FLIR imagery, and a FLIR camera.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards, and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA's intent is that the pilot will be able to use the combination of information seen in the image and the natural view of the outside seen through the image as safely and effectively as a § 25.773-compliant pilot compartment view without an EVS image.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, it believes that EFVSs could be certified through application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVS to provide a level of safety equivalent to that provided by the standard in § 25.773.

Note: The term "enhanced vision system (EVS)" has been commonly used to refer to a system comprised of a head up display, imaging sensor(s), and avionics interfaces that displayed the sensor imagery on the HUD and overlaid it with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems which displayed the sensor imagery, with or without other flight information, on a head down display. To avoid confusion, the FAA created the term "enhanced flight visibility system (EFVS)" to refer to certain EVS systems that meet the requirements of the new operational rules—in particular the requirement for a HUD and specified flight information—and can be used to determine "enhanced flight visibility." EFVSs can be considered a subset of systems otherwise labeled EVSs.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions 25–180–SC, which approved the use of an EVS on Gulfstream Model G–V airplanes. These special conditions addressed the requirements for the pilot compartment view and limited the scope of the intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during the approach and allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The recent operational rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. The new rule will allow the use of EFVSs for operation below the Minimum Descent Altitude (MDA) or Decision Height (DH) to meet new visibility requirements of § 91.175(l). The purpose of this special condition is not only to address the issue of the "pilot compartment view" as was done by 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Bombardier Aerospace must show that the Bombardier Aerospace Model BD–700–1A10 and BD–700–1A11 Global Express airplanes, as modified, comply with the regulations in the U.S. type certification basis established for those airplanes. The U.S. type certificate basis for the airplanes is established in accordance with 14 CFR 21.21, 14 CFR 21.17, and the type certification application date. The U.S. type certification basis for these model airplanes is listed in Type Certificate Data Sheet No. T00003NY.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Bombardier Global Express airplanes modified by Bombardier Aerospace because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.19 after public notice, as required by 14 CFR 11.38, and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Bombardier Aerospace apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The EFVS is a novel or unusual design feature, because it projects a video image derived from a FLIR camera through the HUD. The EFVS image is projected in the center of the "pilot compartment view," which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify "visual references for the intended runway" (*see* § 91.175(l)(3)) to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than he or she can see them through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the naked eye will be easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal duties of the flight crew and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that displays only stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically) which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (*i.e.*, the ability see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system that is intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment.

Hence, there need to be safety standards for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773—Pilot Compartment View, specifies that "Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew* * *." In issuing § 25.773, the FAA did not anticipate the development of EFVSs and does not consider § 25.773 to be adequate to address the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to function by presenting an enhanced view during the approach. This enhanced view would help the pilot to see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as described in FAA Order 6750.24D ("Instrument Landing System and Ancillary electronic Component Configuration and Performance Requirements," dated March 1, 2000).

Based on this functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—when the Runway Visual Range is as low as 1,200 feet.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

- Present an enhanced view that would aid the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument approach procedure.
- Display an image that the pilot can use to detect and identify the "visual references for the intended runway" required by § 91.175(l)(3) to continue the approach with vertical guidance to 100 feet height above the touchdown zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (*i.e.*, 14 CFR Parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

- The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown (HAT).
- The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.

An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene seen through the image as safely and effectively as the pilot would use a § 25.773—compliant pilot compartment view without an EVS image. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as 14 CFR 25.1301 and 14 CFR 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image characteristics criteria include the following:

- Resolution,
- Luminance,
- Luminance uniformity,
- Low level luminance,
- Contrast variation,
- Display quality,
- Display dynamics (*e.g.*, jitter, flicker, update rate, and lag), and
- Brightness controls.

Installation criteria address visibility and access to EFVS controls and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high intensity radiated fields (HIRF) and lightning protection.

Applicability

As discussed above, these special conditions are applicable to Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplanes. Should Bombardier Aerospace apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplane, as modified by Bombardier Aerospace. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes the following special conditions as part of the amended type certification basis for Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplanes, modified by Bombardier Aerospace:

1. The EFVS imagery on the HUD must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (*e.g.* noise, "burlap" overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of EFVS display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high workload phase of flight (*e.g.*, low visibility instrument approach)

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, TCAS resolution advisories, or unusual attitude recovery cues.

e. The EFVS image and the HUD symbols—which are spatially referenced to the pitch scale, outside view and

image—must be scaled and aligned (*i.e.*, conformal) to the external scene. In addition, the EFVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. There may be airplane attitudes or cross-wind conditions which cause certain symbols (*e.g.*, the zero-pitch line or flight path vector) to reach field of view limits, such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance, which makes the pilot aware that they are no longer displayed conformally (for example, "ghosting").

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must not be degraded by the display of the EFVS image. These tasks include the following:

a. Detection, accurate identification and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Compliance with these special conditions will enable the EFVS to be used during instrument approaches in accordance with 14 CFR 91.175(l) such that it may be found acceptable for the following intended functions:

a. Presenting an image that would aid the pilot during a straight-in instrument approach.

b. Enabling the pilot to determine that the "enhanced flight visibility," as required by § 91.175(l)(2) for descent and operation below minimum descent altitude/decision height (MDA)/(DH).

c. Enabling the pilot to use the EFVS imagery to detect and identify the "visual references for the intended runway," required by 14 CFR 91.175(l)(3), to continue the approach with vertical guidance to 100 feet height above touchdown zone elevation.

5. Use of EFVS for instrument approach operations must be in accordance with the provisions of 14 CFR 91.175(l) and (m). Appropriate limitations must be stated in the Operating Limitations section of the Airplane Flight Manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6310 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20730; Directorate Identifier 2004–NM–68–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The existing AD currently requires installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. Additionally, the existing AD requires eventual installation of an FAA-approved system that would prevent such positioning of the power levers during flight. Installation of that system terminates the requirement for installation of a placard. This proposed AD would require operators who have incorporated a certain Bombardier service bulletin to perform repetitive operational checks of the beta lockout system and to revise the Airworthiness Limitations document. This proposed AD is prompted by in-service issues reported by operators who incorporated Bombardier Service Bulletin 8–76–24 as an alternative method of compliance to the existing AD. We are proposing this AD to prevent the inadvertent activation of ground beta mode during flight, which could lead to engine overspeed, engine damage or failure, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

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. This docket number is FAA–2005–20730; the directorate identifier for this docket is 2004–NM–68–AD.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, Federal Aviation Administration, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7304; fax (516) 794–5531.

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–2005–20730; Directorate Identifier 2004–NM–68–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of 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*.

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

On January 20, 2000, we issued AD 2000–02–13, amendment 39–11531 (65 FR 4095, January 26, 2000), for all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. That AD requires installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. Additionally, that AD requires eventual installation of a system that will prevent such positioning of the power levers during flight. Installation of that system terminates the requirement for installation of a placard. That AD was prompted by reports of operation of the airplane with the power levers positioned below the flight idle stop during flight. The actions specified by that AD are intended to prevent such positioning of the power levers below the flight idle stop during flight, which could cause engine overspeed, possible engine damage or failure, and consequent reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2000–02–13, Bombardier has reevaluated Service Bulletin 8–76–24, which was provided as part of the alternative method of compliance (AMOC) to AD 2000–02–13. As a result of this reevaluation, Bombardier issued an Airworthiness Limitation (AWL), outlined in Bombardier Q100/200/300 All Operator Message 759, dated February 9, 2004, that applies to Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes with a beta lockout system installed. The new AWL introduces de Havilland, Inc., Dash 8 Maintenance Task Card 6120–10, dated November 21, 2003 (for series 100, 200, and 300 airplanes).

Relevant Service Information

Bombardier has issued temporary revisions (TRs) to the applicable Bombardier DHC–8 Program Support Manual (PSM), as listed in the following TR table. The TRs specify that de Havilland, Inc., Dash 8 Maintenance Task Card 6120/10, operational check of beta lockout ground logic, dated November 21, 2003, be done at repetitive intervals not to exceed 500 flight hours for series 100, 200, and 300 airplanes, as listed in the following Task Card table.

TABLE—TRs

DHC–8 Model	TR Number	Date	PSM
–101, –102, –103, and –106 airplanes	AWL–86	March 17, 2003	1–8–7
–201 and –202 airplanes	AWL 2–26	March 17, 2003	1–82–7
–301, –311, and –315 airplanes	AWL 3–93	March 17, 2003	1–83–7

TABLE—TASK CARDS

DHC–8 Model	de Havilland, Inc., Task Card	Date
–101, –102, –103, and 106 airplanes	Dash 8 Series 100 Maintenance Task Card 6120/10	November 21, 2003.
–201 and –202 airplanes	Dash 8 Series 200 Maintenance Task Card 6120/10	November 21, 2003.
–301, –311, and –315 airplanes	Dash 8 Series 300 Maintenance Task Card 6120/10	November 21, 2003.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. We have reviewed all available information and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would supersede AD 2000–02–13, to continue to require installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. Additionally, this proposed AD continues to require eventual installation of an FAA-approved system that would prevent such positioning of the power levers during flight. This proposed AD would also require operators to perform initial and repetitive operational checks of the beta lockout system and to revise the Airworthiness Limitations document.

Transport Canada, which is the airworthiness authority for Canada, has been advised of the actions proposed by this airworthiness directive and is in agreement with the proposed actions.

Explanation of Action Taken by the FAA

The manufacturer has revised the Airworthiness Limitations document to include new operational checks of the beta lockout system. The TCCA has not issued a corresponding airworthiness directive, although accomplishment of the operational checks contained in the document described previously may be considered mandatory for operators of these aircraft in Canada.

This proposed AD, however, would require revising the applicable Airworthiness Limitations document to require the operational checks. To require compliance with those actions, we must issue an airworthiness directive.

Change to Existing AD

This proposed AD would retain all requirements of AD 2000–02–13 and add additional requirements. Since AD 2000–02–13 was issued, the AD format has been revised, and certain paragraphs

have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–02–13	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).

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

Costs of Compliance

This proposed AD would affect about 185 Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes of U.S. registry.

The installation of a placard that is required by AD 2000–02–13, and retained in this proposed AD, requires about 1 work hour per airplane, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the cost impact of the placard installation on U.S. operators is estimated to be $12,025, or $65 per airplane.

The installation of the preventative system that is required by AD 2000–02–13, and retained in this proposed AD, requires about 123 work hours per airplane, at an average labor rate of $65 per work hour. We estimate that required parts would cost approximately $12,000 per airplane. Based on these figures, the cost impact of the installation of the preventative system on U.S. operators is estimated to be $3,699,075, or $19,995 per airplane.

The proposed operational check of the beta lockout system would take about 1 work hour per airplane, per check cycle, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the estimated cost of the new operational check specified in this proposed AD for U.S. operators is $12,025, or $65 per airplane, per check cycle.

The proposed revision of the Airworthiness Limitations document would take about 1 work hour per airplane, at an average labor rate $65 per work hour. Based on these figures, the estimated cost of the revision specified in the proposed AD for U.S. operators is $12,025, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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 removing amendment 39–11531 (65 FR 4095, January 26, 2000) and adding the following new airworthiness directive (AD):

Bombardier Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–20730; Directorate Identifier 2004–NM–68–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) This AD supersedes AD 2000–02–13, amendment 39–11531 (65 FR 4095, January 26, 2000).

Applicability: (c) This AD applies to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revision. In this situation, to comply with 14 CFR 91.403 (c), the operator must request approval for an alternative method of compliance in accordance with paragraph (l)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD was prompted by in-service issues reported by operators who incorporated a certain Bombardier service bulletin as an alternative method of compliance to AD 2000–02–13. We are issuing this AD to prevent the inadvertent activation of ground beta mode during flight, which could lead to engine overspeed, engine damage or failure, and consequent reduced controllability of the airplane.

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

Requirements of AD 2000–02–13

Installation of Placard

(f) Within 30 days after March 1, 2000 (the effective date of AD 2000–02–13), install a placard in a prominent location on the instrument panel of the cockpit that states:

"Positioning of the power levers below the flight idle stop during flight is prohibited. Such positioning may lead to loss of airplane control, or may result in an engine overspeed condition and consequent loss of engine power."

Installation of System Preventing Excessive Lowering of Power Levers in Flight

(g) Within 2 years after March 1, 2000, install a system that would prevent positioning the power levers below the flight idle stop during flight, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Following accomplishment of that installation, the placard required by paragraph (f) of this AD may be removed.

(h) In the event that the system required by paragraph (g) of this AD malfunctions, or if the use of an override (if installed) is necessary, the airplane may be operated for three days to a location where required maintenance/repair can be performed, provided the system required by paragraph (g) of this AD has been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

New Requirements

Operational Checks of the Beta Lockout System

(i) For airplanes that have been modified in accordance with Bombardier Service Bulletin 8–76–24: Within 50 flight hours after the effective date of this AD, perform an operational check of the beta lockout system in accordance with the applicable de Havilland, Inc., Dash 8 task card listed in Table 1 of this AD. Thereafter repeat the operational check at intervals specified in the applicable de Havilland, Inc., temporary revision (TR) listed in Table 2 of this AD.

TABLE 1.—TASK CARDS

DHC–8 Model	de Havilland, Inc., task card	Date
–101, –102, –103, and –106 airplanes	Dash 8 Series 100 Maintenance Task Card 6120/10	November 21, 2003.
–201 and –202 airplanes	Dash 8 Series 200 Maintenance Task Card 6120/10	November 21, 2003.
–301, –311, and –315 airplanes	Dash 8 Series 300 Maintenance Task Card 6120/10	November 21, 2003.

Revision of Airworthiness Limitations (AWL) Section

(j) Within 30 days after the effective date of this AD, revise the AWL section of the applicable Instructions for Continued Airworthiness by incorporating the contents of the applicable de Havilland, Inc., TR listed in Table 2 of this AD into the AWL section of the applicable Bombardier DHC–8 Maintenance Program Support Manual (PSM).

TABLE 2.—TRS

DHC–8 Model	de Havilland, Inc., TR	Dated	For PSM
–101, –102, –103, and –106 airplanes	AWL–86	March 17, 2003	1–8–7
–201 and –202 airplanes	AWL 2–26	March 17, 2003	1–82–7
–301, –311, and –315 airplanes	AWL 3–93	March 17, 2003	1–83–7

(k) When the information in the applicable de Havilland, Inc., TR identified in Table 2 of this AD has been included in the general revisions of the applicable PSM identified in Table 2 of this AD, the general revisions may be inserted in the PSM, and the applicable TR may be removed from the AWL section of the Instruction for Continued Airworthiness.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, New York ACO has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCS approved previously in accordance with AD 2000–02–13 are acceptable for the corresponding requirements of this AD.

Related Information

(m) None.

Issued in Renton, Washington, on March 17, 2005.

Jeffery E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6241 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20755; Directorate Identifier 2004–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A321 series airplanes. The existing AD currently requires revising the Limitations section of the airplane flight manual to include an instruction to use Flap 3 for landing when performing an approach in conditions of moderate to severe icing, significant crosswind (*i.e.*, crosswinds greater than 20 knots, gust included), or moderate to severe turbulence. This proposed AD would require replacing existing elevator and aileron computers (ELAC) with ELACs having either L83 or L91 software, as applicable, which would terminate the requirements of the existing AD. This proposed AD would also require a related concurrent action. In addition, this proposed AD would revise the applicability by removing airplanes with these ELAC software standards incorporated in production. This proposed AD is prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. We are proposing this AD to prevent roll oscillations during approach and landing in certain icing, crosswind, and turbulent conditions, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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. This docket number is FAA–2005–20755; the directorate identifier for this docket is 2004–NM–244–AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20755; Directorate Identifier 2004–NM–244–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of 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*.

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

On January 28, 2004, we issued AD 2004–03–02, amendment 39–13446 (69 FR 5007, February 3, 2004), for all Airbus Model A321 series airplanes. That AD requires revising the Limitations section of the airplane flight manual to include an instruction to use Flap 3 for landing when performing an approach in conditions of moderate to severe icing, significant crosswind (*i.e.*, crosswinds greater than 20 knots, gust included), or moderate to severe turbulence. That AD was prompted by reports indicating that pilots of two separate Model A321 series airplanes encountered lateral handling difficulties, which led to roll oscillations. We issued that AD to prevent roll oscillations during approach and landing in certain icing, crosswind, and turbulent conditions, which could result in reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–03–02, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued French airworthiness directive F–2004–147, dated August 18, 2004. The French airworthiness directive mandates the installation of elevator aileron computers (ELAC) having L83 or L91 software, as applicable, and cancels the revision to the Limitations section of the airplane flight manual. The French airworthiness directive also revises the applicability by removing airplanes on which Airbus Modification 34043 was installed in production.

Relevant Service Information

Airbus has issued Service Bulletins A320–27–1151, including Appendix 01, dated March 9, 2004; and A320–27–1152, including Appendix 01, dated June 4, 2004. Service Bulletin A320–27–1151 describes procedures for replacing existing ELACs with ELACs having L83 software, and Service Bulletin A320–27–1152 describes procedures for replacing existing ELACs with ELACs having L91 software. 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 F–2004–147, dated August 18, 2004, to ensure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A320–27–1151 refers to Thales Service Bulletin 394512–27–026, dated March 5, 2004, as an additional source of service information for installing ELAC L83 software. Airbus Service Bulletin A320–27–1152 refers to Thales Service Bulletin 394512B–27–010, dated May 24, 2004, as an additional source of service information for installing ELAC L91 software.

Concurrent Service Bulletin

Airbus Service Bulletins A320–27–1151 and A320–27–1152 recommend prior or concurrent accomplishment of Airbus Service Bulletin A320–27–1135, Revision 02, dated April 18, 2002. Airbus Service Bulletin A320–27–1135, Revision 02, describes procedures for installing ELACs having L81 software. Airbus Service Bulletin A320–27–1135, Revision 02, refers to Thales Service Bulletins 394512–27–022, Revision 01, dated June 4, 2004; and 394512B–27–002, Revision 01, dated July 16, 2002; as additional sources of service information for installing L81 software in the ELACs.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. 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 airplanes of this type design that are certificated for operation in the United States. This proposed AD would supersede AD 2004–03–02. This proposed AD would continue to require revising the airplane flight manual to specify procedures for landing under certain conditions of icing, significant crosswind, or moderate to severe turbulence, until the new requirements of this AD have been accomplished.

This proposed AD would also require replacing existing ELAC computers with ELAC computers having L83 or L91 software, as applicable, which would terminate the requirements of the existing AD. This proposed AD would also require a related concurrent action. In addition, this proposed AD would revise the applicability by removing airplanes with these ELAC software standards incorporated during production. The actions would be required to be accomplished in accordance with the service information described previously.

Clarification of Terminology

Concurrent Airbus Service Bulletin A320–27–1135 refers to "ELAC standard L81." This AD uses the term "L81 software."

Change to Existing AD

This proposed AD would retain all requirements of AD 2004–03–02. Since AD 2004–03–02 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifier has changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIER

Requirement in AD 2004–03–02	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

Action	Work hour	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Estimated Costs						
AFM revision (required by AD 2004–03–02)	1	$65	None	$65	29	$1,885
Installation of ELAC having L83 or L91 software (new proposed action).	1	65	No charge	65	29	1,885
Estimated Concurrent Service Bulletin Costs						
Installation of ELAC having L81 software	1	65	No charge	65	29	1,885

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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 removing amendment 39–13446 (69 FR 5007, February 3, 2004) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–20755; Directorate Identifier 2004–NM–244–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) This AD supersedes AD 2004–03–02, amendment 39–13446 (69 FR 5007, February 3, 2004).

Applicability

(c) This AD applies to Airbus Model A321 series airplanes, certificated in any category, except those with Airbus Modification 34043 installed in production.

Unsafe Condition

(d) This AD was prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority. We are issuing this AD to prevent roll oscillations during approach and landing in certain icing, crosswind, and turbulent conditions, which could result in reduced controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 2004–03–02

Airplane Flight Manual Revision

(f) Within 10 days after February 18, 2004 (the effective date of AD 2004–03–02), revise the Limitations section of the airplane flight manual (AFM) to include the following

statement. This may be done by inserting a copy of this AD in the AFM.

"*A321 APPROACH AND LANDING* (ROLL CONTROL) When moderate to severe icing conditions, or significant cross wind (i.e., crosswinds greater than 20 knots, gust included), or moderate to severe turbulence are anticipated:

Use FLAP 3 for landing."

Note 1: When a statement identical to that in paragraph (f) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

New Requirements of This AD

Installation of Elevator Aileron Computers (ELAC) Having L83 or L91 Software

(g) Within 16 months after the effective date of this AD: Replace existing ELACs with ELACs having L83 software, by accomplishing all of the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–27–1151, including Appendix 01, dated March 9, 2004; or with ELACs having L91 software, by accomplishing all of the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–27–1152, including Appendix 01, dated June 4, 2004; as applicable. After accomplishing the ELAC replacements, remove the AFM revision required by paragraph (f) of this AD. Accomplishing the requirements of this paragraph terminates the requirements of paragraph (f) of this AD.

Note 2: Airbus Service Bulletin A320–27–1151 refers to Thales Service Bulletin 394512–27–026, dated March 5, 2004, as an additional source of service information for installing ELAC L83 software. Airbus Service Bulletin A320–27–1152 refers to Thales Service Bulletin 394512B–27–010, dated May 24, 2004, as an additional source of service information for installing ELAC L91 software.

Concurrent Service Bulletin

(h) Prior to doing the requirements of paragraph (g) of this AD: Install ELACs having L81 software in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1135, Revision 02, dated April 18, 2002.

Previously Accomplished Actions in Concurrent Service Bulletin

(i) Installation of ELACs having L81 software in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1135, dated June 29, 2001; or Service Bulletin A320–27–1135, Revision 01, dated August 31, 2001; is acceptable for compliance with the requirements of paragraph (h) of this AD.

Part Installation

(j) As of the effective date of this AD, no person may install on any airplane an ELAC, part number 3945122506, 3945123506, 3945128102, or 3945128103.

Alternative Methods of Compliance (AMOCs)

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2004–03–02, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Related Information

(l) French airworthiness directive F–2004–147, dated August 18, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 22, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6243 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20727; Directorate Identifier 2004–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, –401, and –402 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400, –401, and –402 airplanes. This proposed AD would require repetitive inspections to detect discrepancies of the attachment fittings of the outboard flap front spar at flap track Number 4 and Number 5 locations, and corrective actions if necessary. This proposed AD also would require eventual replacement of the attachment fittings as terminating action for the repetitive inspections. This proposed AD is prompted by the discovery of several airplanes that have loose flap front spar attachment fittings at flap track Number 4 and Number 5 locations. We are proposing this AD to prevent the attachment fittings from becoming detached, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

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. This docket number is FAA–2005–20727; the directorate identifier for this docket is 2004–NM–148–AD.

FOR FURTHER INFORMATION CONTACT: David A. Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

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–2005–20727; Directorate Identifier 2004–NM–148–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*.

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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–400, –401, and –402 airplanes. TCCA advises that, during inspections and flap modifications, several airplanes were found to have loose flap front spar attachment fittings at flap track Number 4 and Number 5 locations. When the fittings were removed, it was discovered that the fittings and the flap front spar web to which they were mounted had elongated attachment holes. In addition, the lugs of certain attachment fittings were found to be chafing with flap track Number 4. Loose fittings can damage the front spar web and result in the fitting becoming detached, and consequent loss of control of the airplane.

Relevant Service Information

Bombardier has issued Alert Service Bulletin (ASB) A84–57–06, Revision "B" dated March 9, 2004. That ASB describes procedures for repetitive visual inspections to detect discrepancies of the attachment fittings of the outboard flap front spar, track Number 4 and Number 5. For flap track Number 4, discrepancies include damage caused by fouling with a flap track, loose fittings, and nonconforming blind fasteners. For flap track Number 5, discrepancies include loose fittings, a gap between any fitting and the front spar web that exceeds 0.002 inches, and nonconforming blind fasteners.

The alert service bulletin refers to the following Bombardier Repair Drawings (RD) as additional sources of service information for doing corrective actions/temporary repairs/terminating action:

- 8/4–57–226, Issue 2, dated November 11, 2003.
- 8/4–57–228, Issue 1, dated October 27, 2003.
- 8/4–57–220, Issue 2, dated October 15, 2003.

The temporary repair procedures involve opening up the holes on original centers in both the brackets and front spar to allow for installation of oversize fasteners, inspecting the areas around the holes for cracks and/or other signs of damage, installing oversize Hi–Lite Pins with corresponding collars in lieu of original standard MS-type blind bolts at all repair locations, and applying corrosion inhibiting compounds as required.

The alert service bulletin also refers to Modification Summary Package IS4Q5750002, Revision D, released December 1, 2003, as an additional source of service information for doing a permanent repair. The permanent repair involves replacing four blind bolts with certain oversize fasteners having certain collars, and installing a repair patch and solid shim. Accomplishing the permanent repair eliminates the need for the repetitive inspections described previously.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2004–11, dated June 28, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA'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 repetitive inspections to detect discrepancies of the attachment fittings of the outboard flap front spar at flap track Number 4 and Number 5 locations, and corrective actions if necessary. This proposed AD also would require eventual replacement of the attachment fittings as terminating action for the repetitive inspections. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

The alert service bulletin 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 TCAA (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 TCAA approve would be acceptable for compliance with this proposed AD Operators should note that, although the Accomplishment Instructions of the alert service bulletin describe procedures for submitting inspection results to the manufacturer, this proposed AD would not require that action.

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
Inspections (per inspection cycle)	1	$65	$0	$65	22	[1] $1,430
Permanent repair	20	65	0	1,300	22	28,600

[1] Per inspection cycle.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–20727; Directorate Identifier 2004–NM–148–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, –401 and –402 airplanes, certificated in any category; serial numbers 4001 and 4003 through 4093 inclusive.

Unsafe Condition

(d) This AD is prompted by the discovery of several airplanes that have loose flap front spar attachment fittings at flap track Number 4 and Number 5 locations. We are issuing this AD to prevent the attachment fittings from becoming detached, and consequent loss of control of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–57–06, Revision 'B,' dated March 9, 2004.

Inspections of Flap Track Number 4

(g) For any front spar attachment fitting at the flap track Number 4 location on which Bombardier Repair Drawing (RD) 8/4–57–228, Issue 1, dated October 27, 2003; in combination with RD 8/4–57–173, Issue 2, dated June 17, 2003, or RD 8/4–57–180, Issue 2, dated September 22, 2003, or RD 8/4–57–226, Issue 2, dated November 11, 2003; has not been done prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, do a general visual inspection to detect discrepancies of the front spar attachment fittings at the flap track Number 4 location on both the left and right outboard flap assemblies. Do the inspection in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours until the terminating action required by paragraph (j) of this AD is 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."

Inspections of Flap Track Number 5

(h) Within 400 flight hours after the effective date of this AD, do a general visual inspection to detect discrepancies of the front spar attachment fittings at the flap track Number 5 location on both the left and right outboard flap assemblies. Do the inspection in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours until the terminating action required by paragraph (j) of this AD is done.

Corrective Actions

(i) If any discrepancy is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, repair the discrepancy in accordance with the service bulletin. Where the service bulletin says to contact the manufacturer for repair instructions, before further flight, repair in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Terminating Action—Permanent Repair

(j) Within 4,000 flight hours after the effective date of this AD, do the permanent repair required by paragraphs (j)(1) and (j)(2) of this AD. Completing the permanent repair constitutes terminating action for the requirements of this AD.

(1) Modify the attachment of the front fittings of flap track Number 4 on both the left and right outboard flap assemblies in accordance with Bombardier Repair Drawing (RD) 8/4–57–226, Issue 2, dated November 11, 2003. Fittings on which the repairs specified in RD 8/4–57–173, Issue 2, dated June 17, 2003, or RD 8/14–57–180, Issue 2, dated September 22, 2003, have been done do not require that RD 8/4–57–226 be incorporated at those fitting locations.

(2) Modify the attachment of the front fittings of flap track Number 5 on both the left and right outboard flap assemblies in accordance with Bombardier Modification Summary Package IS4Q5750002, Revision D, dated December 1, 2003.

Inspections Accomplished According to Previous Issue of Service Bulletin

(k) Inspections accomplished before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A84–57–06, dated November 5, 2003; or Revision 'A,' dated December 16, 2003; are acceptable for compliance with the inspections required by this AD.

No Reporting Requirement

(l) Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, New York Aircraft Certification Office, 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

(n) Canadian airworthiness directive CF–2004–11, dated June 28, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6248 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20724; Directorate Identifier 2004–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 series airplanes. This proposed AD would require repetitive inspections for cracks of the fuselage pressure skin above the left and right main landing gear (MLG) bay. This proposed AD also would require corrective action, including related investigative actions, if leaks are found. This proposed AD is prompted by reports of cracks in the fuselage pressure skin above the left and right MLG bay. We are proposing this AD to detect and correct fatigue cracking in the fuselage pressure skin above the left and right MLG bay; such fatigue cracking could adversely affect the structural integrity of the fuselage and its ability to maintain pressure differential.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

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–2005–20724; the directorate identifier for this docket is 2004-NM–233-AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20724; Directorate Identifier 2004–NM–233–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*.

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 Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 series airplanes. The CAA advises that significant cracking in the fuselage pressure skin above the main landing gear (MLG) bay has been reported following unrelated maintenance. The published inspection technique does not guarantee that any damage will be detected. This condition, if not corrected, could adversely affect the structural integrity of the fuselage and its ability to maintain pressure differential.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin 53–170, dated August 8, 2003. The service bulletin describes procedures for repetitive inspections for cracks of the fuselage pressure skin above the left and right main landing gear (MLG) bay; and for corrective action, including related investigative actions, if necessary. The inspections for cracks include listening for air leaks and doing a visual check for air leaks. The corrective action includes repairing any crack found during the inspections for air leaks and contacting the manufacturer if the crack exceeds the limit specified in the service bulletin. The related investigative actions include doing a detailed visual and fluorescent dye penetrant or eddy current inspection for cracking on the fuselage pressure skin. If any cracking is found during the related investigative actions, the service bulletin specifies to report the findings to BAe Systems. The service bulletin also specifies that

accomplishing BAe Modification HCM00972C ends the inspections.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2004–0004, dated February 26, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that we need to issue an AD for 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 under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

The service bulletin 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 Civil Aviation Authority (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 Civil Aviation Authority (or its delegated agent) approve would be acceptable for compliance with this proposed AD.

Operators should note that, although the Accomplishment Instructions of the service bulletin describe procedures for submitting findings to the manufacturer, this proposed AD would not require that action.

Although the service bulletin specifies that accomplishing BAe Modification HCM00972C ends the inspections, we have not included a terminating modification in the proposed AD. We have determined that the modification does not contain substantive information about the modification and will vary among operators. Operators may request an alternative method of compliance (AMOC) according to the provisions of paragraph (j) of the proposed AD, if sufficient data are included to justify that the AMOC would provide an acceptable level of safety.

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 inspection cycle	7	$65	$0	$455	18	[1] 8,190

[1] Per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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):

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–20724; Directorate Identifier 2004–NM–233–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146 series airplanes, certificated in any category; except those on which BAe Modification HCM00972A or HCM00972C has been accomplished.

Unsafe Condition

(d) This AD was prompted by reports of cracks in the fuselage pressure skin above the left and right main landing gear (MLG) bay. We are issuing this AD to detect and correct fatigue cracking in the fuselage pressure skin above the left and right MLG bay; such fatigue cracking could adversely affect the structural integrity of the fuselage and its ability to maintain pressure differential.

Compliance

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

Initial and Repetitive Inspections

(f) At the times specified in Table 1 of this AD, inspect the fuselage pressure skin above the left and right MLG bay for cracks in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin 53–170, dated August 8, 2003.

TABLE 1.—COMPLIANCE TIMES

For airplanes listed in paragraph (c) of this AD—	Do initial inspections—	And do repetitive inspections thereafter—
On which neither BAe modification HCM00744M nor HCM00850A has been accomplished.	Prior to the accumulation of 15,000 total flight cycles or within 500 flight cycles after the effective date of this AD, whichever occurs later.	At intervals not to exceed 1,000 flight cycles.
On which neither BAe modification HCM00744M nor HCM00850A has been accomplished.	Prior to the accumulation of 15,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.	At intervals not to exceed 3,000 flight cycles.
On which both BAe modification HCM00744M nor HCM00850A has been accomplished.		

Corrective Action

(g) If any crack is found during any inspection required by paragraph (f) of this AD, do the corrective action and any related investigative actions, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin 53–170, dated August 8, 2003, except as required by paragraph (h) of this AD.

(h) If any cracking is found during any inspection or related investigative action required by this AD, and the service bulletin recommends contacting BAe Systems for appropriate action: Before further flight, repair the cracks according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Civil Aviation Authority (or its delegated agent).

No Reporting

(i) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(j) 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

(k) British airworthiness directive G–2004–0004, dated February 26, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 17, 2005.

Jeffery E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6249 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20726; Directorate Identifier 2004–NM–265–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –200PF Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757–200, –200CB, and –200PF series airplanes. This proposed AD would require an inspection of each trailing edge flap transmission assembly to determine the part number and serial number, and related investigative and corrective actions and part marking if necessary. This proposed AD is prompted by a report indicating that cracked flap transmission output gears have been discovered during routine overhaul of the trailing edge flap transmission assemblies. We are proposing this AD to prevent an undetected flap skew, which could result in a flap loss, damage to adjacent airplane systems, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 16, 2005.

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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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–2005–20726; the directorate identifier for this docket is 2004–NM–265–AD.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20726; Directorate Identifier 2004–NM–265–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*.

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 cracked flap transmission output gears have been discovered during routine overhaul of the trailing edge flap transmission assemblies on certain Boeing Model 757–200, –200CB, and –200 PF series airplanes. Investigation revealed that the cracks are the result of a manufacturing error in the production of transmission assemblies having certain part numbers and serial numbers. A damaged output gear could result in a disconnect within the flap transmission and cause an undetected flap skew. An undetected flap skew, if not corrected, could result in a flap loss, damage to adjacent airplane systems, and consequent reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004. The service bulletin describes procedures for inspecting each trailing edge flap transmission assembly to determine the part number and serial number, and related investigative and corrective actions if necessary. The related investigative and corrective actions include removing the transmission output gear from the affected transmission assembly, performing a magnetic particle inspection of the output gear, and replacing the output gear with a new output gear if any cracks or defects are found. The service bulletin also includes procedures for marking the nameplate of a trailing edge flap transmission assembly with the service bulletin number to indicate that the inspection of the output gear has been completed. 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.

Costs of Compliance

There are about 979 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 644 airplanes of U.S. registry.

It will take approximately 1 work hour per airplane to accomplish the proposed inspection at an average labor rate of $65 per work hour. Based on this figure, the cost impact of the proposed AD on U.S. operators is estimated to be $41,860, or $65 per airplane.

Removal of a transmission assembly; removal, inspection, and reassembly of the transmission output gear; and reinstallation of the transmission assembly; if required; will take about 20 work hours per transmission assembly, at an average labor rate of $65 per work hour. Required parts will cost about $325 per transmission output gear. Based on these figures, we estimate the cost of replacement to be $1,625 per transmission output assembly (there are 8 transmission output assemblies per airplane and 325 suspect assemblies).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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–2005–20726; Directorate Identifier 2004–NM–265–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 16, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, and –200PF series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004.

Unsafe Condition

(d) This AD was prompted by a report indicating that cracked flap transmission output gears have been discovered during routine overhaul of the trailing edge flap transmission assemblies. We are issuing this AD to prevent an undetected flap skew, which could result in a flap loss, damage to adjacent airplane systems, and consequent reduced controllability of the airplane.

Compliance

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

Inspection To Determine Part Number and Serial Number

(f) Within 60 months after the effective date of this AD: Do an inspection of each trailing edge flap transmission assembly to determine the part number and serial number, and any applicable related investigative and corrective actions and part marking, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004. If, during any related investigative action, any transmission output gear is found with a defect or crack, replace that transmission output gear before further flight.

Parts Installation

(g) As of the effective date of this AD, no person may install a trailing edge flap transmission assembly, part number (P/N) 251N4050–37, –38, –39, or –40, having any serial number (S/N) 001 through 325 inclusive; or P/N 251N4022–28, –29, –30, or –31, having any S/N 001 through 325 inclusive; on any airplane; unless the transmission assembly has been inspected, and any applicable related investigative and corrective actions and part marking has been accomplished, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office, 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 March 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6250 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20725; Directorate Identifier 2003–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707–300B, –300C, and –400 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 Boeing Model 707–300B, –300C, and –400 series airplanes. This proposed AD would require repetitive inspections to detect cracked or broken hinge fitting assemblies of the inboard leading edge slats, and corrective action if necessary. This proposed AD would provide as an option a preventive modification, which would defer the repetitive inspections. This proposed AD also would provide an option of replacing all hinge fitting assemblies with new, improved parts, which would terminate the repetitive inspection requirements. This proposed AD is prompted by results of a review to identify and implement procedures to ensure the continued structural airworthiness of aging transport category airplanes. We are proposing this AD to detect and correct fatigue cracking of the hinge fitting assembly of the inboard leading edge slats, which could result in reduced structural integrity of the slat system. This condition could result in loss of the inboard leading edge slat and could cause the flightcrew to lose control of the airplane.

DATES: We must receive comments on this proposed AD by May 16, 2005.

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, P.O. Box 3707, Seattle, Washington 98124–2207.

You may 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: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

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–2005–20725; Directorate Identifier 2003–NM–250–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 may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You may examine the AD docket 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 Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Working Group (AAWG) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AAWG was to sponsor "Task Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs;
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Inspection Documents (SID); and
5. Assess repair quality.

Based on the results of this review, the task group for Boeing Model 707 series airplanes recommended replacing all hinge fitting assemblies on Boeing Model 707–300B, –300C, and –400 series airplanes to prevent fatigue cracking of the hinge fitting assembly of the inboard leading edge slats, which could result in reduced structural integrity of the slat system. This condition could result in loss of the inboard leading edge slat, which could cause the flightcrew to lose control of the airplane.

We partially agree with the task group's recommendation. We agree that corrective action is necessary to address the identified unsafe condition. However, we do not agree with the recommendation to mandate the replacement of all hinge fitting assemblies for the following reasons:

1. Accessing the hinge fitting assemblies for inspection is easily accomplished; and
2. Cracked or broken assemblies are easily detectable by means of a visual inspection.

Relevant Service Information

We have reviewed Boeing Service Bulletin 2982, Revision 2, dated October 7, 1977. This service bulletin describes procedures for doing repetitive dye penetrant inspections to detect cracked or broken hinge fitting assemblies of the inboard leading edge slats, and corrective action if necessary. The corrective action replaces any cracked or broken hinge fitting assembly with the following:

- A like serviceable part;
- A like serviceable part on which the preventative modification (described below) has been done. This replacement defers the repetitive inspections for 1.5 times the total flight hours at the time of modification for that hinge fitting assembly; or
- A new, improved part. This replacement ends the repetitive inspections for that hinge fitting assembly.

As an option to the repetitive dye penetrant inspections, this service bulletin also describes procedures for a preventive modification, which consists of a magnetic particle inspection and rework of the hinge fitting assembly. This preventive modification provides a new threshold for doing the repetitive dye penetrant inspections of the hinge fitting assemblies. This service bulletin also describes procedures for replacing all hinge fitting assemblies with new, improved parts, which ends the repetitive inspections. We have determined that accomplishment of the actions specified in the service bulletin will 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 repetitive dye penetrant inspections of the hinge fitting assemblies of the inboard leading edge slats to detect cracks or broken parts of the hinge fitting assemblies of the inboard leading edge, and corrective action if necessary. This proposed AD would provide as an option a preventive modification, which would defer the repetitive dye penetrant inspections. This proposed AD also would provide an option of replacing all hinge fitting assemblies with new, improved parts, which would terminate the repetitive inspection requirements. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

The service bulletin gives a new inspection threshold following a preventive modification that is "equal to 1.5 times the accumulated flight hours at the time of the modification." This preventive modification is included in paragraph (i) of this proposed AD. Instead of allowing a threshold that

multiplies the current number of flight hours, paragraph (i) proposes to limit the inspection threshold to 15,000 flight hours following the preventive modification. We have made this change to the inspection threshold because, when the service bulletin was originally released in 1970, the affected airplanes had relatively few total flight hours. All affected airplanes now have significantly more total flight hours—in one case, more than 90,000. We find that allowing a threshold of 1.5 times the flight hours of any airplane in the current fleet would not provide an adequate level of safety.

This proposed AD also differs from the service bulletin in that it applies to Boeing Model 707–400 series airplanes as well as the Boeing Model 707–300B and –300C series airplanes specified in the service bulletin. As stated earlier in this proposed AD, the inboard leading edge slats on the Model 707–400 series airplanes have the same configuration as that on the affected Model 707–300B and –300C series airplanes. Therefore, those Model 707–400 series airplanes may be subject to the same unsafe condition as the Model –300B, and –300C series airplanes. In addition, the procedures in the service bulletin also address the unsafe condition on the Model 707–400 series airplanes.

The service bulletin does not provide procedures for repairing any crack found during the magnetic particle inspection (part of the preventative modification). This proposed AD would require you to do the corrective action specified in paragraph (h) of the proposed AD.

We have coordinated the differences discussed above with the airplane manufacturer.

Clarification Between the Proposed AD and the Service Bulletin

The service bulletin allows operators to use a "like serviceable part." For this proposed AD, we have defined "like serviceable part" as a serviceable part listed in the "Existing" part number column of Table II of the service bulletin that has been inspected and found to be crack free in accordance with paragraph (g) of this AD before installation. A "new part" is a part listed in the "Replacement" or "Optional" part number column of Table II of the service bulletin.

Costs of Compliance

This proposed AD would affect about 189 Boeing Model 707–300B, –300C, and –400 series airplanes worldwide. 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
Dye Penetrant Inspection	3	$65	None	$195 (per inspection cycle)	16
Preventive Modification (Optional)	10	65	None	650 (per inspection)	16
Terminating Action (Optional)	10	65	$8,220	8,870	16

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

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–2005–20725; Directorate Identifier 2003–NM–250–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 16, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 707–300B, –300C, and –400 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by results of a review to identify and implement procedures to ensure the continued structural airworthiness of aging transport category airplanes. We are proposing this AD to detect and correct fatigue cracking of the hinge fitting assembly of the inboard leading edge slats, which could result in reduced

structural integrity of the slat system. This condition could result in loss of the inboard leading edge slat and could cause the flightcrew to lose control of the airplane.

Compliance

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

Service Bulletin Reference

(f) In this AD, the term "service bulletin" means the Accomplishment Instructions of Boeing Service Bulletin 2982, Revision 2, dated October 7, 1977.

Repetitive Inspections

(g) Before the accumulation of 10,000 total flight hours, or within 1,500 flight hours after the effective date of this AD, whichever occurs later, do a dye penetrant inspection to detect cracked or broken hinge fitting assemblies of the inboard leading edge slats in accordance with Part I, "Inspection Data," of the service bulletin. Repeat the inspection at intervals not to exceed 1,500 flight hours, except as provided by paragraph (i) or (k) of this AD.

Corrective Action

(h) If any crack or broken assembly is found during any inspection required by paragraph (g) of this AD, before further flight, do the action specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) Replace the hinge fitting assembly with like serviceable part in accordance with Part I of the service bulletin.

(2) Replace the hinge fitting assembly with like serviceable part on which the preventative modification specified in paragraph (i) of this AD has been done, in accordance with Part II of the service bulletin. This replacement defers the repetitive inspection requirements of paragraph (g) of this AD for 15,000 flight hours for that hinge fitting assembly.

(3) Replace the hinge fitting assembly with a new, improved part in accordance with Part III of the service bulletin. This replacement terminates the repetitive inspection requirements of paragraph (g) of this AD for that hinge fitting assembly.

Note 1: For this AD, a "like serviceable part" is a serviceable part listed in the "Existing" part number column of Table II of the service bulletin that has been inspected and found to be crack free in accordance with paragraph (g) of this AD before installation. A "new part" is a part listed in the "Replacement" or "Optional" part number column of Table II of the service bulletin.

Optional Preventative Modification (Defers Repetitive Inspections)

(i) Do a preventative modification by accomplishing all the procedures in Part II of the service bulletin, except as required by paragraph (j) of this AD. Within 15,000 flight hours after the preventive modification, do the repetitive inspections in paragraph (g) of this AD at intervals not to exceed 1,500 flight hours.

(j) If any crack is found during the preventative modification specified in paragraph (i) of this AD, before further flight, do the action specified in paragraph (h) of this AD.

Optional Terminating Action

(k) Replacement of a hinge fitting assembly with a new, improved part terminates the repetitive inspection requirements of paragraph (g) of this AD for that assembly. Replacement of all hinge fitting assemblies with new, improved parts terminates the repetitive inspection requirements of this AD. The replacement must be done in accordance with Part III of the service bulletin.

Actions Accomplished Using a Previous Issue of the Service Bulletin

(l) Actions accomplished before the effective date of this AD using Boeing Service Bulletin 2982, Revision 1, dated June 29, 1970, are considered acceptable for compliance with the corresponding action in this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO) has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for a preventive modification of hinge fitting assemblies of the inboard leading edge slat if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on March 17, 2005.

Jeffery E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6251 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20728; Directorate Identifier 2005–NM–003–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 and –135 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–145 and –135 series airplanes. This proposed AD would require replacing the horizontal stabilizer control unit (HSCU) with a modified and reidentified or new, improved HSCU. For certain airplanes, this proposed AD would also require related concurrent actions as necessary. This proposed AD is prompted by reports of loss of the pitch trim system due to a simultaneous failure of both channels of the HSCU. We are proposing this AD to prevent loss of pitch trim and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

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–2005–20728; the directorate identifier for this docket is 2005–NM–003–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your

comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20728; Directorate Identifier 2005–NM–003–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*.

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 Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–145 and EMB–135 series airplanes. The DAC advises that it has received reports of loss of the pitch trim system due to a simultaneous failure of both channels of the horizontal stabilizer control unit (HSCU). This condition, if not corrected, could result in loss of pitch trim and reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletins 145–27–0106, Revision 01 (for Model EMB–145 and EMB–135 series airplanes, except for EMB–135BJ series airplanes), and 145LEG–27–0016, Revision 01 (for Model EMB–135BJ series airplanes); both dated August 30, 2004. The service bulletins describe procedures for replacing the HSCU with a modified and reidentified or new, improved HSCU. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2004–11–01, dated November 28, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

The EMBRAER service bulletins refer to Parker Service Bulletin 362100–27–265, dated June 25, 2004, as an additional source of service information for replacing the HSCU. The EMBRAER service bulletins include the Parker service bulletin.

The EMBRAER service bulletins specify, for certain airplanes, concurrent accomplishment of certain actions specified in EMBRAER Service Bulletins 145LEG–27–0002, Revision 01, dated April 15, 2003, and 145–27–0084, Revision 04, dated October 21, 2003. These actions include replacing the HSCU with a new HSCU with improved features, and having a new part number. Accomplishment of these actions is required by AD 2004–25–21, as discussed under "Related AD."

Related AD

We have issued a related AD, AD 2004–25–21, amendment 39–13909 (69 FR 76605, December 22, 2004), which is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. Among other things, that AD requires accomplishment of EMBRAER Service Bulletins 145LEG–27–0002, Revision 01, dated April 15, 2003, and 145–27–0084, Revision 04, dated October 21, 2003, which describe procedures for replacing the HSCU with a new HSCU with improved features, and having a new part number. As explained previously, for certain airplanes, certain actions specified in these EMBRAER service bulletins must be accomplished before or during accomplishment of the replacement that would be required by this proposed AD.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between Proposed AD and Foreign Airworthiness Directive" and "Difference Between Proposed AD and Service Information."

Difference Between Proposed AD and Foreign Airworthiness Directive

The DAC states that Brazilian airworthiness directive 2004–11–01, dated November 28, 2004, is applicable to "all EMB–145() and EMB–135() aircraft models in operation." However, this does not agree with EMBRAER Service Bulletin 145–27–0106, Revision 01, and Service Bulletin 145LEG–27–0016, Revision 01; both dated August 30, 2004; which state that only EMB–145 and –135 airplanes with certain serial numbers are affected. This proposed AD would be applicable only to the airplanes identified in the service bulletins. This difference has been coordinated with the DAC.

Difference Between Proposed AD and Service Information

The accomplishment instructions of EMBRAER Service Bulletins 145–27–0106 and 145LEG–27–0016 do not specifically address, as a concurrent requirement, the accomplishment of Service Bulletins 145LEG–27–0002 and 145–27–0084; however, this concurrent accomplishment is specified in paragraph 1.C (1) of EMBRAER Service Bulletins 145–27–0106 and 145LEG–27–0016, and would be required for certain airplanes by this proposed AD.

Costs of Compliance

This proposed AD would affect about 616 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would be supplied by the manufacturer at no cost. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $40,040, or $65 per airplane.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–20728; Directorate Identifier 2005–NM–003–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EMB–145 and –135 series airplanes; certificated in any category; as identified in EMBRAER Service Bulletin 145–27–0106, Revision 01 (for Model EMB–145 and EMB–135 series airplanes, except for EMB–135BJ series airplanes), and EMBRAER Service Bulletin 145LEG–27–0016, Revision 01 (for Model EMB–135BJ series airplanes); both dated August 30, 2004.

Unsafe Condition

(d) This AD was prompted by reports of loss of the pitch trim system due to a simultaneous failure of both channels of the horizontal stabilizer control unit (HSCU). We are issuing this AD to prevent loss of pitch trim and reduced controllability of the airplane.

Compliance

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

Replacement

(f) Within 18 months or 4,000 flight hours after the effective date of this AD, whichever occurs first, replace the HSCU with a modified and reidentified or new, improved HSCU, part number 362100–1013, by doing all the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0106, Revision 01; or EMBRAER Service Bulletin 145LEG–27–0016, Revision 01; both dated August 30, 2004; as applicable.

Related AD

(g) For airplanes identified in paragraph 1.C (1) of EMBRAER Service Bulletins 145–27–0106, Revision 01, and 145LEG–27–0016, Revision 01, both dated August 30, 2004: Prior to or concurrently with the actions required by paragraph (f) of this AD, replace the HSCU with a new HSCU with improved features, and having a new part number, in accordance with EMBRAER Service Bulletins 145LEG–27–0002, Revision 01, dated April 15, 2003, or 145–27–0084, Revision 04, dated October 21, 2003, as applicable. These actions are currently required by AD 2004–25–21, amendment 39–13909 (69 FR 76605, December 22, 2004).

Actions Accomplished Per Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–27–0106, and EMBRAER Service Bulletin 145LEG–27–0016; both dated August 4, 2004; are considered acceptable for compliance with the applicable action in this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) Brazilian airworthiness directive 2004–11–01, dated November 28, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6252 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20756; Directorate Identifier 2004–NM–52–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –03, –106, –201, –202, –301, –311, and –315 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311 and –315 airplanes. This proposed AD would require installation of check valves in Numbers 1 and 2 hydraulic systems, removal of the filters from the brake shuttle valves, and removal of the internal garter spring from the brake shuttle valves. This proposed AD results from two instances of brake failure due to the loss of hydraulic fluid from both Numbers 1 and 2 hydraulic systems and one incident of brake failure due to filter blockage in the shuttle valve. We are proposing this AD to prevent the loss of hydraulic power from both hydraulic systems which could lead to reduced controllability of the airplane; and to prevent brake failure which could result in the loss of directional control on the ground and consequent departure from the runway during landing.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

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–2005–20756; the directorate identifier for this docket is 2004–NM–52–AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–20756; Directorate Identifier 2004–NM–52–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*.

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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. TCCA advises that there have been two instances during which the Numbers 1 and 2 hydraulic systems power was lost due to a hydraulic leak downstream of one of the brake shuttle valves. Investigation revealed that a minor leak in one of the brake units allowed the Number 2 hydraulic system fluid to deplete. In addition, the shuttle valve internal garter spring had also failed. This failure allowed the Number 1 hydraulic system fluid to also deplete through the same brake unit. This condition, if not corrected, could result in loss of hydraulic power from both hydraulic systems, which could lead to reduced controllability of the airplane.

An additional incident has been reported of a brake seizure and subsequent wheel assembly fire while the airplane was taxiing. An investigation revealed that hydraulic pressure remained applied to the brake unit even after brake release. It was determined that the dislodging of the 10-micron filter in the brake shuttle valve had blocked the valve port and prevented hydraulic fluid flow from the brake. Brake failure could result in the loss of directional control on the ground and consequent departure from the runway during landing.

Relevant Service Information

Bombardier Inc. has issued Service Bulletin S.B. 8–29–36, Revision "B," dated January 6, 2003, that describes procedures for installing check valves in the Numbers 1 and 2 hydraulic systems by incorporating Modsum 8Q101320. Bombardier has also issued S.B. 8–29–37, Revision "A," dated September 19, 2003, that provides instructions for incorporating Modsum 8Q101316 to remove the filter assemblies and internal garter spring, and S.B. 8–29–39, dated July 14, 2003, that includes instructions for incorporating Modsum 8Q101422 to remove the filter assemblies. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2004–02, dated February 9, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada 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, TCCA has kept the FAA informed of the situation described above. We have examined TCCA'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 installation of check valves in Numbers 1 and 2 hydraulic systems, removal of filters from the brake shuttle valves and removal of the internal garter spring from the brake shuttle valves. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and Canadian Airworthiness Directive."

Differences Between the Proposed AD and Canadian Airworthiness Directive

Although the Canadian airworthiness directive recommends, for airplanes that removed the filters from the brake shuttle valve, removal of the internal garter spring at the next overhaul of each brake shuttle valve, we have determined that a specific compliance time is needed. In developing appropriate compliance times for this proposed AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject

unsafe condition, and the average utilization of the affected fleet. Considering these factors, we find that after removing the filters, a compliance time of 40,000 flight hours for the removal of the internal garter spring is warranted. We have coordinated this issue with TCCA.

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	Average fleet cost
Installation of check valves in Numbers 1 and 2 hydraulic systems	3	$65	$279–$405	$444–$600	179	$79,476–$107,400
Removal of filters and internal garter springs from brake shuttle valves ..	3	65	252–1,360	447–1,555	179	80,013–278,345

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

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):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–20756; Directorate Identifier 2004–NM–52–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315, certificated in any category; serial numbers 003 through 593 inclusive.

Unsafe Condition

(d) This AD results from two instances of brake failure due to the loss of hydraulic fluid from both Numbers 1 and 2 hydraulic systems and one incident of brake failure due to filter blockage in the shuttle valve. We are proposing this AD to prevent the loss of hydraulic power from both hydraulic systems which could lead to reduced controllability of the airplane; and to prevent brake failure which could result in the loss of directional control on the ground and consequent departure from the runway during landing.

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 Check Valves in Numbers 1 and 2 Hydraulic Systems

(f) Within 12 months after the effective date of this AD, install check valves in the Numbers 1 and 2 hydraulic return systems by incorporating Modsum 8Q101320 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin S.B. 8–29–36, Revision 'B,' dated January 6, 2003.

Removal of Filters and Internal Garter Spring From the Brake Shuttle Valves

(g) Within 12 months after the effective date of this AD, modify the brake shuttle valves, part number (P/N) 5084–1, by doing the actions in either paragraph (g)(1) or (g)(2) of this AD. The installation specified in paragraph (f) of this AD must be done prior to doing any actions in accordance with Bombardier Service Bulletin S.B. 8–29–37, Revision 'A,' dated September 19, 2003 (Modsum 8Q101316) that are specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Remove the filter assemblies by incorporating Modsum 8Q101422 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin S.B. 8–29–39, dated July 14, 2003; and within 40,000 flight hours after removing the filter assemblies, remove the internal garter spring by incorporating Modsum 8Q101316 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin S.B. 8–29–37, Revision 'A,' dated September 19, 2003.

(2) Remove the filter assemblies and internal garter spring by incorporating Modsum 8Q101316 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin S.B. 8–29–37, Revision 'A,' dated September 19, 2003.

Note 1: You can mix shuttle valves that have incorporated either Modsum 8Q101316 or 8Q101422 on the same airplane.

Actions Accomplished According to Previous Issues of Service Bulletins

(h) Installations accomplished before the effective date of this AD according to Bombardier Service Bulletin S.B. 8–29–36,

dated December 6, 2002, and Revision 'A,' dated December 12, 2002, are considered acceptable for compliance with the corresponding installation specified in paragraph (f) of this AD.

(i) Removals of the filters and internal garter springs accomplished before the effective date of this AD according to Bombardier Service Bulletin S.B. 8–29–37, dated July 15, 2003, are considered acceptable for compliance with the corresponding removals specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, New York Aircraft Certification Office, 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) Canadian airworthiness directive CF–2004–02, dated February 9, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 22, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6253 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20757; Directorate Identifier 2004–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposed AD would require modifying the auxiliary power unit (APU) exhaust duct in the environmental control system (ECS) bay; installing new, improved insulation on this APU exhaust duct; and replacing the existing drain pipe with a new exhaust drain pipe blank. This proposed AD is prompted by a determination that the temperature of the skin of the APU exhaust duct in the ECS bay is higher than the certificated maximum temperature for this area. We are proposing this AD to prevent the potential for ignition of fuel or hydraulic fluid, which could leak from pipes running through the ECS bay. Ignition of these flammable fluids could result in a fire in the ECS bay.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

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–2005–20757; the directorate identifier for this docket is 2004–NM–192–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20757; Directorate Identifier 2004–NM–192–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments 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*.

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 Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that it has determined that the temperature of the skin of the auxiliary power unit (APU) exhaust duct in the environmental control system (ECS) bay is higher than the certificated maximum temperature for this area. The ECS bay is not a designated fire zone; therefore, there is no fire detection or suppression system. Also, ventilation airflow around the APU exhaust duct is low. Pipes carrying fuel and hydraulic fluid run through the ECS bay. Should these pipes leak flammable fluids, the excessive temperature of the APU exhaust duct skin could present an ignition source. This condition, if not corrected, could result in a fire in the ECS bay.

Relevant Service Information

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.49–072–36244A, dated October 11, 2004. The service bulletin describes procedures for modifying the APU

exhaust duct in the ECS bay; installing new, improved insulation on the APU exhaust duct in the ECS bay; and replacing the existing drain pipe with a new exhaust drain pipe blank. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2004–0031, dated December 22, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between the Proposed AD and Service Information

Although the Accomplishment Instructions in the service information provide for submitting certain information to the manufacturer, this proposed AD would not require this action.

Costs of Compliance

This proposed AD would affect about 65 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $3,766 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $249,015, or $3,831 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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):

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–20757; Directorate Identifier 2004–NM–192–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category, on which BAE Systems Modification HCM30373A, or BAE Systems Modification HCM30373A and HCM36166C, are installed.

Unsafe Condition

(d) This AD was prompted by a determination that the temperature of the skin of the auxiliary power unit (APU) exhaust duct in the environmental control system (ECS) bay is higher than the certificated maximum temperature for this area. We are issuing this AD to prevent the potential for ignition of fuel or hydraulic fluid, which could leak from pipes running through the ECS bay. Ignition of these flammable fluids could result in a fire in the ECS bay.

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.

Modification

(f) Within 6 months after the effective date of this AD: Modify the APU exhaust duct in the ECS bay; install new, improved insulation on this APU exhaust duct; and replace the existing drain pipe with a new exhaust drain pipe blank; by doing all of the actions in the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.49–072–36244A, dated October 11, 2004. Where the Accomplishment Instructions of the service bulletin specify submitting an Advice Note to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(g) 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

(h) British airworthiness directive G–2004–0031, dated December 22, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on March 22, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6254 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20729; Directorate Identifier 2002–NM–71–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ series airplanes. The existing AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This proposed AD would also require revising the ALS of the Instructions for Continued Airworthiness to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures. This proposed AD is prompted by issuance of a later revision to the airworthiness limitations of the BAe/Avro 146 Aircraft Maintenance Manual, which specifies new inspections and compliance times for inspection and replacement actions. We are proposing this AD to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: We must receive comments on this proposed AD by April 29, 2005.

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

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

For service information identified in this proposed AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

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–2005–20729; the directorate identifier for this docket is 2002–NM–71–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–20729; Directorate Identifier 2002–NM–71–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of 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*.

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

On December 22, 2000, we issued AD 2000–26–07, amendment 39–12057 (66 FR 263, January 3, 2001), for all BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ series airplanes. That AD requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. That AD was prompted by issuance of a revision to the airworthiness limitations of the BAe/Avro 146 Aircraft Maintenance Manual (AMM), which specifies new inspections and compliance times for inspection and replacement actions. We issued that AD to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 2000–26–07, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that a later revision to Section 05–10–01 has been issued for Chapter 5 of the BAe/Avro 146 AMM. That section also references additional sections of the AMM. (The FAA refers to the information included in the revised section of the AMM as the Airworthiness Limitations Section (ALS).) The revised section affects all BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ series airplanes. In addition, that section provides mandatory replacement times and structural inspection intervals approved under § 25.571 of the Joint Aviation Requirements and the Federal Aviation Regulations (14 CFR 25.571). As airplanes gain service experience, or as results of post-certification testing and evaluation are obtained, it may become necessary to add additional life limits or structural inspections to ensure the

continued structural integrity of the airplane.

The CAA advises that analysis of fatigue test data has revealed that certain inspections must be performed at specific intervals to preclude fatigue cracking in certain areas of the airplane. In addition, the CAA advises that certain life limits must be imposed for various components on these airplanes to preclude the onset of fatigue cracking in those components. Such fatigue cracking, if not corrected, could adversely affect the structural integrity of these airplanes.

Relevant Service Information

British Aerospace has issued Section 05–10–01, Revision 81, dated December 15, 2004, which is a revision to Chapter 5 of the BAe/Avro 146 AMM. That section references additional sections, which include the following:

1. Life limit times for certain structural components, or other components or equipment.

2. Structural inspection times to detect fatigue cracking of certain Significant Structural Items (SSIs).

The revision to Section 05–10–01 of the AMM describes new inspections and compliance times for inspection and replacement actions. Accomplishment of those actions will preclude the onset of fatigue cracking of certain structural elements of the airplane.

The CAA has approved Section 05–10–01, Revision 81, of the AMM to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA has not issued a corresponding airworthiness directive, although accomplishment of the additional life limits and structural inspections contained in the AMM revision may be considered mandatory for operators of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

These airplane models manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States. We have determined that Section 05–10–01, Revision 81, of the AMM must be incorporated into the ALS of the Instructions for Continued Airworthiness.

This proposed AD would supersede AD 2000–26–07. This proposed AD would retain the requirements of the existing AD. This proposed AD would also require revising the ALS of the Instructions for Continued Airworthiness to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures.

Change to Existing AD

This proposed AD would retain all requirements of AD 2000–26–07. Since AD 2000–26–07 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–26–07	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).

Costs of Compliance

This proposed AD would affect about 59 airplanes of U.S. registry.

The actions that are required by AD 2000–26–07 and retained in this proposed AD take about 1 work hour per airplane, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the estimated cost of the currently required actions is $65 per airplane.

The new proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. No parts would be required. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $3,835, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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 removing amendment 39–12057 (66 FR 263, January 3, 2003) and adding the following new airworthiness directive (AD):

BAe Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–20729; Directorate Identifier 2002–NM–71–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 29, 2005.

Affected ADs

(b) This AD supersedes AD 2000–26–07, amendment 39–12057 (66 FR 263, January 3, 2001).

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAE 146 and Model Avro 146–RJ series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by issuance of a later revision to the airworthiness limitations of the BAe/Avro 146 Aircraft Maintenance Manual, which specifies new inspections and compliance times for inspection and replacement actions. We are issuing this AD to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Compliance

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

Requirements of AD 2000–26–07

Airworthiness Limitations Revision

(f) Within 30 days after February 7, 2001 (the effective date of AD 2000–26–07), revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating Section 05–10–01, Revision 65, dated August 3, 1999, of Chapter 5 of the BAe/Avro 146 Aircraft Maintenance Manual (AMM), into the ALS. This section references other sections of the AMM. The applicable revision level of the referenced sections is that in effect on the effective date of this AD.

(g) Except as specified in paragraph (j) of this AD: After the actions specified in paragraph (f) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (f) of this AD.

New Requirements of This AD

Later Revision for Airworthiness Limitations

(h) Within 30 days after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent). Section 05–10–01, Revision 81, dated December 15, 2004, of Chapter 5 of the BAe/Avro 146 AMM is one approved method. This section references other sections of the AMM. The applicable revision level of the referenced sections is that in effect on the effective date of this AD. Incorporating the new and more restrictive life limits and inspections into the ALS terminates the requirements of paragraphs (f) and (g) of this AD, and after incorporation has been done, the limitations required by paragraph (f) of this AD may be removed from the ALS.

(i) Except as specified in paragraph (j) of this AD: After the actions specified in paragraph (h) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs, approved previously in accordance with AD 2000–26–07, are approved as AMOCs for the corresponding requirements of this AD.

Related Information

(k) None.

Issued in Renton, Washington, on March 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–6258 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–125443–01]

RIN 1545–AY92

Revisions to Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revisions of Information Reporting Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains amendments to final regulations relating to the withholding of income tax under sections 1441 and 1442 on certain U.S. source income paid to foreign persons and related requirements governing collection, deposit, refunds, and credits of withheld amounts under sections 1461 through 1463. Additionally, this document contains amendments to final regulations under sections 6041, 6049, and 6114. These regulations affect persons making payments of U.S. source income to foreign persons.

DATES: Written or electronic comments must be received by June 28, 2005. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for July 13, 2005, at 10 AM must be received by June 22, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–125443–01), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–125443–01), Courier's Desk, Internal Revenue Service 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site *http://www.irs.gov/regs* or via the Federal eRulemaking Portal site at *http://www.regulations.gov* (IRS and REG–125443–01). The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ethan Atticks, (202) 622–3840 (not a toll free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622–7180 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1484.

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

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

Background

In Treasury Decision 8734 (1997–2 C.B. 109 [62 FR 533871]), the Treasury Department and the IRS issued

comprehensive regulations (final regulations) under chapter 3 (sections 1441–1464) and subpart G of Subchapter A of chapter 61 (sections 6041 through 6050S) of the Internal Revenue Code. Those final regulations were amended by TD 8804 (1999–1 C.B. 793 [63 FR 72183]), TD 8856 (2000–1 C.B. 298 [64 FR 73408]), TD 8881 (2000–1 C.B. 1158 [65 FR 32152]), and TD 9023 (2002–2 C.B. 955 [67 FR 70310]).

In Notice 2001–4 (2001–1 C.B. 267), Notice 2001–11 (2001–1 C.B. 464), and Notice 2001–43 (2001–2 C.B. 72), the Treasury Department and the IRS announced the intention to amend the final regulations to address the matters discussed in those notices. These proposed regulations would implement certain changes announced in those notices and other changes.

Under section 1441 of the Internal Revenue Code (Code), as amended by the American Jobs Creation Act of 2004 (Public Law 108–357, 118 Stat. 1418), "interest-related dividends" and "short-term capital gain dividends" paid by regulated investment companies are exempt from withholding. These proposed regulations would amend the withholding rules in order to reflect the treatment of these new categories of dividends.

Explanation of Provisions

I. Notice 2001–4

A. TIN Requirement for Certain Foreign Grantor Trusts

The final regulations provide that a withholding certificate that specifies certain payee information and that meets certain requirements may be used for a variety of purposes, including certifying a payee's status as a foreign person or foreign intermediary. Section 1.1441–1(e)(4)(vii)(G) of the final regulations provides that a taxpayer identification number (TIN) must be stated on a withholding certificate from a person representing to be a foreign grantor trust with 5 or fewer grantors.

After the final regulations took effect, some taxpayers requested documentation and reporting relief for simple and grantor trusts that hold an account with a qualified intermediary (QI). In response to this request, the Treasury Department and the IRS provided in section III.C of Notice 2001–4 that, if a foreign simple or grantor trust provides a QI with a Form W–8IMY, "Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," and the trust has 5 or fewer owners, the IRS will not require the trust to provide the QI with a TIN, notwithstanding § 1.1441–1(e)(4)(vii)(G). Section III.C of Notice 2001–4 was superseded by Rev. Proc. 2003–64 (2003–2 C.B. 306), which provides comprehensive guidance for withholding partnerships and withholding trusts. However, Rev. Proc. 2003–64 does not provide any relief from the TIN requirement of § 1.1441–1(e)(4)(vii)(G) in the QI context.

In addition to requesting reinstatement of the previously granted relief from the TIN requirement in the QI context, withholding agents have requested relief from the TIN requirement beyond the QI context. In light of these requests, the Treasury Department and the IRS have reexamined the TIN requirement of § 1.1441–1(e)(4)(vii)(G) and have concluded that the rule is not serving to enhance enforcement objectives. Therefore, the proposed regulations would reinstate the relief granted in section III.C of Notice 2001–4 for withholding certificates provided to a QI by a foreign grantor trust with 5 or fewer grantors. In addition, the proposed regulations would grant relief from the TIN requirement for withholding certificates that are executed after December 31, 2003 and that are provided to a withholding agent by a foreign grantor trust with 5 or fewer grantors.

B. Reporting Relief for U.S. Payors in U.S. Possessions

U.S. payors that pay foreign source income outside the United States to U.S. non-exempt recipients generally must report these payments on Form 1099 and, if required, apply backup withholding. After the final regulations became effective, withholding agents requested that the Treasury Department and the IRS reconsider this rule to the extent it requires Form 1099 reporting and backup withholding with respect to income from sources within a possession of the United States paid to a U.S. citizen even if the income is exempt from tax under section 931, 932, or 933.

In response to this request, the Treasury Department and the IRS provided in section V.C of Notice 2001–4 that the final regulations would be amended to provide that income that is derived from sources within a possession of the United States, that is exempt from taxation under section 931, 932, or 933, and that a payor reasonably believes to be paid to a resident of a possession of the United States is not required to be reported on Form 1099. Section V.C of Notice 2001–4 also provides that U.S payors will not be required to report such income until the regulations are amended.

These proposed regulations would amend § 1.6049–5(c) to implement section V.C. of Notice 2001–4, with modifications. The proposed regulations would provide that U.S. payors are not required to report on Form 1099 income from sources within a possession of the United States that is exempt from tax under section 931, section 932, or section 933. Under the proposed regulations, this exception from Form 1099 reporting would be applicable if the payor could reliably associate the payment of such income with valid documentation that supports a claim that the beneficial owner of the payment is a resident of the U.S. possession.

In addition, the proposed regulations would add new § 1.1441–1(c)(30), which for these purposes would define *possessions of the United States* as Guam, American Samoa, the Nothern Mariana Islands, Puerto Rico, and the Virgin Islands.

C. Use of Documentary Evidence in Possessions of the United States

The final regulations provide certain exceptions from certain information reporting requirements. One such exception applies in cases in which, among other things, a payment is made outside the United States and the payor can rely on appropriate documentation to treat the payment as made to a foreign person. Section 1.6049–5(c)(1) allows a payor to rely on documentary evidence instead of an applicable withholding certificate described in § 1.1441–1(c)(16) (Form W–8) in the case of a payment made to an offshore account. For this purpose, the term offshore account means an account maintained at an office or branch of a U.S. or foreign bank at any location outside the United States and outside of possessions of the United States.

When the final regulations took effect, taxpayers requested that the Treasury Department and the IRS consider allowing the use of documentary evidence for an account in a possession of the United States. In response to this request, the Treasury Department and the IRS provided in section V.D of Notice 2001–4 that documentary evidence may be used in lieu of Form W–8 in a possession of the United States and announced the intention to amend § 1.6049–5(c)(1) accordingly.

These proposed regulations would implement Section V.D of Notice 2001–4.

D. Information Reporting of Foreign Source Services Income

Under section 6041, a U.S. payor must report certain payments made for services performed outside the United

States. However, § 1.6041–4 provides that information reporting is not required if the payee has provided documentation to establish its status as a foreign beneficial owner or a foreign payee, or if the payee is presumed to be a foreign payee under the presumption rules. Under the presumption rules of §§ 1.6049–5(d)(2) and 1.1441–1(b)(3)(iii), a U.S. payor must presume that the payee is a U.S. payee if the payee is an individual.

When the final regulations took effect, U.S. payors commented that these rules were overly burdensome because they require U.S. payors making payments for services performed outside the United States to ask all payees to represent that such payees are not U.S. persons.

In response to this comment, the Treasury Department and the IRS provided in section V.E of Notice 2001–4 that a U.S. payor will not be required to report, under section 6041, income paid for services performed outside the United States if (1) the payee of the income is an individual, (2) the U.S. payor does not know that the payee is a U.S. citizen or resident, (3) the payor does not know, and has no reason to know, that the income is (or may be) effectively connected with the conduct of a trade or business within the United States, and (4) all of the services for which payment is made were performed by the payee outside the United States.

The proposed regulations would implement section V.E of Notice 2001–4. The Treasury Department and the IRS are considering whether there are appropriate circumstances, and if so, an appropriate manner, in which such an exception could be extended to payments made to foreign partnerships. Comments are requested on this issue.

II. Notice 2001–11—Reporting/ Withholding on Payments to Financial Institutions in U.S. Possessions

Corporations and partnerships organized in a possession of the United States generally are treated as foreign persons for purposes of applying the final regulations. Accordingly, under the final regulations, a possessions financial institution acting as an intermediary is treated as a nonqualified intermediary that must provide documentation and allocation information for the beneficial owners on whose behalf it acts. In contrast, a U.S. branch of a foreign financial institution may agree with a withholding agent to be treated as a U.S. person. See § 1.1441–1(b)(2)(iv)(A) and (E). Under § 1.1441–1(b)(1), if such a U.S. branch agrees to be treated as a U.S. person, payments of U.S. source income made to it will be treated as made to a U.S. payee and therefore will not be subject to withholding under section 1441. Possessions financial institutions generally are subject to all of the withholding and reporting obligations of a U.S. withholding agent. Section 7651.

When the final regulations took effect, possessions financial institutions commented that the requirement to provide a withholding agent with customer information should not apply to them, because possessions financial institutions are subject to all of the withholding and information reporting requirements that apply to U.S. withholding agents under Chapters 3 and 61 and section 3406 of the Code, and because they are subject to direct audit supervision by the Internal Revenue Service.

In response to these comments, the Treasury Department and the IRS issued Notice 2001–11, which provided that a possessions financial institution will be treated as a U.S. branch that is subject to the rules of § 1.1441–1(b)(2)(iv) and announced the intention to amend the final regulations accordingly.

These proposed regulations would implement Notice 2001–11.

III. Notice 2001–43

A. Reporting of Treaty-Based Return Positions

Section 301.6114–1(a) of the final regulations provides that, if a taxpayer takes a return position that a tax treaty overrules or modifies any provision of the Internal Revenue Code and thereby effects a reduction of any tax at any time, the taxpayer must disclose that return position, either on a statement attached to the return or on a return filed for the purpose of making such disclosure. Section 301.6114–1(b) provides that reporting is required unless it is expressly waived. It further provides a nonexclusive list of particular positions for which reporting is required. Section 301.6114–1(c) provides a list of specific exceptions from the general reporting requirements of § 301.6114–1(a) and (b).

When the final regulations took effect, taxpayers requested guidance regarding the scope of the reporting required under § 301.6114–1(a) and (b) in the case of claims for treaty-reduced withholding made by foreign persons that are not individuals or States. In particular, taxpayers requested the following clarification and relief.

First, because § 301.6114–1(c)(1)(i) waives reporting only for individuals and States, clarification was requested regarding whether taxpayers that are not individuals or States and that do not meet the requirements to report under § 301.6114–1(b)(4)(ii)(C) are nevertheless required to disclose treaty-based return positions described in subparagraph (b)(4)(ii) under the general rules of § 301.6114–1(a) and (b).

Second, because § 301.6114–1(c)(2) waives reporting only for individuals who receive less than the threshold amount, a *de minimis* exception was requested for taxpayers that are not individuals.

Third, because the representation under § 1.1441–6(b)(1) (that the beneficial owner will file the statement required under § 301.6114–1(d)) is required when the beneficial owner is related to the withholding agent within the meaning of section 482, and because the filing under § 301.6114–1(b)(4)(ii)(C) is required when the beneficial owner is related to the person obligated to pay the income within the meaning of sections 267(b) and 707(b), clarification was requested regarding coordination of the representation requirement with the filing requirement.

Finally, because § 1.1441–6(b)(1) states that the filing requirement applies only to amounts received during the calendar year that exceed $500,000 in the aggregate, and because § 301.6114–1(a)(1) permits a taxpayer to adopt a taxable year for filing different from the calendar year, taxpayers requested clarification regarding a fiscal-year taxpayer's obligation to report such amounts.

In response to these and other comments, Treasury and the IRS issued Notice 2001–43. Section 2 of Notice 2001–43 provided that the following rules would apply, effective January 1, 2001.

First, reporting is waived for a treaty-based return position described in § 301.6114–1(b)(4)(ii), unless the conditions in paragraph (b)(4)(ii)(A) and (B) of this section, paragraph (b)(4)(ii)(C) of this section, or paragraph (b)(4)(ii) (D) of this section are met.

Second, reporting under § 301.6114–1(b)(4)(ii)(D) is waived for taxpayers that are not individuals or States and that receive amounts of income subject to withholding that do not exceed $10,000 in the aggregate.

Third, the related-person test for purposes of applying the representation requirement of § 1.1441–6(b)(i) was conformed to the related-person test that applies for purposes of the filing requirement of § 301.6114–1(b)(4)(ii)(C).

Fourth, the calendar-year rule in § 1.1441–6(b)(1) was replaced with a taxable-year rule to conform to § 301.6114–1(a)(1).

These proposed regulations would implement Section 2 of Notice 2001–43.

B. Conversion of Foreign Currency Amounts

Section 1.1441–3(e)(2) of the final regulations provides that if an amount subject to tax is paid in a currency other than the U.S. dollar, the amount of withholding under section 1441 shall be determined by applying the applicable rate of withholding to the foreign currency amount and by converting the amount withheld into U.S. dollars at the spot rate on the date of payment. A withholding agent that makes regular or frequent payments in foreign currency is permitted to use a month end spot rate or a monthly average spot rate.

After the final regulations took effect, some withholding agents that make regular and frequent payments in foreign currency commented that the permitted conversion conventions can expose them to currency risks that would require management by means of hedging transactions. Also, they commented that permitted conventions can require multiple accounting adjustments when payment amounts in the base currency are adjusted or corrected in the course of processing and settlement. They requested that they be permitted to use the spot rate on the date the amount of tax is deposited.

In response to this comment, in Section 3 of Notice 2001–43, the Treasury Department and the IRS provided that a withholding agent that makes regular or frequent payments in foreign currency is permitted to convert the amount withheld into U.S. dollars at the spot rate on the day the tax is deposited, provided that the deposit is made within seven days of the date of payment. Section 3 of Notice 2001–43 also provided that taxpayers using this alternative convention must do so consistently for all nondollar amounts withheld and from year to year. It also provided that such convention could not be changed without the consent of the Commissioner.

These proposed regulations would implement Section 3 of Notice 2001–43.

IV. The American Jobs Creation Act of 2004

The final regulations provide generally that if the amount of distributions designated by a regulated investment company as being subject to 852(b)(3)(C) (relating to capital-gain dividends) or 852(b)(5)(A) (relating to exempt-interest dividends) exceeds the amount that may be designated under those sections for the taxable year, then no penalties will be asserted for any resulting underwithholding if the designations were based on a reasonable estimate, as defined in regulations, and the adjustments to amount withheld are made in accordance with regulations. § 1.1441–3(c)(3)(i). These proposed regulations would extend the reasonable-estimate rule to cover distributions designated as being subject to new section 871(k)(1)(C) (relating to interest-related dividends) or 871(k)(2)(C) (relating to short-term capital gain dividends).

Proposed Effective Date

These regulations are proposed to be applicable when final regulations are published in the **Federal Register**.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 13, 2005, beginning at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Wednesday, June 8. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1441–1 is amended as follows:

1. Paragraph (b)(2)(iv)(A) is revised.
2. Paragraph (b)(3)(iii)(E) is added.
3. Paragraph (c)(30) is added.
4. Paragraph (e)(4)(vii)(G) is revised.

The revisions and additions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(2) * * *

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to a U.S. branch of a foreign

person is a payment to a foreign person. However, a U.S. branch described in this paragraph (b)(2)(iv)(A) and a withholding agent (including another U.S. branch described in this paragraph (b)(2)(iv)(A)) may agree to treat the branch as a U.S. person for purposes of withholding on specified payments to the U.S. branch. Notwithstanding the preceding sentence, a withholding agent making a payment to a U.S. branch treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to such U.S. branch shall be reported on Form 1042-S under § 1.1461–1(c). Further, a U.S. branch that is treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not be treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent. Therefore, the U.S. branch must furnish a U.S. branch withholding certificate on Form W–8 as provided in paragraph (e)(3)(v) of this section and not a Form W–9. An agreement to treat a U.S. branch as a U.S. person must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. In addition, a financial institution organized in a possession of the United States will be treated as a U.S. branch for purposes of this paragraph (b)(2)(iv)(A). The Internal Revenue Service (IRS) may approve a list of U.S. branches that may qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter). See § 1.6049–5(c)(5)(vi) for the treatment of U.S. branches as U.S. payors if they make a payment that is subject to reporting under chapter 61 of the Internal Revenue Code. Also see § 1.6049–5(d)(1)(ii) for the treatment of U.S. branches as foreign payees under chapter 61 of the Internal Revenue Code.

* * * * *

(3) * * *

(iii) * * *

(E) *Certain payments for services.* A payment for services is presumed to be made to a foreign person if—

(*1*) The payee is an individual;

(*2*) The withholding agent does not know, or have reason to know, that the payee is a U.S. citizen or resident;

(*3*) The withholding agent does not know, or have reason to know, that the income is (or may be) effectively connected with the conduct of a trade or business within the United States; and

(*4*) All of the services for which the payment is made were performed by the payee outside of the United States.

* * * * *

(c) * * *

(30) *Possessions of the United States.* For purposes of the regulations under chapter 3 and 61 of the Internal Revenue Code, *possessions of the United States* means Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

* * * * *

(e) * * *

(4) * * *

(vii) * * *

(G) A withholding certificate executed on or before December 31, 2003 from a person representing to be a grantor trust with 5 or fewer grantors, except where such withholding certificate is provided to a qualified intermediary.

* * * * *

Par. 3. Section 1.1441–3 is amended by revising paragraphs (c)(3) and (e)(2) to read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

(c) * * *

(3) *Special rules in the case of distributions from a regulated investment company*—(i) *General rule.* If the amount of any distributions designated as being subject to section 852(b)(3)(C) or 5(A), or 871(k)(1)(C) or (2)(C), exceeds the amount that may be designated under those sections for the taxable year, then no penalties will be asserted for any resulting underwithholding if the designations were based on a reasonable estimate (made pursuant to the same procedures as described in paragraph (c)(2)(ii)(A) of this section) and the adjustments to the amount withheld are made within the time period described in paragraph (c)(2)(ii)(B) of this section. Any adjustment to the amount of tax due and paid to the IRS by the withholding agent as a result of underwithholding shall not be treated as a distribution for purposes of section 562(c) and the regulations thereunder. Any amount of U.S. tax that a foreign shareholder is treated as having paid on the undistributed capital gain of a regulated investment company under section 852(b)(3)(D) may be claimed by the foreign shareholder as a credit or refund under § 1.1464–1.

(ii) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether a payment is a distribution designated as subject to section 852(b)(3)(C) or (5)(A), or 871(k)(1)(C) or (2)(C), a withholding agent that is not the distributing regulated investment company may, absent actual knowledge or reason to know otherwise, rely on the designations that the distributing company represents have been made in accordance with paragraph (c)(3)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the regulated investment company to reasonably estimate the required amounts or to properly communicate the relevant information to the withholding agent shall be imputed to the distributing company. In such a case, the IRS may collect from the distributing company any underwithheld amount and subject the company to applicable interest and penalties as a withholding agent.

* * * * *

(e) * * *

(2) *Payments in foreign currency.* If the amount subject to withholding tax is paid in a currency other than the U.S. dollar, the amount of withholding under section 1441 shall be determined by applying the applicable rate of withholding to the foreign currency amount and converting the amount withheld into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) in effect on that date. A withholding agent making regular or frequent payments in foreign currency may use a month-end spot rate or a monthly average spot rate. In addition, such a withholding agent may use the spot rate on the date the amount of tax is deposited (within the meaning of § 1.6302–2(a)), provided that such deposit is made within seven days of the date of the payment giving rise to the obligation to withhold. A spot rate convention must be used consistently for all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner. The U.S. dollar amount so determined shall be treated by the beneficial owner as the amount of tax paid on the income for purposes of determining the final U.S. tax liability and, if applicable, claiming a refund or credit of tax.

* * * * *

Par. 4. In § 1.1441–6, paragraph (b)(1) is revised to read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner, and all other requirements for benefits under the treaty are satisfied. *See* section 894 and the regulations thereunder to determine whether a resident of a treaty country derives the income. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, as described in § 1.1441–1(e)(2), that contains the information necessary to support the claim, or, in the case of a payment of income described in paragraph (c)(2) of this section made outside the United States with respect to an offshore account, documentary evidence described in paragraphs (c)(3), (4), and (5) of this section. *See* § 1.6049–5(e) for the definition of payments made outside the United States and § 1.6049–5(c)(1) for the definition of offshore account. For purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) contains information necessary to support the claim for a treaty benefit only if it includes the beneficial owner's taxpayer identifying number (except as otherwise provided in paragraph (c)(1) of this section and § 1.1441–6(g)) and the representations that the beneficial owner derives the income under section 894 and the regulations thereunder, if required, and meets the limitation on benefits provisions of the treaty, if any. The withholding certificate must also contain any other representations required by this section and any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in place of, the information and certifications described in this section. Absent actual knowledge or reason to know that the claims are incorrect (and subject to the standards of knowledge in § 1.1441–7(b)), a withholding agent may rely on the claims made on a withholding certificate or on documentary evidence. A withholding agent may also rely on the information contained in a withholding statement provided under §§ 1.1441–1(e)(3)(iv) and 1.1441–5(c)(3)(iv) and (e)(5)(iv) to determine whether the appropriate statements regarding section 894 and limitation on benefits have been provided in connection with documentary evidence. If the beneficial owner is related to the person obligated to pay the income, within the meaning of section 267(b) or 707(b), the withholding certificate must also contain a representation that the beneficial owner will file the statement required under § 301.6114–1(d) of this chapter (if applicable). The requirement to file an information statement under section 6114 for income subject to withholding applies only to amounts received during the taxpayer's taxable year that, in the aggregate, exceed $500,000. *See* § 301.6114–1(d) of this chapter. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. *See* § 1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

* * * * *

Par. 5. Section 1.6049–5 is amended as follows:

1. Paragraph (c)(1) is revised.
2. Paragraphs (c)(5)(i), (ii), (iii), (iv), (v) and (vi) are redesignated as paragraphs (c)(5)(i)(A), (B), (C), (D), (E), and (F), respectively.
3. A new heading is added to paragraph (c)(5)(i).
4. New paragraph (c)(5)(ii) is added.

The revisions and additions read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(c) *Applicable rules*—(1) *Documentary evidence for offshore accounts and for possessions accounts.* A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) in the case of a payment made outside the United States to an offshore account, in the case of a payment made to a U.S. possessions account or, in the case of broker proceeds described in § 1.6045–1(c)(2), in the case of a sale effected outside the United States (as defined in § 1.6045–1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an *offshore account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (*i.e.*, other than in any of the fifty States or the District of Columbia) and outside of possessions of the United States. Thus, for example, an account maintained in a foreign country at a branch of a U.S. bank or of a foreign subsidiary of a U.S. bank is an offshore account. For purposes of this paragraph (c)(1), a *U.S. possessions account* means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution located within a possession of the United States. For the definition of a payment made outside the United States, *see* paragraph (e) of this section. A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person (including, but not limited to, documentary evidence described in § 1.1441–6(c)(3) or (4)); and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed by retaining the original, certified copy, or a photocopy (or microfiche or similar means of record retention) of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed. Documentary evidence furnished for the payment of an amount subject to withholding under chapter 3 of the Code must contain all of the information that is necessary to complete a Form 1042–S for that payment. A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441–1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441–1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441–1(c)(26), even though the partnership or trust account is maintained in the United States.

* * * * *

(5) * * * (i) *Definition.* * * *

(ii) *Reporting by U.S. payors in U.S. possessions.* U.S. payors are not required to report on Form 1099 income that is from sources within a possession of the United States and that is exempt from taxation under section 931, 932, or 933, each of which sections exempts

certain income from sources within a possession of the United States paid to a bona fide resident of that possession. For purposes of this paragraph (c)(5)(ii), a U.S. payor may treat the beneficial owner as a bona fide resident of the possession of the United States from which the income is sourced if, prior to payment of the income, the U.S. payor can reliably associate the payment with valid documentation that supports the claim of residence in the possession of the United States from which the income is sourced. This paragraph (c)(5)(ii) shall not apply if the U.S. payor has actual knowledge or reason to know that the documentation is unreliable or incorrect or that the income does not satisfy the requirements for exemption under section 931, 932, or 933. For the rules determining whether income is from sources within a possession of the United States, *see* section 937(b) and the regulations thereunder.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 7. In § 301.6114–1 is amended as follows:

1. Paragraphs (c)(1)(i) through (c)(1)(vii) are redesignated as paragraphs (c)(1)(ii) through (c)(1)(viii), respectively.

2. New paragraph (c)(1)(i) is added.

3. Paragraph (c)(7) is added.

The additions and revision read as follows:

§ 301.6114–1 Treaty-based return positions.

* * * * *

(c) * * * (1) * * *

(i) For amounts received on or after January 1, 2001, return positions described in paragraph (b)(4)(ii) of this section, unless the conditions in paragraphs (b)(4)(ii)(A) and (B) of this section, paragraph (b)(4)(ii)(C) of this section, or paragraph (b)(4)(ii)(D) of this section are met;

* * * * *

(7) Reporting under paragraph (b)(4)(ii)(D) of this section is waived with respect to a taxable year for taxpayers that are not individuals or states and that, on or after January 1, 2001, receive amounts of income subject to withholding that do not exceed $10,000 in the aggregate for such taxable year.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–6060 Filed 3–29–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–04–043]

RIN 1625–AA01

Anchorage Grounds, Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the anchorage regulations in the Port of Hampton Roads. Infrastructure improvements and increases in vessel traffic and draft entering the port have prompted this proposed rulemaking. The proposed changes to this regulation will ensure that the Hampton Roads Anchorage Grounds continue to safely support current and future vessel anchoring demands. This supplemental notice of proposed rulemaking (SNPRM) discusses changes made to Anchorages J, K, and, L since publication of the notice of proposed rulemaking (NPRM) in the **Federal Register** on September 27, 2004 (69 FR 57656). The changes are explained in the section titled "Discussion of Proposed Rule" section of this document.

DATES: Comments must be received on or before April 29, 2005.

ADDRESSES: You may mail comments and related material to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Room 401, Portsmouth, VA 23704–5004. Commander (oan), Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Fifth Coast Guard District between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District (oan), (757) 398–6285, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–04–043), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please, submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a meeting by writing to the Aids to Navigation and Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On September 27, 2004 the Coast Guard published a NPRM in the **Federal Register** titled "Anchorage Grounds, Hampton Roads, VA" (69 FR 57656). This SNPRM provides further opportunity for the public to comment on changes made to Anchorages J, K, and L.

Background and Purpose

Recreational, public, and commercial vessels use the Hampton Roads Anchorage Grounds. General regulations covering the anchorage of vessels in the port are set out in 33 CFR 110.168. In June 1986, the U.S. Army Corps of Engineers (USACE) completed a study of the Norfolk Harbor, including its anchorages. The study is entitled, "General Design Memorandum 1, Norfolk Harbor and Channels, Virginia, Main Report." Comments from the Coast Guard, Navy, Virginia Port Authority, Virginia Pilots Association and Hampton Roads Maritime Association requesting improvements to Anchorages F and K were considered in the study.

Anchorage F currently has two 400-yard radius berths. The USACE, in 1998, constructed a single 500-yard radius

berth for Anchorage F and is currently maintaining the anchorage at a project depth of 50 feet. This proposed rule would change Anchorage F to a single 500 yard radius berth to reflect the construction completed by the USACE in 1998. The USACE was congressionally authorized in November of 1986 to increase the channel depth of Anchorage F to 55 feet deep, see H. Doc. 99–85, 99th Cong., 1st session. Improvements were also proposed by the Coast Guard to the Newport News Middle Ground, Anchorage K, by increasing the easternmost berth, K–1 from a swing radius of 400 yards to one of 500 yards. In addition, Berth K–2, currently maintained at 40 feet, would be deepened to 45 feet. The increase in size to Berth K–1, the increase in depth to Berth K–2, and the increase in depth to Anchorage F have all been congressionally authorized and will be scheduled once the increase in arrivals of vessels with deeper drafts support the project. The circular boundaries for Berth K–1, referred to as East Anchorage, and Berth K–2, referred to as West Anchorage, will be shown on future chart editions for the area when the final rule for this regulation is published.

It is proposed that the overall boundary of Anchorage K be changed so that the entire anchorage lies north of the Fairway for Shallow Draft Vessels and Tows.

A new quarantine anchorage, new Anchorage Q, is proposed to replace Berth K–3, which is currently not maintained by the USACE. The new quarantine anchorage would be located east of York Spit Channel between Chesapeake Channel Lighted Buoy 36 and Chesapeake Channel Lighted Buoy 38, west of Cape Charles. The new anchorage would be located in naturally deep water with charted depths in excess of 60 feet and would have two 500 yard, swing-radius berths.

Current trends indicate that shipping companies will call on the Port of Hampton Roads using larger, deeper draft vessels, thereby creating a need for fewer trips when visiting the Port of Hampton Roads in the future. With the increase in size, The Navigation Plan for the Port of Hampton Roads, conducted by the USACE in February of 2000, indicated that by the year 2010 almost 40 percent of containerized cargo will be moved on ships capable of carrying 4,000 twenty-foot trailer equivalent units (TEU). Some "Mega Ships" already in service are capable of carrying up to 6,000 TEUs. The average container ship calling on the port today carries between 1,500 and 4,000 TEUs. The bulk carriers that call on the Port of Hampton Roads have also increased in size and will play a significant role in the port's future design considerations. In addition to the projected increase in the size of vessels calling on the Port of Hampton Roads, there are two infrastructure improvement projects in the port that affect the anchorage grounds. In September 2001, APM Terminals North America, Inc. (Maersk) purchased 570 acres of property located on the Elizabeth River, south of Craney Island. Dredging has begun in the vicinity of Anchorage P for the development of a major marine container handling facility on this property. The first ship is due to moor at this new terminal sometime in 2007. Anchorage P lies between the future terminal and the Federal navigation channel. Parts of Anchorage P will be made unusable following completion of the terminal and the approach channels. Maersk has requested the discontinuation of Anchorage P.

Likewise, the construction of the Norfolk International Terminal North (NIT North) approach channel, which passes through the existing Anchorage M, has rendered that anchorage unusable. This proposed rule would discontinue Anchorage M.

To further enhance the safety of the port anchorages, this rule proposes to amend the regulations of the boundaries of Berths 3 and 4 within Explosive Anchorage G. Currently, these berths overlap each other and pose a potential hazard to anchored vessels. The proposed rule would separate the berths, eliminating the risk of collision as a result of overlapping swing circles.

The proposed rule would rename existing Anchorage R as Anchorage M, rename existing Anchorage T as Anchorage N, rename existing Anchorage U, The Hague, as Anchorage O, The Hague.

The proposed rule would eliminate existing Anchorages Q and S. The proposed changes are listed in the following Table:

Current anchorage [33 CFR 110.168(a)]	Proposed change
A—Cape Henry Naval Anchorage (1)	No change.
B—Chesapeake Bay, Thimble Shoals Channel Naval Anchorage (CBTSC) [(2)(i)].	No change.
C—CBTSC Naval Anchorage [(2)(ii)]	No change.
D—CBTSC Navel Anchorage [(2)(iii)]	No change.
E—Commercial Explosive Anchorage [(2)(iv)]	No change.
E–1—Explosive Handling Berth [(2)(v)(A)]	No change.
F—Hampton Bar [(3)(i)]	No changes to anchorage limits. One 500-yard swing radius berth would replace two 400 yard swing radius berths. Single berth dredged to a depth of 50 feet in 1998, authorized depth 55 feet. New regulations would be included in part [(e)(3)] excluding vessels with drafts less than 45 ft from using Anchorage F without permission from the Captain of the Port. Previously, vessels with a draft less than 40 ft and a length of less than 700 ft were excluded.
F–1—[(3)(i)(A)]	Designation would refer to 500 yard berth.
F–2—[(3)(i)(B)]	Discontinue F–2.
G—Hampton Flats Naval Explosives Anchorage [(3)(ii)].	New center positions created for Berths 3 and 4, which would remove overlapping circumferences.
G–1—Explosives Handling Berth [(3)(ii)(A)]	No change.
G–2—Explosives Handling Berth [(3)(ii)(B)]	No change.
G–3—Explosives Handling Berth [(3)(ii)(C)]	A new center position would replace current center position to remove overlapping circumferences with G–4.
G–4—Explosives Handling Berth [(3)(ii)(D)]	A new center position would replace current center position to remove overlapping circumferences with G–3.
H—Newport News Bar [(3)(iii)]	No change.
I—Newport News [(4)(i)]	No change.
I–1 [(4)(i)(A)]	No change.
I–2 [(4)(i)(B)]	A new center position would replace current center position removing ambiguous boundary lines.

Current anchorage [33 CFR 110.168(a)]	Proposed change
J—Newport News Middle Ground [(4)(ii)]	New boundary lines are proposed.
K—Newport News Middle Ground [(4)(iii)]	New boundary lines are proposed. Replace boundary lines for K–1 and K–2 with berth circumferences. We propose to remove K–3.
K–1—East Anchorage [(4)(iii)(A)]	K–1 would have a 400 yard swing radius and be maintained at a depth of 45 ft. Future plans include increasing the swing radius to 500 yards.
K–2—West Anchorage [(4)(iii)(B)]	K–2 would have a 400 yard swing radius and be maintained at a depth of 45 ft. Future plans include increasing the depth to 45 ft.
K–3—Quarantine Berth [(4)(iii)(C)]	We propose to remove K–3 and establish a new quarantine anchorage adjacent to Cape Charles, east of York Spit Channel.
L—Craney Island Flats [(4)(iv)]	New boundary lines are proposed.
M—Norfolk Harbor Channel Anchorages, (NHCA) [(5)(i)].	Old Anchorage M would be eliminated.
N—NHCA [(5)(ii)]	Old Anchorage N would be eliminated.
O—NHCA [(5)(iii)]	Old Anchorage O would be eliminated.
P—Lambert's Point [(6)(i)]	We would eliminate Anchorage P.
Q—Elizabeth River Anchorage (ERA) [(6)(ii)]	Old Anchorage Q would be eliminated.
R—ERA, Port Norfolk [(6)(iii)]	Current Anchorage R would be redesignated Anchorage M.
S—ERA, Port Norfolk [(6)(iv)]	We would eliminate Anchorage S.
T—ERA, Hospital Point [(6)(v)]	We would rename Anchorage T Anchorage N.
U—The Hague [(7)]	We would discontinue the use of the Anchorage U designation. Current Anchorage U would be redesignated Anchorage O.
Q—Quarantine Anchorage	We propose to establish a new quarantine anchorage adjacent to Cape Charles east of York Spit Channel.

Discussion of Comments and Changes

Based on a comment received via telephone from NOAA's Nautical Data Branch in Baltimore, the second coordinate in Anchorage N, Hospital Point, listed as 36°51′05.4″ N 76°18′ 22.4″ W, has been moved to the final position in the listing of new Anchorage N coordinates putting the positions in their intended sequence. Also noted by NOAA, the center coordinate for Berth Q–2 was inadvertently excluded from the NPRM when published in the **Federal Register**. The center coordinate for Berth Q–2 has been added.

The letter P, included in error in the final paragraph of the NPRM, has been changed to Q denoting the designation of the new Quarantine Anchorage.

The boundary lines for Anchorages J, K, and L have been changed to exclude vessels from anchoring in the Fairway For Shallow Draft Vessels and Tows.

Discussion of Proposed Rule

No changes are proposed for Anchorage grounds A, B, C, D, and E. Regulations for Anchorage F would establish one 500 yard radius berth (F–1) that would replace the two 400 yard radius berths. Under our proposed regulations, vessels with a draft less than 45 feet would not be able to anchor in berth F–1 without permission from the Captain of the Port. Currently, vessels with a draft less than 40 feet and a length of less than 700 feet are excluded from using Anchorage F without permission from the Captain of the Port. Anchorage berth F–2 would be discontinued.

New center positions have been calculated for Berths G–3 and G–4 to separate intersecting circumferences. This action would remove any ambiguity and address safety concerns involving overlapping swing circles. Berths G–1 and G–2 would remain unchanged. No changes are proposed for Anchorage H.

A new center position has been calculated for Berth I–2 placing it entirely within the boundary surrounding Anchorage I. The new position will move the berth northeast and remove any ambiguity associated with the limits of Anchorage I or Berth I–2.

Since publication of the NPRM the boundary of Anchorage J has been changed excluding the portion north of the Fairway For Shallow Draft Vessels and Tows and now lies entirely south of that channel. The boundary for Anchorage K has changed after giving up Anchorage K Lower to Anchorage J and absorbing the section of Anchorage J north of the Fairway For Shallow Draft Vessels and Tows. There are no ongoing improvement projects occurring in Anchorage K other than those required to maintain the two 400 yard radius berths. The circular boundary lines for Berth K–1, East Anchorage, and for Berth K–2, West Anchorage, would be shown on future chart editions instead of the current linear berth boundaries. Berth K–3 would be discontinued. The coordinates for Anchorage L now all reside south of the Fairway For Shallow Draft Vessels and Tows excluding vessels from anchoring in that channel.

Anchorage M, formerly referred to as Anchorage R, and Anchorage N, formerly referred to as Anchorage T, would remain available for small boat usage. Anchorage O, formerly referred to as Anchorage U, or The Hague, would also remain available for small boat usage.

A new anchorage would be established to replace the current quarantine berth designated K–3. The current language in 33 CFR 110.168 listing specific regulations for Berth K–3 will be removed. The new quarantine anchorage would be designated Q and located east of York River Spit Channel between Chesapeake Channel Lighted Buoy 36 and Chesapeake Channel Lighted Buoy 38. Two berths, Q–1 and Q–2, each having a radius of 500 yards, would be designated within Anchorage Q. Specific regulations for Quarantine Anchorage, Anchorage Q, formerly Berth K–3, have been added to section (e) of the revised regulation. The letter designations P, R, S, T, and U would be discontinued.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The proposed rule

changes complement current anchorage usage and waterway modifications made by the USACE resulting in minimal impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the owners or operators of small pleasure craft wishing to anchor in the Elizabeth River anchorages that would be discontinued due to shallow natural water depths.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its affects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District (oan), at (757) 398–6285. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

The proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards.

Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. The proposed rule deals directly with establishing, disestablishing and renaming anchorage areas.

A draft "Environmental Analysis Check list" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make a final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.168 to read as follows:

§ 110.168 Hampton Roads, Virginia and adjacent waters (Datum: NAD 83).

(a) *Anchorage Grounds.* (1) *Anchorage A (Naval Anchorage).* The waters bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55′33.0″ N.	76°02′47.0″ W.
36°57′02.8″ N.	76°03′02.6″ W.
36°56′45.0″ N.	76°01′30.0″ W.
36°55′54.0″ N.	76°01′37.0″ W.

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages.*

(i) *Anchorage B (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′58.0″ N.	76°06′07.0″ W.
36°57′11.0″ N.	76°03′02.1″ W.
36°55′48.8″ N.	76°03′14.0″ W.
36°56′31.8″ N.	76°06′07.0″ W.
36°57′04.0″ N.	76°06′07.0″ W.
36°57′08.5″ N.	76°06′24.5″ W.

(ii) *Anchorage C (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°58′54.8″ N.	76°09′41.5″ W.
36°58′18.8″ N.	76°07′18.0″ W.
36°57′27.0″ N.	76°07′37.5″ W.
36°58′04.0″ N.	76°10′00.0″ W.

(iii) *Anchorage D (Naval Anchorage).* The waters bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55′49.0″ N.	76°10′32.8″ W.
36°58′04.0″ N.	76°10′02.1″ W.
36°57′31.2″ N.	76°07′54.8″ W.
36°55′24.1″ N.	76°08′28.8″ W.

(iv) *Anchorage E (Commercial Explosive Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′58.7″ N.	76°13′47.0″ W.
36°59′08.2″ N.	76°10′33.8″ W.
36°58′13.0″ N.	76°10′51.8″ W.
36°59′02.0″ N.	76°14′10.2″ W.

(v) *Explosive Handling Berth E–1 (Explosives Anchorage Berth):* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°59′05.0″ N.	76°11′23.0″ W.

(3) *Hampton Roads Anchorages.* (i) *Anchorage F, Hampton Bar.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′51.6″ N.	76°19′12.0″ W.
36°59′25.2″ N.	76°18′48.5″ W.
36°58′49.1″ N.	76°19′33.8″ W.
36°59′25.0″ N.	76°20′07.0″ W.

(ii) *Anchorage Berth F–1.* The waters bounded by a line connecting the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°59′29.1″ N.	76°19′15.1″ W.

(iii) *Anchorage G, Hampton Flats (Naval Explosives Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′25.0″ N.	76°20′07.0″ W.
36°58′49.1″ N.	76°19′33.8″ W.
36°57′41.4″ N.	76°21′07.7″ W.
36°57′34.6″ N.	76°21′26.7″ W.
36°57′31.1″ N.	76°22′01.9″ W.
36°58′07.0″ N.	76°22′03.0″ W.
36°58′54.8″ N.	76°21′42.6″ W.

(iv) *Explosives Handling Berth G–1.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°57′50.0″ N.	76°21′37.0″ W.

(v) *Explosives Handling Berth G–2.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°58′14.0″ N.	76°21′01.5″ W.

(vi) *Explosives Handling Berth G–3.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°58′34.2″ N.	76°20′31.4″ W.

(vii) *Explosives Handling Berth G–4.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°58′54.9″ N.	76°20′03.2″ W.

(viii) *Anchorage H, Newport News Bar.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°58′07.0″ N.	76°22′03.0″ W.
36°57′31.1″ N.	76°22′01.9″ W.
36°57′18.0″ N.	76°24′11.2″ W.
36°57′38.3″ N.	76°24′20.0″ W.
36°57′51.8″ N.	76°22′31.0″ W.

(4) *James River Anchorages.* (i) *Anchorage I, Newport News.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′06.7″ N.	76°24′44.3″ W.
36°56′22.6″ N.	76°24′28.0″ W.
36°56′03.0″ N.	76°24′37.0″ W.
36°57′53.7″ N.	76°26′41.5″ W.
36°58′23.0″ N.	76°27′11.0″ W.
36°58′48.5″ N.	76°27′11.0″ W.
36°58′35.4″ N.	76°26′38.4″ W.
36°57′51.7″ N.	76°26′02.8″ W.
36°57′30.6″ N.	76°25′34.5″ W.

(ii) *Anchorage Berth I–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′08.5″ N.	76°25′21.6″ W.

(iii) *Anchorage Berth I–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′23.8″ N.	76°25′46.0″ W.

(iv) *Anchorage J, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°55′59.9″ N.	76°22′11.7″ W.
36°55′59.9″ N.	76°24′00.0″ W.
36°56′25.3″ N.	76°23′48.0″ W.
36°57′10.2″ N.	76°24′09.9″ W.
36°57′12.0″ N.	76°23′47.3″ W.
36°56′38.5″ N.	76°21′39.1″ W.
36°56′38.5″ N.	76°20′47.0″ W.

(v) *Anchorage K, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′56.4″ N.	76°20′30.5″ W.
36°57′08.5″ N.	76°20′31.0″ W.
36°56′48.8″ N.	76°20′22.5″ W.
36°56′45.0″ N.	76°20′32.0″ W.
36°56′45.0″ N.	76°21′37.7″ W.
36°57′14.1″ N.	76°23′29.1″ W.
36°57′28.1″ N.	76°21′11.7″ W.

(vi) *Anchorage Berth K–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′30.5″ N.	76°20′45.3″ W.

(vii) *Anchorage Berth K–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′16.8″ N.	76°21′09.5″ W.

(viii) *Anchorage Berth L, Craney Island Flats.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°55′59.9″ N.	76°22′11.7″ W.
36°56′38.5″ N.	76°20′45.5″ W.
36°56′30.0″ N.	76°20′24.3″ W.
36°56′04.2″ N.	76°20′26.2″ W.

(5) *Elizabeth River Anchorages.* (i) *Anchorage M, Port Norfolk.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°51′45.7″ N.	76°19′31.5″ W.
36°51′45.8″ N.	76°19′20.7″ W.
36°51′37.8″ N.	76°19′24.3″ W.
36°51′32.5″ N.	76°19′31.1″ W.
36°51′40.7″ N.	76°19′37.3″ W.
36°51′45.7″ N.	76°19′31.5″ W.

(ii) *Anchorage N, Hospital Point.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°50′50.0″ N.	76°18′00.0″ W.
36°51′05.4″ N.	76°18′22.4″ W.
36°50′36.7″ N.	76°17′52.8″ W.
36°50′33.6″ N.	76°17′58.8″ W.
36°50′49.3″ N.	76°18′09.0″ W.
36°50′50.3″ N.	76°18′07.8″ W.
36°50′56.2″ N.	76°18′12.5″ W.
36°51′01.8″ N.	76°18′32.3″ W.

(iii) *Anchorage O, The Hague.* The waters of the basin known as "The Hague", north of the Brambleton Avenue Bridge, except for the area within 100 feet of the bridge span that provides access to and from the Elizabeth River.

(6) *Anchorage Q. Quarantine Anchorage.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
37°17′13.7″ N.	76°06′41.6″ W.
37°17′30.3″ N.	76°05′53.9″ W.
37°16′25.0″ N.	76°05′18.4″ W.
37°16′08.4″ N.	76°06′06.0″ W.

(i) *Anchorage Berth Q–1.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
37°17′05.7″ N.	76°0608.9″ W.

(ii) *Anchorage Berth Q–2.* The waters bounded by the arc of a circle with a radius of 500 yards with the center located at:

Latitude	*Longitude*
37°16′ 33.0″ N.	76°05′51.1″ W.

(b) *Definitions.* As used in this section—

Class 1 (explosive) materials means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

Dangerous cargo means "certain dangerous cargo" as defined in § 160.204 of this title.

U.S. naval vessel means any vessel owned, operated, chartered, or leased by the U.S. Navy; any pre-commissioned vessel under construction for the U.S. Navy, once launched into the water; and any vessel under the operational control of the U.S. Navy or a Combatant Command.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains a permit from the Captain of the Port.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or to the anchoring of other vessels, may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may, upon application, assign a vessel to a specific berth within an anchorage for a specified period of time.

(5) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of a berth. Only the vessel that holds the revocable permit may use the berth during the period that the permit is in effect.

(6) The Commander, Fifth Coast Guard District, may authorize the establishment and placement of temporary mooring buoys within a berth. Placement of a fixed structure within an anchorage may be authorized by the District Engineer, U.S. Army Corps of Engineers.

(7) If an application is for the long-term lay up of a vessel, the Captain of the Port may establish special conditions in the permit with which the vessel must comply.

(8) Upon notification by the Captain of the Port to shift its position within an anchorage, a vessel at anchor must get underway at once or signal for a tug. The vessel must move to its new location within 2 hours after notification.

(9) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(10) A vessel that does not have a sufficient crew on board to weigh anchor at any time must have two anchors in place, unless the Captain of the Port waives this requirement. Members of the crew may not be released until the required anchors have been set.

(11) No vessel at anchor or at a mooring within an anchorage may transfer oil to another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(12) Barges may not anchor in the deeper portions of anchorages or interfere with the anchoring of deep-draft vessels.

(13) Barges towed in tandem to an anchorage must be nested together when anchored.

(14) Any vessel anchored or moored in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or Monitor-Merrimac Bridge Tunnel (MMBT) must be capable of getting underway within 30 minutes with sufficient power to keep free of the bridge tunnel complex.

(15) A vessel may not anchor or moor in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or Monitor-Merrimac Bridge Tunnel (MMBT) if its steering or main propulsion equipment is impaired.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* This paragraph applies to every vessel, except a naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(1) Unless otherwise directed by the Captain of the Port, each commercial vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must be anchored or moored within Anchorage Berth E–1.

(2) Each vessel, including each tug and stevedore boat, used for loading or unloading dangerous cargoes or Class 1 (explosive) materials in an anchorage, must carry a written permit issued by the Captain of the Port.

(3) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold a form of valid identification.

(4) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, must present the pass or other form of identification prescribed by paragraph

(d)(3) of this section to any Coast Guard boarding officer who requests it.

(5) The Captain of the Port may revoke at any time a pass issued under the authority of paragraph (d)(4) of this section.

(6) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(7) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a red flag (Bravo flag) in a prominent location and by night a fixed red light.

(e) *Regulations for Specific Anchorages.* (1) *Anchorages A, B, C, and D.* Except for a naval vessel, military support vessel, or vessel in an emergency situation, a vessel may not anchor in Anchorages A, B, C, or D without the permission of the Captain of the Port. The Captain of the Port must consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorages A, B, C, or D.

(2) *Anchorage E.* (i) A vessel may not anchor in Anchorage E without a permit issued by the Captain of the Port.

(ii) The Captain of the Port must give commercial vessels priority over naval and public vessels.

(iii) The Captain of the Port may at any time revoke a permit to anchor in Anchorage E issued under the authority of paragraph (e)(4)(i) of this section.

(iv) A vessel may not anchor in Anchorage Berth E–1, unless it is handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(v) A vessel may not anchor within 500 yards of Anchorage Berth E–1 without the permission of the Captain of the Port, if the berth is occupied by a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(3) *Anchorage F.* A vessel having a draft less than 45 feet may not anchor in Anchorage F without the permission of the Captain of the Port. No vessel may anchor in Anchorage F for a longer period than 72 hours without permission from the Captain of the Port. Vessels expecting to be at anchor for more than 72 hours must obtain permission from the Captain of the Port.

(4) *Anchorage G.* (i) Except for a naval vessel, a vessel may not anchor in Anchorage G without the permission of the Captain of the Port.

(ii) When handling or transferring Class 1 (explosive) materials in Anchorage G, naval vessels must comply with Department of Defense Ammunition and Explosives Safety Standards, or the standards in this section, whichever are the more stringent.

(iii) When barges and other vessels are berthed at the Ammunition Barge Mooring Facility, located at latitude 36°58′34″ N., longitude 76°21′12″ W., no other vessel, except a vessel that is receiving or offloading Class 1 (explosive) materials, may anchor within 1,000 yards of the Ammunition Barge Mooring Facility. Vessels transferring class 1 (explosive) materials must display by day a red flag (Bravo flag) in a prominent location and by night a fixed red light.

(iv) Whenever a vessel is handling or transferring Class 1 (explosive) materials while at anchor in Anchorage G, no other vessel may anchor in Anchorage G without the permission of the Captain of the Port. The Captain of the Port must consult with the Commander, Naval Station Norfolk, before granting a vessel permission to anchor in Anchorage G.

(v) A vessel located within Anchorage G may not handle or transfer Class 1 (explosive) materials within 400 yards of Norfolk Harbor Entrance Reach.

(vi) A vessel may not handle or transfer Class 1 (explosive) materials within 850 yards of another anchored vessel, unless the other vessel is also handling or transferring Class 1 (explosive) materials.

(vii) A vessel may not handle or transfer Class 1 (explosive) materials within 850 yards of Anchorage F or H.

(5) *Anchorage I: Anchorage Berths I–1 and I–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth I–1 or I–2 without the permission of the Captain of the Port.

(6) *Anchorage K: Anchorage Berths K–1 and K–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth K–1 or K–2 without the permission of the Captain of the Port.

(7) *Anchorage N.* Portions of this anchorage are a special anchorage area under § 110.72aa of this part during marine events regulated under § 100.501 of this chapter.

(8) *Anchorage O.* (i) A vessel may not anchor in Anchorage O unless it is a recreational vessel.

(ii) No float, raft, lighter, houseboat, or other craft may be laid up for any reason in Anchorage O without the permission of the Captain of the Port.

(9) *Anchorage Q: Quarantine Anchorage.* (i) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities shall anchor in Anchorage Q.

(ii) Every vessel using Anchorage Q must be prepared to move promptly under its own power to another location when directed by the Captain of the Port, and must promptly vacate Anchorage Q after being examined and released by authorities.

(iii) Any non-self-propelled vessel using Anchorage Q must have a tugboat in attendance while undergoing examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

Dated: March 14, 2005.

Sally Brice O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–6305 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–022]

RIN 1625–AA09

Drawbridge Operation Regulations; Chelsea River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the P.J. McArdle Bridge, mile 0.3, across the Chelsea River between East Boston and Chelsea, Massachusetts. This proposed rule would allow the bridge to remain closed from 9 a.m. to 5 p.m. on June 18, 2005, to facilitate the second Annual Chelsea River Revel 5K Road Race. Vessels that can pass under the bridge without a bridge opening may do so at all times.

DATES: Comments and related material must reach the Coast Guard on or before April 29, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, 408 Atlantic Avenue, Boston, Massachusetts, 02110, or deliver them to the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be

available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–022), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The P.J. McArdle Bridge has a vertical clearance of 21 feet at mean high water and 30 feet at mean low water in the closed position. The existing drawbridge operation regulations listed at 33 CFR 117.593 require the bridge to open on signal at all times.

On March 2, 2005, the Chelsea Creek Action Group requested a temporary change to the drawbridge operation regulations to allow the bridge to remain closed to vessel traffic from 9 a.m. to 5 p.m. on June 18, 2005, to facilitate the running of the second Annual Chelsea River Revel 5K Road Race. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Chelsea River is predominantly transited by commercial tugs, barges, oil tankers, and some recreational vessels. The Coast Guard coordinated this closure with the mariners that normally use this waterway and no objections were received at that time.

The Coast Guard did not receive the request to keep the bridge closed to facilitate the scheduled road race until March 7, 2005. A shortened comment period is necessary, due the short notice given to the Coast Guard, to allow this rule to become effective in time for the start of Annual Chelsea River Revel 5K Road Race on June 18, 2005.

The Coast Guard believes this proposed rule is reasonable in order to provide for public safety and the safety of the race participants.

Discussion of Proposal

This proposed change would suspend § 117.593 and temporarily add a new § 117.T592.

Under the new temporary section all drawbridges across the Chelsea River would open on signal; except that the P.J. McArdle Bridge, mile 0.3, need not open for the passage of vessel traffic from 9 a.m. to 5 p.m. on June 18, 2005.

The opening signal for each drawbridge would remain as two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal would remain as three prolonged blasts when the draw can be opened immediately and two prolonged blasts when the draw cannot be opened or is open and must be closed.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge will be closed for only 8 hours in the interest of public safety during the running of the 5K road race.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will be closed for only 8 hours in the interest of public safety during the running of the 5K Road Race.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. On June 18, 2005, from 9 a.m. to 5 p.m., § 117.592 is suspended and a new § 117.T593 is added to read as follows:

§ 117.T592 Chelsea River

(a) All drawbridges across the Chelsea River shall open on signal; except that the P.J. McArdle Bridge, mile 0.3, need not open for the passage of vessel traffic from 9 a.m. to 5 p.m. on June 18, 2005.

(b) The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal is three prolonged blasts when the draw can be opened immediately and two prolonged blasts when the draw cannot be opened or is open and must be closed.

Dated: March 22, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 05–6306 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0011; FRL–7891–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal 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 action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 29, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0011 by one of the following methods:

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

B. *Agency Web site: http://www.docket.epa.gov/rmepub/RME,* EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail: morris.makeba@epa.gov.*

D. *Mail:* R03–OAR–2005–PA–0011, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–0011. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval of Pennsylvania's VOC and NO_X RACT Determinations for Five Individual Sources, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 18, 2005.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 05–6281 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0004; FRL–7891–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Ten Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for ten major sources of nitrogen oxides (NO_X). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal 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 action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 29, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0004 by one of the following methods:

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

B. *Agency Web site: http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail: morris.makeba@epa.gov*.

D. *Mail:* R03–OAR–2005–PA–0004, Makeba Morris, Chief, Air Quality Planning, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–0004. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 23, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–6282 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–MD–0003; FRL–7891–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. The revisions update the SIP's reference to the EPA definition of volatile organic compounds (VOC). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal 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 action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 29, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–MD–0003 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *frankford.harold@epa.gov*.

D. Mail: R03–OAR–2005–MD–0003, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–MD–0003. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: March 23, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–6288 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–PA–0005; FRL–7891–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X and VOC RACT Determinations for Four Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for four sources of nitrogen oxides (NO_X) and volatile organic compounds (VOC). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal 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 action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 29, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0005 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2005–PA–0005, Makeba Morris, Chief, Air Quality Planning Branch. Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–PA–0005. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: LaKeshia Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 18, 2005.

James Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 05–6290 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2005–IA–0001; FRL–7892–2]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the state of Iowa. The purpose of this revision is to approve the 2004 update to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These revisions will help to ensure consistency between the applicable local agency rules and Federally-approved rules, and ensure Federal enforceability of the applicable parts of the local agency air programs.

DATES: Comments on this proposed action must be received in writing by April 29, 2005.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. 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. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 21, 2005.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 05–6292 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–311–0481; FRL–7892–8]

Revisions to the California State Implementation Plan; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District's portion of the California State Implementation Plan (SIP). These revisions concern particulate matter emissions from agricultural operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments must arrive by April 29, 2005.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Avenue, Fresno, CA 93726–0244.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415)947–4115, *steckel.andrew@epa.gov*.

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

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I. The State's Submittal

A. What Rule Did the State Submit?

Rule 4550, Conservation Management Practices, and the List of Conservation Management Practices (CMP List), were adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) on May 20, 2004. Rule 4550 and the CMP List were readopted without change on August 19, 2004, and submitted by the California Air Resources Board (CARB) to EPA on September 23, 2005. On October 18, 2004, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There are no previous versions of Rule 4550 or the CMP List in the SIP. Rule 4550 and the CMP List were readopted without change on August 19, 2004, to ensure a full and complete public notice process.

C. What Is the Purpose of the Submitted Rule?

Small particulate matter (PM–10) harms human health and the environment. CAA section 110(a) requires States to submit regulations that control PM–10 emissions. The San Joaquin Valley area (SJV) is a serious PM–10 nonattainment area. 40 CFR 81.305. As such, under CAA section 189(b)(1)(B), the nonattainment plan for the area must, among other things, provide for the expeditious implementation of best available control measures (BACM).

Because the SJV failed to attain the 24-hour and annual National Ambient Air Quality Standard (NAAQS) for PM–10 by the December 31, 2001, statutory deadline, pursuant to CAA section 189(d), California was required to submit a plan that provides for expeditious attainment and, from the date of the plan submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5% of the amount of such emissions as reported in the most recent inventory

prepared for the area. 67 FR 48039 (July 23, 2002).

One of the control strategies in the SJVUAPCD's 2003 PM–10 Plan [1] is the Conservation Management Practices (CMP) Program. SJVUAPCD adopted Rule 4550, Conservation Management Practices, the CMP List, and Rule 3190, Conservation Management Practices Plan Fee,[2] to implement the CMP Program. Rule 4550 contains requirements to control fugitive dust emissions from agricultural operations. It establishes the CMP Program that requires agricultural operation sites to select and implement CMPs, and submit these to the SJVUAPCD Air Pollution Control Officer (APCO) for approval. For each agricultural parcel of an agricultural operation site, the owner/operator is to select one CMP from the CMP List for each applicable category. Rule 4550 contains exemptions for several types of sources, including sites with total acreage less than 100 acres, parcels used for forestry, and animal feeding operations that meet specific size-based limits. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), and must not relax existing requirements (see sections 110(l) and 193). Pursuant to section 189(b) of the CAA and EPA guidance, serious PM–10 areas must submit SIPs that provide for the expeditious implementation of BACM for significant sources of PM–10 emissions. The activities regulated by SJVUAPCD Rule 4550 are significant sources of PM–10 emissions according to the emission inventory estimates for the SJV. SJVUAPCD 2003 PM–10 Plan. Therefore, SJVUAPCD Rule 4550 must meet the CAA's BACM requirements. Guidance and policy documents that we used to help evaluate enforceability and BACM requirements are described in the TSD.

B. Does the Rule Meet the Evaluation Criteria?

We believe Rule 4550 and the CMP List are consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP criteria. EPA has issued a General Preamble and Addendum to the General Preamble describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for PM–10 plans. *See* "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992) and "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (Addendum) 59 FR 41998 (August 16, 1994). The General Preamble defines a significant source category as one which contributes significantly to nonattainment of the PM–10 NAAQS. 57 FR at 13540. The Addendum provides that BACM is considered to be a higher level of control than RACM and is defined as being, among other things, the maximum degree of emissions reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010–42014.[3]

SJVUAPCD's staff report associated with Rule 4550 (dated August 19, 2004) provides detailed analyses of various CMPs and an assessments of costs, feasibility, and impacts associated with them. SJVUAPCD also considered farm census data, economic impacts, and per farm emissions in selecting the 100-acre threshold for cropland, and the size-based exemptions for animal feeding operations that are contained in Rule 4550. As discussed in the Addendum, energy and environmental impacts of control measures and the cost of control should be considered in determining BACM. Economic feasibility considers the cost of reducing emissions and costs incurred by similar sources. Addendum at 42012 and 42013. The SJVUAPCD's analyses have also determined that application of BACM at these small operations would produce an insignificant regulatory benefit. As a result, the exemption of these smaller operations is considered reasonable and consistent with general procedures for making BACM determinations. The TSD discusses the evaluation of these exemptions in more detail.

The CMP List is attached as an Appendix to the Rule 4550 staff report, and is also included in a CMP Handbook that is available to affected sources. The CMP List was submitted for inclusion into the SIP. The CMP List contains over 100 practices that are grouped into 18 CMP categories. The CMP List for the SJV is more comprehensive than any similar lists existing in other serious nonattainment areas. When no feasible CMP can be used from the CMP List for a certain category, Rule 4550 allows an owner/operator to select a substitute CMP from another category. An owner/operator may also use a CMP not on the CMP List if approval from the APCO is obtained. To obtain approval, the owner/operator must demonstrate that the new CMP achieves PM–10 emission reductions that are at least equivalent to other appropriate CMPs on the CMP List. The APCO is required to perform an independent analysis to evaluate the PM–10 emission reductions. CMPs that are not shown to achieve equivalent reductions will be disapproved. SJVUAPCD will maintain a list of any new CMPs that are approved. It is expected that the CMP List will be periodically updated into the SIP.

A requirement that an individual source select one control method from a list, but allowing the source to select which is most appropriate for its situation, is a common and accepted practice for the control of dust. *See, e.g.*, 66 FR 50252, 50269 (October 2, 2001).[4] Allowing sources the discretion to

[1] On August 19, 2003, CARB submitted the "2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller." On December 30, 2003, CARB submitted the Amendment to the 2003 PM–10 Plan. CARB and the SJVUAPCD developed and adopted these SIP revisions in order to address the CAA requirements in § 189(b)-(d). EPA approved the 2003 PM–10 Plan and Amendment (collectively, 2003 PM–10 Plan) on May 26, 2004. 69 FR 30006.

[2] SJVUAPCD Rule 3190 was not submitted for inclusion into the SIP. Rule 3190 establishes fees and fee schedules to recover the costs related to the review, approval, and enforcement of CMP applications and plans in accordance with Rule 4550. These fee provisions are not SIP-related economic incentives and are not designed to replace or relax an emission limit in the SIP. Therefore, it is unnecessary to include this rule in the SIP.

[3] CAA section 189(a)(1)(C) requires implementation of reasonably available control measures (RACM) for moderate PM–10 nonattainment areas. A serious area PM–10 plan must also provide for the implementation of RACM to the extent that the RACM requirement has not been satisfied in the area's moderate area plan. There is no federally approved moderate area PM–10 plan for the SJV. However, we do not normally conduct a separate evaluation to determine if a serious area plan's measures meet the RACM as well as BACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement as generally subsuming the RACM requirement (*i.e.*, if we determine that the measures are indeed the "best available," we have necessarily concluded that they are "reasonably available"). Consequently, our proposed approval of Rule 4550 and the CMP List relating to the implementation of BACM also constitutes a proposed finding that the rule and list provide for the implementation of RACM and references to BACM in the discussion below are intended to include RACM.

[4] The U.S. Court of Appeals for the Ninth Circuit recently upheld EPA's approval of such a regulatory scheme in Vigil v. Leavitt, 366 F.3d 1025 (9th Cir. 2004).

choose from a range of specified options is particularly important for the agricultural sector because of the variable nature of farming. Moreover, the economic circumstances of farmers vary considerably. As a result, it is imperative that flexibility be built into any PM–10 control measure for the agricultural source category. *Id.* The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

Because EPA believes Rule 4550 and the CMP List fulfill all relevant requirements, we are proposing to fully approve them under CAA section 110(k)(3) as meeting the requirements of section 189(a)(1)(C) and (b)(1)(B) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate Rule 4550 and the CMP List into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 15, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 05–6298 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 60
Wednesday, March 30, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), approved a petition for trade adjustment assistance (TAA) that was filed on February 11, 2005, by the Potato Growers of Idaho, Blackfoot, Idaho. The certification date is March 28, 2005. Beginning on this date, Idaho potato producers who produce fresh market potatoes will be eligible to apply for fiscal year 2005 benefits during an application period ending June 27, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of french fries contributed importantly to a decline in producer prices of fresh potatoes in Idaho by 21 percent during January 2003 through December 2003, when compared with the previous 5-year average.

Eligible producers must apply to the Farm Service Agency for benefits. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and may receive an adjustment assistance payment, if certain program criteria are satisfied. Applicants must obtain the technical assistance from the Extension Service by September 26, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Idaho.

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: March 28, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–6268 Filed 3–29–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Tanana River Floodplain Acquisition Project at Salcha, Alaska

AGENCY: Natural Resources Conservation Service, USDA.

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 Guidelines (40 CFR, part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (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 the Tanana River Floodplain Acquisition Project at Salcha, Alaska.

FOR FURTHER INFORMATION CONTACT: Ms. Febe Ortiz, Acting State Conservationist, Natural Resources Conservation Service, Alaska State Office, 800 West Evergreen Avenue, Suite 100, Palmer, AK 99645–6539; Phone: 907–761–7760; Fax: 907–761–7790.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Febe Ortiz, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to reduce flood induced damages in the Tanana River floodplain at Salcha, Alaska and to restore floodplain function and values. The planned works of improvement include the voluntary acquisition of residential, commercial and other property; the removal and decommissioning of buildings and other facilities; and the re-vegetation and restoration of acquired sites. Restored land will be maintained, in perpetuity, for floodplain use and function.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and other 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 Febe Ortiz.

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: March 23, 2005.

Mark R. Weatherstone,

Acting 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. 05–6225 Filed 3–29–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces its Community Connect Grant Program application window for funding during fiscal year (FY) 2005. In addition, RUS announces the minimum and maximum amounts for Community Connect grants applicable for the fiscal year. The Community Connect Grant Program regulations are contained in 7 CFR 1739, subpart A.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than May 31, 2005 to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.
- Electronic copies must be received by May 31, 2005 to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.

ADDRESSES: You may obtain application guides and materials for the Community Connect Grant Program via the Internet at the following Web site: *http://www.usda.gov/rus/telecom/commconnect.htm*. You may also request application guides and materials from RUS by contacting the appropriate individual listed in section VII of the **SUPPLEMENTARY INFORMATION** section of this notice.

Submit completed paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division, Telecommunications Program."

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Director, Advanced Services Division, Telecommunications, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 690–4493, fax: (202) 720–1051.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.863.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than May 31, 2005, to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.
- Electronic copies must be received by May 31, 2005, to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the Community Connect Grant Program.
II. Award Information: Available funds and minimum and maximum amounts.
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
VI. Award Administration Information: Award notice information, award recipient reporting requirements.
VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide currently unserved areas, on a "community-oriented connectivity" basis, with broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. RUS will give priority to rural areas that it believes have the greatest need for broadband transmission services, based on the criteria contained herein.

Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a "community-oriented connectivity" basis. The "community-oriented connectivity" concept will stimulate practical, everyday uses and applications of broadband by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals. Please see 7 CFR 1739, subpart A for specifics.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003. This Notice does not change the Community Connect Grant Program regulation (7 CFR 1739, subpart A).

II. Award Information

A. Available Funds

1. *General.* The Administrator has determined that the following amounts are available for grants in FY 2005 under 7 CFR 1739.2(a).

2. *Grants*

a. $8.9 million is available for grants. Under 7 CFR 1739.2, the Administrator has established a minimum grant amount of $50,000. There is no maximum grant amount for FY 2005.

b. Assistance instrument: RUS will execute grant documents appropriate to the project prior to any advance of funds with successful applicants.

c. Community Connect grants cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who Is Eligible for Grants? (See 7 CFR 1739.10.)

1. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

a. An incorporated organization,

b. An Indian tribe or tribal organization, as defined in *25 U.S.C. 450b(b) and (c),*

c. A State or local unit of government,

d. A cooperative, private corporation or limited liability company organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for Community Connect Grant Program financial assistance directly.

3. Applicants must have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

B. What Are the Basic Eligibility Requirements for a Project?

1. Required matching contributions. Please see 7 CFR 1739.14 for the requirement. Grant applicants must demonstrate a matching contribution, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of RUS financial assistance requested. Matching contributions must be used for eligible purposes of Community Connect grant assistance (*see* 7 CFR 1739.14).

2. To be eligible for a grant, the Project must (*see* 7 CFR 1739.11):

a. Serve a Rural Area throughout which Broadband Transmission Service does not currently exist, to be verified by RUS prior to the award of the grant;

b. Serve one and only one Community recognized in the latest U.S. Census. For FY 2005, RUS will accept communities added to the Census through the Count Question Resolution Process, and considers a Census Designated Place to be an unincorporated town, village, or borough, and thus a "community" as defined in 7 CFR 1739. Additional communities located in the contiguous areas outside the Community's boundaries that are not recognized (due to size) in the U.S. Census, can be included in the applicant's proposed Service Area, but must be supported by documentation, acceptable to RUS, as to their existence. Communities made eligible through the Count Question Resolution Process may lack corresponding Per Capita Income (PCI) data, so for scoring purposes, applicants claiming eligibility through the Count Question Resolution Process should propose a substitute PCI which is available for a geographical area which includes and most nearly replicates the applicant's proposed service area, subject to RUS acceptance;

c. Deploy Basic Broadband Transmission Service, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

d. Offer Basic Broadband Transmission Service to residential and business customers within the proposed Service Area; and

e. Provide a Community Center with at least ten (10) Computer Access Points within the proposed Service Area, and make Broadband Transmission Service available therein, free of all charges to users for at least 2 years.

C. See paragraph IV.B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1739.15 for completed grant application items.

IV. Application and Submission Information

A. Where To Get Application Information

The application guide, copies of necessary forms and samples, and the Community Connect Grant Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/commconnect.htm*, or *http://www.grants.gov*.

2. The RUS, Advanced Services Division, for paper copies of these materials: (202) 690–4493.

B. What Constitutes a Completed Application?

1. Detailed information on each item required can be found in the Community Connect Grant Program regulation and the Community Connect Grant Program application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of Community Connect Grant Program financial assistance specified in the Community Connect Grant Program regulation. The Community Connect Grant Program regulation and the application guide provide specific guidance on each of the items listed and the Community Connect Grant Program application guide provides all necessary forms and sample worksheets.

2. A completed application must include the following documentation, studies, reports and information in form satisfactory to RUS. Applications should be prepared in conformance with the provisions in 7 CFR 1739, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the RUS Application Guide for this program containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. *An Application for Federal Assistance.* A completed Standard Form 424.

b. *An executive summary of the Project.* The applicant must provide RUS with a general project overview.

c. *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed 7 CFR 1739.17.

d. *System design.* The applicant must submit a system design, including, narrative specifics of the proposal, associated costs, maps, engineering design studies, technical specifications and system capabilities, etc.

e. *Scope of work.* The scope of work must include specific activities and services to be performed under the proposal, who will carry out the activities and services, specific time-frames for completion, and a budget for all capital and administrative expenditures reflecting the line item costs for all grant purposes, the matching contribution, and other sources of funds necessary to complete the project.

f. *Community-Oriented Connectivity Plan.* The applicant must provide a detailed Community-Oriented Connectivity Plan.

g. *Financial information and sustainability.* The applicant must provide financial statements and information and a narrative description demonstrating the sustainability of the Project.

h. *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

i. *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and to perform the activities proposed under the grant application.

j. *Funding commitment from other sources.* If the Project requires additional funding from other sources in addition to the RUS grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

k. *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

(i) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(ii) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(iii) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(iv) 7 CFR part 3018—New Restrictions on Lobbying.

(v) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(vi) Certification regarding Architectural Barriers.

(vii) Certification regarding Flood Hazard Precautions.

(viii) An environmental report, in accordance with 7 CFR 1794.

(ix) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Transmission Service.

(x) Federal Obligation Certification on Delinquent Debt.

5. DUNS Number. As required by the OMB, all applicants for grants must now supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number

costs nothing and requires a short telephone call to Dun and Bradstreet. Please see the Community Connect Web site or Grants.gov for more information on how to obtain a DUNS number or how to verify your organization's number.

C. How Many Copies of an Application Are Required?

1. Applications submitted on paper: Submit the original application and two (2) copies to RUS.

2. Electronically submitted applications: The additional paper copies for RUS are not necessary if you submit the application electronically through Grants.gov.

D. How and Where To Submit an Application

Grant applications may be submitted on paper or electronically.

1. Submitting Applications on Paper

a. Address paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division, Telecommunications Program."

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically Submitted Applications

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov*.

c. How to use Grants.gov:

(i) Navigate your Web browser to *http://www.grants.gov*.

(ii) Follow the instructions on that Web site to find grant information.

(iii) Download a copy of the application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

d. Grants.gov contains full instructions on all required passwords, credentialing and software.

e. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline.

f. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

g. New information for FY 2005: RUS clarifies its application of the definition of "community" to enable more rural areas to qualify for application to this program.

(i) A Census Designated Place will now be recognized as an unincorporated town, village or borough.

(ii) Communities recognized by the Count Question Resolution Process will now be accepted as being in the "latest U.S. Census".

E. Deadlines

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than May 31, 2005 to be eligible for FY 2005 grant funding.

2. Electronic grant applications must be received by May 31, 2005 to be eligible for FY 2005 funding. Late applications are not eligible for FY 2005 grant funding.

F. Funding Restrictions

1. Eligible Grant Purposes

Grant funds may be used to finance:

a. The construction, acquisition, or leasing of facilities, including spectrum, to deploy Broadband Transmission Service to all participating Critical Community Facilities and all required facilities needed to offer such service to residential and business customers located within the proposed Service Area;

b. The improvement, expansion, construction, or acquisition of a Community Center that furnishes free access to broadband Internet service, provided that the Community Center is open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of five percent (5%) of the grant amount requested or $100,000;

c. End-User Equipment needed to carry out the Project;

d. Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction. Salary and administrative expenses will be subject to review, and may be limited by RUS for reasonableness in relation to the scope of the Project; and

e. The purchase of land, buildings, or building construction needed to carry out the Project.

2. Ineligible Grant Purposes

a. Grant funds may not be used to finance the duplication of any existing Broadband Transmission Service provided by another entity.

b. Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such service.

3. Please *see* 7 CFR 1739.3 for definitions, 7 CFR 1739.12 for eligible grant purposes, and 7 CFR 1739.13 for ineligible grant purposes.

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 100). *See* 7 CFR 1739.17 for the items that will be reviewed during scoring and for scoring criteria.

a. The rurality of the Project (up to 40 points);

b. The economic need of the Project's Service Area (up to 30 points); and

c. The "community-oriented connectivity" benefits derived from the proposed service (up to 30 points).

B. Review Standards

1. All applications for grants must be delivered to RUS at the address and by the date specified in this notice (*see also* 7 CFR 1739.2) to be eligible for funding. RUS will review each application for conformance with the provisions of this part. RUS may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

3. Applications conforming with this part will then be evaluated competitively by a panel of RUS employees selected by the Administrator of RUS, and will be awarded points as described in the scoring criteria in 7 CFR 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

4. Regardless of the score an application receives, if RUS determines that the Project is technically or financially infeasible, RUS will notify the applicant, in writing, and the application will be returned with no further action.

C. Selection Process

Grant applications are ranked by final score. RUS selects applications based on those rankings, subject to the availability of funds.

VI. Award Administration Information

A. Award Notices

RUS recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. RUS generally notifies applicants whose projects are selected for awards by faxing an award letter. RUS follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements

The items listed in paragraph IV.B.2.k of this notice, and the Community Connect Grant Program regulation, application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. *Performance reporting.* All recipients of Community Connect Grant Program financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project. *See* 7 CFR 1739.19.

2. *Financial reporting.* All recipients of Community Connect Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please *see* 7 CFR 1739.20.

VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/commconnect.htm.* The RUS's Web site maintains up-to-date resources and contact information for the Community Connect Grant Program.

B. *Phone:* (202) 690–4493.

C. *Fax:* (202) 720–1051.

D. *Main point of contact:* Orren E. Cameron III, Director, Advanced Services Division, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture.

Dated: March 24, 2005.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–6267 Filed 3–29–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: International Trade Administration.

Title: Advocacy Questionnaire.

OMB Number: 0625–0220.

Agency Form Number: ITA–4133P.

Type of Request: Regular Submission.

Burden: 205 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration's (ITA) Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center works closely with the Trade Promotion Coordination Committee which is chaired by the Secretary of Commerce and includes 19 Federal agencies involved in export promotion.

Advocacy assistance is wide and varied, but most often is employed to assist U.S. commercial interests that must deal with foreign governments or government-owned corporations to win or maintain business transactions in foreign markets. The Advocacy Center is at the core of the President's National Export Strategy and its goal to ensure opportunities for American companies in the international marketplace.

The purpose of the Advocacy Questionnaire is to collect the necessary information to evaluate whether a firm qualifies for USG advocacy assistance. The Advocacy Center, appropriate ITA officials, officers at U.S. Embassies/Consulates worldwide, and other federal government agencies that provide advocacy support (the Advocacy Network) to U.S. firms, will request firm(s) seeking USG advocacy support to complete the questionnaire. Without this information, we would be unable to determine if a firm is eligible for U.S. government advocacy.

Affected Public: Business community.

Frequency: On occasion.

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

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

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; e-mail: *dHynek@doc.gov.*

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

Dated: March 24, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6229 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

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: Gear-Marking Requirements in Antarctic Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0367.

Type of Request: Regular submission.

Burden Hours: 11.

Number of Respondents: 4.

Average Hours Per Response: 2 hours, 45 minutes.

Needs and Uses: The vessels participating in Antarctic fisheries must mark the vessel's fishing gear with official vessel identification number, Federal permit or tag number, or some other specified form of identification. The information is used for enforcement purposes. The authority for this requirement comes from the Antarctic Marine Living Resources Convention Act of 1984.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.
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: March 24, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6230 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

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: Southeast Region Bycatch Reduction Device Certification Family of Forms.
Form Number(s): None.
OMB Approval Number: 0648–0345.
Type of Review: Regular submission.
Burden Hours: 6,899.
Number of Respondents: 32.
Average Hours Per Response: 1.3 hours (78 minutes).
Needs and Uses: Any person seeking to obtain certification for bycatch reduction devices to be used on shrimp vessels in the Gulf of Mexico or South Atlantic must apply for authorization to conduct tests and submit the test results. Any person seeking certification to be an observer for such tests in the Gulf of Mexico must file an application and provide two references. The information is needed for NOAA to determine if the equipment meets the standards that would allow its use in commercial fisheries.
Affected Public: Business or other for-profit organizations; 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: March 24, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6231 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

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 Multispecies Framework Adjustment 40-A Logbook Information Data Collection.
Form Number(s): None.
OMB Approval Number: 0648–0502.
Type of Request: Regular submission.
Burden Hours: 2,533.
Number of Respondents: 997.
Average Hours Per Response: 15 minutes.
Needs and Uses: The National Marine Fisheries Service (NMFS) is submitting a request to renew the information collections previously approved under OMB Control No. 0648–0502 to continue to implement provisions contained within Framework Adjustment 40A to the Northeast Multispecies Fishery Management Plan. This submission requests clearance for the following provisions: (1) A Category B (regular) days-at-sea Pilot Program; (2) Closed Area I Hookgear Special Access Program (SAP); (3) Eastern United States/Canada SAP Pilot Program; and (4) Modifications to the Western United States/Canada Area Regulations.
Affected Public: Business or other for-profit organizations; Individuals or households.
Frequency: Annually and 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: March 24, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6232 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

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: Foreign Fishing Vessel Identification Requirements.
Form Number(s): None.
OMB Approval Number: 0648–0356.
Type of Request: Regular submission.
Burden Hours: 8.
Number of Respondents: 10.
Average Hours Per Response: 48 minutes.
Needs and Uses: Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. The vessels so authorized are required to display vessel identification to make it possible for enforcement personnel to monitor fishing, at-sea processing, and other related activities, to ascertain whether a vessel's observed activities are in accordance with those authorized for that vessel.
Affected Public: Business or other for-profit organizations.

Frequency: Annually.
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: March 24, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6233 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

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: Foreign Fishing Gear Identification Requirements.
Form Number(s): None.
OMB Approval Number: 0648–0354.
Type of Request: Regular submission.
Burden Hours: 1.
Number of Respondents: 1.
Average Hours Per Response: 1 hour, 15 minutes.

Needs and Uses: Under provisions of section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. The vessels so authorized that deploy gear which is not physically and continuously attached to the vessel are required to mark such gear in a prescribed manner to allow enforcement personnel to monitor fishing activities and ensure that a vessel harvests only from its own gear and that its gear is not illegally placed.

Affected Public: Business or other for-profit organizations.
Frequency: Annually.
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: March 24, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6234 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

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 Ocean and Atmospheric Administration (NOAA).
Title: Northeast Multispecies Framework Adjustment 40–A Permit Information Data Collection.
Form Number(s): None.
OMB Approval Number: 0648–0501.
Type of Request: Regular submission.
Burden Hours: –557. This is a further reduction to the previous reduction of –2,094, which was due to the accounting for much of the information collection under other requirements. This latest reduction results from corrections to previous calculations.
Number of Respondents: 997.
Average Hours Per Response: 2 minutes.

Needs and Uses: This submission requests renewal of the information collection approval for measures contained in Framework Adjustment 40–A and approved under OMB Control No. 0648–0501. Framework Adjustment 40–A included the following measures: (1) A Category B (regular) days-at-sea Pilot Program; (2) Closed Area I Hookgear Special Access Program (SAP); (3) Eastern United States/Canada SAP Pilot Program; and (4) Modifications to the Western United States/Canada Area Regulations.

Affected Public: business or other for-profit organizations; individuals or households.
Frequency: Annually and 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: March 24, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6236 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS) School Enrollment Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 31, 2005.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, Census

Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 2005 CPS. The Census Bureau and the Bureau of Labor Statistics (BLS) sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 40 years.

This survey provides information on public/private elementary school, secondary school, and college enrollment, and on characteristics of private school students and their families, which is used for tracking historical trends, policy planning, and support. This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

II. Method of Collection

The school enrollment information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0464.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 55,000.

Estimated Time Per Response: 3.0 minutes.

Estimated Total Annual Burden Hours: 2,750.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., section 182, and title 29, U.S.C., sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: March 24, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6228 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–504

Petroleum Wax Candles from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("the Department") is rescinding its administrative review of one company, Shangyu City Garden Candle Factory ("Garden Candle"), under the antidumping duty order on Petroleum Wax Candles from the People's Republic of China for the period August 1, 2003, through July 31, 2004. This rescission, in part, is based on the withdrawal for a request for review by Garden Candle. The Department is not rescinding its review of Shanghai R&R Import/Export Co., Ltd ("Shanghai R&R").

EFFECTIVE DATE: March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Nicole Bankhead or Alex Villanueva at (202) 482–9068 and (202) 482–3208, respectively, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on petroleum wax candles from the People's Republic of China on August 28, 1986 (51 FR 30686). Pursuant to its *Notice of Opportunity to Request an Administrative Review*, 69 FR 46496 (August 3, 2004), and in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(b) of the Department's regulations, the Department received timely requests for review from two companies: Garden Candle and Shanghai R&R. No other interested party requested a review.

On September 22, 2004, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part*, 69 FR 56745 (September 22, 2004), initiating on both companies for which an administrative review was requested.

Rescission, in Part, of Administrative Review

Pursuant to section 351.213(d)(1) of the Department's regulations, the Department may rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." The Department may also extend this time limit if it decides that it is reasonable to do so. *Id.*

While Garden Candle's withdrawal of its own request for review was not timely, according to section 351.213(d)(1) of the Department's regulations, the Department may extend this time limit if it decides that it is reasonable to do so. In this case, the Department has determined that rescinding the review of Garden Candle is appropriate. Continuing this review would only require Garden Candle and the Department to expend time and resources on a review in which the party that requested the review is no longer interested. The Department has only released one supplemental questionnaire with respect to Garden Candle and has not yet conducted a verification. Therefore, the Department does not believe the administrative review has proceeded to a point at which it would be "unreasonable" to rescind the review. The Department has therefore determined that it is reasonable to extend the 90-day time limit for Garden Candle to request its withdrawal from the administrative review, and is rescinding its antidumping administrative review with respect to Garden Candle in accordance

with section 351.213(d)(1) of the Department's regulations.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for this company at the cash deposit rate in effect on the date of entry for entries during the period August 1, 2003, through July 31, 2004.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. 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 section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(2)(C) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: March 16, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1400 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–825

Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order

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

SUMMARY: On November 26, 2004, the Department of Commerce (the Department) published the preliminary results of the changed circumstances review and intent to reinstate the Tianjin Chemicals Import and Export Corporation (Tianjin) in the antidumping duty order on exports of sebacic acid from the People's Republic of China (PRC). *See Sebacic Acid From the People's Republic of China: Preliminary Results of Changed Circumstances Review and Intent to Reinstate the Antidumping Duty Order*, 69 FR 68879 (November 26, 2004) (*Preliminary Results*). This review covers subject merchandise exported by Tianjin. The products covered by this order are all grades of sebacic acid which include, but are not limited to, CP Grade, Purified Grade, and Nylon Grade (*see* "Scope of the Review" section below). The period of review (POR) is July 1, 2002, through June 30, 2003. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. We determine that Tianjin sold subject merchandise at less than normal value (NV) during the referenced period, and hereby reinstate Tianjin in the order. The final weighted–average dumping margin is listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ledgerwood, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 2004, the Department published in the **Federal Register** the preliminary results of changed circumstances review and intent to reinstate Tianjin in the antidumping duty order on exports of sebacic acid from the PRC. *See Preliminary Results.* This review covers subject merchandise exported by Tianjin. The POR is July 1, 2002, through June 30, 2003.

We invited interested parties to comment on the preliminary results of review. We received comments from Tianjin on January 3, 2005. On March 11, 2005, we put excerpts from the International Trade Commission's Staff Report on the record and invited parties to comment. The hearing was held on March 15, 2005. The Department has conducted this changed circumstances review in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principle difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free–flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Separate Rates

We initiated this changed circumstance review for the sole purpose of determining whether Tianjin has resumed dumping of sebacic acid from the PRC. We did not require Tianjin to answer questions related to separate rates because no administrative review has been initiated that would require Tianjin to substantiate a *de facto* and *de jure* absence of government control of its export activities. We have not received any other information since the *Preliminary Results* which would indicate that Tianjin is not eligible for a separate rate. Therefore, we determine that Tianjin should be assigned an individual dumping margin in this changed circumstances review.

Analysis of Comments Received

All issues raised in the case brief submitted by Tianjin to this changed circumstances review are addressed in the "Issues and Decision Memorandum"

(*Decision Memo*) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated March 23, 2005, which is adopted by this notice. A list of the issues which parties have raised are in the *Decision Memo* and it is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://www.ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the *Decision Memo* and the Memorandum to the File from Jennifer Moats, dated March 23, 2005 (*Analysis Memo*). Specifically, for these final results, we have revalued sebacic acid and revalued capryl alcohol with a more recently submitted value for octanol.

Final Results of Review

We determine that the following weighted–average margin percentage exists for the period July 1, 2002, through June 30, 2003:

Manufacturer/Exporter	Margin
Tianjin Chemicals Import and Export Corporation	26.33 percent

Since we have established that sebacic acid exported by Tianjin is being sold at less than NV, Tianjin is hereby reinstated in the antidumping duty order effective on the publication date of this notice. We will advise U.S. Customs and Border Protection (CBP) to collect a cash deposit of 26.33 percent on all entries of the subject merchandise exported by Tianjin that are entered, or withdrawn from warehouse, for consumption on or after, the publication date of these final results. This requirement shall remain in effect until publication of the final results of the next administrative review as to Tianjin. There are no changes to the rates applicable to any other companies under this antidumping duty order.

Notification to Interested Parties

The Department will disclose calculations performed in connection with the final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b) of its regulations.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations. 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.

We are issuing and publishing this determination and notice in accordance with section 751(b)(1) of the Act and 19 CFR 351.216.

Dated: March 23, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix - - Issues in Decision Memo

Comments

1. Authority to Reinstate the Antidumping Duty Order
2. Lack of Domestic Interested Party
3. Appearance of Cognis Corporation
4. Valuation of Sebacic Acid
5. Valuation of Activated Carbon
6. Valuation of Capryl Alcohol
7. Selection of Surrogate Financial Ratios

[FR Doc. E5–1401 Filed 3–29–05; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada

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

SUMMARY: On September 2, 2004, the Department of Commerce published a notice of initiation of changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada. The review was initiated to determine the appropriate cash deposit rate for Produits Forestiers Saguenay Inc., a previously inactive holding company which began producing softwood lumber and exporting it to the United States as of June 1, 2004, and is currently owned by Abitibi Consolidated Company of Canada. We have preliminarily concluded that Produits Forestiers Saguenay Inc. should be assigned the same cash deposit rate as the Abitibi Group.

DATES: *Effective Dates:* March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Saliha Loucif, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2004, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(b) (2004), the Abitibi Group and Produits Forestiers Saguenay (PFS), both Canadian producers of softwood lumber products and interested parties in this proceeding, filed a request for a changed circumstances review. The Abitibi Group is composed of Abitibi-Consolidated Inc. (ACI), Abitibi Consolidated Company of Canada (ACCC), Produits Forestiers Petit Paris Inc. (PFPP), and Societe en Commandite Scierie Opitciwan (Opitciwan).

In response to this request, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on certain softwood lumber from Canada. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Products from Canada*, 69 FR 53681 (September 2, 2004) *(Initiation Notice)*. On October 18, 2004, the Department issued to the Abitibi Group a questionnaire requesting further details on PFS' affiliation with the Abitibi Group. The Abitibi Group's response was received by the Department on November 18, 2004. The petitioner, the Coalition of Fair Lumber Imports Executive Commission, did not file comments with respect to the request.

Scope of the Order

For purposes of the order, the products covered are certain softwood lumber products from Canada. For a complete description of the scope of the order, *see Initiation Notice*.

Preliminary Results of the Review

In submissions to the Department dated July 29, 2004, and November 18,

2004, the Abitibi Group contends that PFS should be subject to the Abitibi Group cash deposit rate, because it is controlled by ACCC, which owns the majority of PFS' shares, and because it has production facilities similar or identical to other members of the Abitibi Group as well as intertwined sales processes.

On June 1, 2004, ACCC entered into a three-way agreement with Cooperative Forestiere Laterriere (CFL) and Les Placements H.N.M.A. Inc. (HNMA), its existing partner in Scierie Saguenay Ltee (SSL), to form PFS. ACCC is the main shareholder in PFS. PFS owns and operates four sawmills located in the Saguenay region of Quebec, of which two [1] were previously wholly-owned by ACCC and consequently shared the Abitibi Group's rate, one [2] was 50 percent owned by the ACCC and 50 percent by HNMA, and one [3] was owned by CFL.

In antidumping duty changed circumstances reviews involving a change in ownership, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) customer base; and (4) supplier relationships. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review,* 57 FR 20460, 20462 (May 13, 1992).

While we recognize that this is not a typical successor-in-interest situation, since the Abitibi Group has not ceased to exist or been substantially changed, we believe that the factors analyzed as part of a successor-in-interest finding are relevant to our determination of the proper cash deposit rate for Abitibi's new affiliate, PFS.

Based on our review of the questionnaire response, we preliminarily find that PFS functions as part of the Abitibi Group. Indeed, as a result of the agreement that formed PFS, significant components of the Abitibi Group's management, production facilities, supplier relationships, and customer base have been incorporated into PFS. PFS's Board of Directors is predominantly composed of directors appointed by the Abitibi Group (three appointed by ACCC, one appointed by CFL, and one appointed by HNMA). The Abitibi Group appointed board members also serve as President, Secretary and Treasurer of PFS. Furthermore, PFS employs former ACCC employees of St. Fulgence and Petit Saguenay sawmills who continue working from the same Abitibi Group facilities.

With regard to production facilities, as noted above, two of the mills as well as 50 percent of the SSL mill already belonged to the Abitibi Group. Production from the Abitibi mills, which accounts for the bulk of PFS's production, was included in determining the Abitibi Group's current cash deposit rate.

In terms of customer base, PFS's price setting, channel of distributions and sales functions have been assigned to ACI, the sales arm of the Abitibi Group. ACI sells the majority of the softwood lumber produced by all four of PFS's sawmills, including all sales of PFS softwood lumber to the United States. Therefore, PFS's customer base is largely that of ACI. Finally, no information on the record indicates any substantial change in supplier relationships of the mills, whose production as stated earlier, is largely from mills already owned by the Abitibi Group.

When PFS purchased two sawmills previously owned by the Abitibi Group, it began to function as a member of the Abitibi Group. PFS's ownership, management, production facilities, supplier relationships, customer base, sales practices and facilities combine important elements of the Abitibi Group. Therefore, we preliminarily find PFS to be a member of the Abitibi Group and entitled to the Abitibi Group cash deposit rate.

If the above preliminary results are affirmed in the Department's final results, the cash deposit rate from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review,* 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Abitibi Group participates.

Public Comment

Any interested party may request a hearing within 20 days of publication of this notice. 19 CFR 351.310(c). Any hearing, if requested, will be held 34 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs not later than 20 days after the date of publication of this notice. 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. We will issue the final results of this changed circumstances review no later than May 23, 2005.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: March 24, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1402 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–DS–P

[1] On May 31, 2004, PFS purchased St. Fulgence and Petit Saguenay sawmills from ACCC, via an asset purchase agreement.

[2] Scierie Saguenay Ltee.

[3] On May 17, 2004, through an asset purchase agreement, PFS purchased the Laterriere sawmill and related assets from Cooperative Forestiere Laterriere (CFL), which had been insolvent.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–866]

Initiation of Antidumping Duty Investigation: Superalloy Degassed Chromium From Japan

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

DATES: *Effective Dates:* March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 4, 2005, the Department of Commerce (the Department) received a petition on imports of superalloy degassed chromium from Japan filed in proper form by Eramet Marietta Inc. and Paper, Allied-Industrial, Chemical and Energy Workers International Union (the petitioners). On March 10, 2005, the Department issued a supplemental questionnaire requesting additional information and clarification of certain areas of the petition. The Department also requested additional information in March 16, 2005, and March 17, 2005, telephone calls with counsel to the petitioners. See Memoranda from Meredith Wood through Norbert O.

Gannon to the File dated March 16, 2005, and March 17, 2005. The petitioners filed supplements to the petition on March 7, 2005, March 14, 2005, March 18, 2005, and March 22, 2005.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of superalloy degassed chromium are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act and the petitioners have demonstrated sufficient industry support with respect to the investigation that the petitioners are requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

Scope of Investigation

The product covered by this investigation is all forms, sizes, and grades of superalloy degassed chromium from Japan. Superalloy degassed chromium is a high-purity form of chrome metal that generally contains at least 99.5 percent, but less than 99.95 percent, chromium. Superalloy degassed chromium contains very low levels of certain gaseous elements and other impurities (typically no more than 0.005 percent nitrogen, 0.005 percent sulphur, 0.05 percent oxygen, 0.01 percent aluminum, 0.05 percent silicon, and 0.35 percent iron). Superalloy degassed chromium is generally sold in briquetted form, as "pellets" or "compacts," which typically are 1½ inches × 1 inch × 1 inch or smaller in size and have a smooth surface. Superalloy degassed chromium is currently classifiable under subheading 8112.21.00 of the Harmonized Tariff Schedule of the United States (HTSUS). This investigation covers all chromium meeting the above specifications for superalloy degassed chromium regardless of tariff classification.

Certain higher-purity and lower-purity chromium products are excluded from the scope of this investigation. Specifically, the investigation does not cover electronics-grade chromium, which contains a higher percentage of chromium (typically not less than 99.95 percent), a much lower level of iron (less than 0.05 percent), and lower levels of other impurities than superalloy degassed chromium. The investigation also does not cover "vacuum melt grade" (VMG) chromium, which normally contains at least 99.4 percent chromium and contains a higher level of one or more impurities (nitrogen, sulphur, oxygen, aluminum and/or silicon) than specified above for superalloy degassed chromium.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323, May 19, 1997), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC) is responsible for determining whether "the domestic industry" has been injured and must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. See section 771(10) of the Act. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the definition of domestic like product, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, superalloy degassed chromium, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of the domestic like product.

We received no opposition to this petition. The petitioners account for 100 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Attachment I of the March 24, 2005, Initiation Checklist (Initiation Checklist) on file in the Central Records Unit, Room B–099 of the Department of Commerce.

Period of Investigation

The anticipated period of investigation is January 1, 2004, through December 31, 2004.

U.S. Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the Initiation Checklist.

[1] See *USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988).

Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculation, if appropriate.

The petition identified one producer of superalloy degassed chromium in Japan. See March 4, 2005, petition at page 24. Although the petitioners provide estimates of U.S. price based on U.S. import data (from the U.S. Bureau of the Census) and Japanese export data (see petition at pages 25–28 and Exhibit 7B), we have relied on a price quote provided by the petitioners (see petition at pages 28–29 and Exhibits 7B and 7D(i) and supplement to the petition dated March 14, 2005, at page 5 and Attachment 4). This price quote is for superalloy degassed chromium from Japan sold to a large customer in the United States during 2004. It is for the subject merchandise which is comparable to the merchandise in the home-market price quote provided by the petitioners and in the constructed value (CV) the petitioners calculated (see supplement to the petition dated March 18, 2005, at pages 1–3).

The petitioners deducted an amount for U.S. customs duty and freight and five percent for selling expenses in the United States from the price quote on which we relied. We examined the information provided regarding U.S. price and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. See Initiation Checklist.

To calculate normal value, the petitioners obtained information regarding the price at which the Japanese producer identified in the petition is believed to have sold superalloy degassed chromium to an end-user in Japan in 2004. The price obtained was inclusive of delivery charges and exclusive of taxes. We reviewed the normal-value information the petitioners provided and have determined that it represents information reasonably available to the petitioners. We have also reviewed it for adequacy and accuracy. See Initiation Checklist.

The petitioners also compared the home-market price to Eramet's cost of production (COP), adjusted for known cost differences between Japan and the United States, to support a sales-below-cost allegation. The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act states that an allegation of sales below COP need not be specific to individual exporters or producers. See SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that the "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.*

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacture (COM) and selling, general, and administrative (SG&A) expenses (including financial expenses). The petitioners calculated COP based on Eramet's own experience as a U.S. producer during 2004 and its knowledge of the particular production processes used by the Japanese producer, adjusted for known differences between costs incurred to manufacture superalloy degassed chromium in the United States and in Japan. The publicly available data the petitioners used were contemporaneous with the prospective POI. See Initiation Checklist.

Based upon a comparison of the home-market price of the foreign like product to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners calculated normal value based on CV. Consistent with section 773(e)(2)(B)(iii) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the 2004 consolidated financial statements of JFE Material Co., Ltd., the potential respondent's parent company.

We reviewed the CV information the petitioners provided and have determined that it represents information reasonably available to the petitioners.

Fair-Value Comparison

Based on a comparison of a U.S. price quote to adjusted CV, the dumping margin is 129.32 percent for superalloy degassed chromium from Japan. Therefore, based on the data provided by the petitioners, there is reason to believe that imports of superalloy degassed chromium are being, or are likely to be, sold in the United States at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than normal value. The petitioners contend that the industry's injured condition is evidenced by reduced market share, lost sales, reduced production, capacity, and capacity utilization rates, decreased U.S. shipments and inventories, decline in prices, lost revenue, reduced employment, decrease in capital expenditures, decreased investment in research and development, and decline in financial performance.

These allegations are supported by relevant evidence including import data, lost sales, and pricing information. We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation and we have determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist.

Initiation of Antidumping Investigation

Based upon the examination of the petition on superalloy degassed chromium from Japan and other information reasonably available to the Department, the Department finds that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of superalloy degassed chromium from Japan are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of Japan. We will attempt to provide a copy of the public version of the petition to the producer named in the petition.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than April 18, 2005, whether there is a reasonable indication that imports of superalloy degassed chromium are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 24, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1399 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–894

Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China

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

EFFECTIVE DATE: March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Kit L. Rudd, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1385.

SUPPLEMENTARY INFORMATION:

AMENDMENT TO FINAL DETERMINATION

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, ("the Act"), on February 14, 2005, the Department of Commerce ("the Department") published its final determination of sales at less than fair value ("LTFV") in the investigation of certain tissue paper products from the People's Republic of China ("PRC"). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005) ("*Final Determination*") and corresponding "Issues and Decision Memorandum" dated February 3, 2005.

On February 14, 2005, Cleo Inc., Crystal Creative Products, Inc., and Marvel Products, Inc. (collectively, "Importers") timely filed allegations that the Department made ministerial errors in its *Final Determination* with respect to calculation of the surrogate profit financial ratio, application of the overhead financial ratio and use of surrogate values.

On February 22, 2005, the Petitioners[1] filed rebuttal comments to ministerial error allegations submitted by the Importers. On February 24, 2005, the Importers filed comments responding to the Petitioners' February 22, 2005, rebuttals. On March 4, 2005, pursuant to 19 CFR 351.224, the Department rejected the Importers' February 24, 2005 submission of further rebuttal comments. *See Letter from Alex Villanueva, Program Manager, China/NME Unit, Office 9 to Importers Regarding Ministerial Error Allegation Rebuttal Comments*, dated March 4, 2005.

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Department considers ministerial. *See* 19 CFR 351.224(f).

After analyzing the Importers' comments and Petitioners' rebuttal comments, we have determined, in accordance with 19 CFR 351.224(e), that we made no ministerial errors in the calculations we performed for the *Final Determination*. For a detailed discussion of these ministerial errors, as well as the Department's analysis, *see Antidumping Duty Investigation of Certain Tissue Paper Products from the People's Republic of China ("China"): Analysis of Allegations of Ministerial Errors*, dated March 16, 2005.

In addition, on February 22, 2005, at the direction of the National Import Specialist, the Department has added the following Harmonized Tariff Schedule of the United States ("HTSUS") classifications to the listing of HTS subheadings contained in the *Final Determination*: 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4805.91.1090; 4805.91.5000; and 4805.91.7000.

Finally, in the *Final Determination*, we inadvertently identified Section A Respondent Anhui Light Industrial Import & Export Co., Ltd. ("Anhui Light") as receiving a separate rate, although the Department had determined that Anhui Light did not meet the Separate Rates criteria. *See Preliminary Determination: Certain Tissue Paper Products From The People's Republic of China Separate Rates for Exporters*, dated September 14, 2004 at 20. We also neglected to include Section A Respondent BA Marketing & Industrial Co., Ltd. ("BA Marketing") which qualified for and received a separate rate.

Therefore, we are correcting the *Final Determination* of sales at LTFV in the antidumping duty investigation of certain tissue paper products from the PRC. The revised scope and corrected list of Section A Respondents are listed below.

Scope of the Order

The tissue paper products subject to this order are cut–to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut–to-length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the HTSUS. Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written

[1] Seaman Paper Company of Massachusetts Inc.; Eagle Tissue LLC; Flower City Tissue Mills Co.; Garlock Printing & Converting, Inc.; Paper Service Ltd.; Putney Paper Co., Ltd.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC (collectively "Petitioners").

description of the scope of this order is dispositive.

Excluded from the scope of this order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that certain tissue paper products from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Act. *See Final Determination*. On March 21, 2005, the ITC notified the Department of its final determination pursuant to 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from the PRC. In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from all producers and exporters from the PRC. Therefore, the Department will instruct U.S. Customs and Border Protection ("CBP") to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption prior to September 21, 2004, the date of publication of the preliminary determination in the **Federal Register**. *See Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products*, 69 FR 56407 (September 21, 2004) ("*Preliminary Determination*").

In accordance with section 736(a)(1) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of certain tissue paper products from the PRC. These antidumping duties will be assessed on all unliquidated entries of certain tissue paper products from the PRC entered, or withdrawn from the warehouse, for consumption on or after September 21, 2004, the date on which the Department published its *Preliminary Determination*.

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of certain tissue paper products, we extended the four-month period to no more than six months. *See Preliminary Determination* at 56410. In this investigation, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on March 19, 2005. Definitive duties are to begin on the date of publication of the ITC's final injury determination. *See* Section 737 of the Act. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of certain tissue paper from the PRC entered, or withdrawn from warehouse, for consumption on or after March 20, 2005, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted–average antidumping duty margins as listed below. The "PRC–wide" rate applies to all exporters of subject merchandise not listed specifically.

We determine that the percentage weighted–average margins are as follows:

Company	Weighted–Average Margin (Percent)
PRC–Wide Rate	112.64

CERTAIN TISSUE PAPER PRODUCTS FROM PRC
SECTION A RESPONDENTS

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Qingdao Wenlong Co. Ltd. ("Qingdao Wenlong")	112.64
Fujian Nanping Investment & Enterprise Co. ("Fujian Nanping")	112.64
Fuzhou Light Industry Import & Export Co. Ltd. ("Fuzhou Light")	112.64
Guilin Qifeng Paper Co. Ltd. ("Guilin Qifeng")	112.64
Ningbo Spring Stationary Limited Company ("Ningbo Spring")	112.64
Everlasting Business & Industry Corporation, Ltd. ("Everlasting")	112.64
BA Marketing & Industrial Co. Ltd. ("BA Marketing")	112.64
Samsam Production Limited & Guangzhou Baxi Printing Products Limited ("Samsam")	112.64
Max Fortune Industrial Limited ("Max Fortune")	112.64

This notice constitutes the antidumping duty order with respect to certain tissue paper products from the PRC. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect. This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: March 23, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–6329 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 31, 2005.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Erik Braun, 62 Newtown Lane, East Hampton, NY 11937(phone 631–324–3569 or by e-mail *reporting.ne@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishing vessels permitted to participate in Federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information about their fishing trips. The participants in the herring, tilefish and red crab fisheries are also required to make weekly reports on their catch through an Interactive Voice Response (IVR) system. In addition, permitted vessels that catch halibut are asked to voluntary provide additional information on the estimated size of the fish and the time of day caught. The information submitted is needed for the management of the fisheries.

II. Method of Collection

Most information is submitted on paper forms, although electronic means may be arranged. In the herring, tilefish and red crab fisheries vessel owners or operators must provide weekly catch information to an IVR system.

III. Data

OMB Number: 0648–0212.

Form Number: NOAA Forms 88–30 and 88–40.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 4,596.

Estimated Time Per Response: 5 minutes per Fishing Vessel Trip Report page (FVTR); 12.5 minutes per response for the Shellfish Log; 4 minutes for a herring, tilefish or red crab report to the IVR system; and 30 seconds for voluntary additional halibut information.

Estimated Total Annual Burden Hours: 5,937.

Estimated Total Annual Cost to Public: $24,262.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: March 24, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–6235 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032505A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for English sole, petrale sole, and starry flounder will hold a work session that is open to the public. The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons. No management actions will be decided.

DATES: The meeting will be held from Monday, April 18, 2005, through Friday, April 22, 2005, beginning at 8 a.m. every morning and ending at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: On April 18–20, and 22, 2005, the meeting will be held at NMFS' Northwest Fisheries Science Center (NWFSC), 2725 Montlake Boulevard East, Seattle, WA 98112; telephone: 206–860–3200. On April 21, 2005, the meeting will be held at the University Inn, 4140 Roosevelt Way NE, Seattle, WA 98105; telephone: 206–632–5055.

Council address: Pacific Fishery Management Council (PFMC), 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Stacey Miller, NWFSC; telephone: 206–860–3480; or John DeVore, PFMC; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the STAR Panel meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons. No management actions will be decided by the STAR Panel. The STAR Panel's role will be development of recommendations and reports for consideration by the Council at its June 2005 meeting in Foster City, CA.

Although non-emergency issues not contained in the meeting agenda may come before the STAR Panel participants for discussion, those issues may not be the subject of formal STAR Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STAR Panel participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Entry to the NWFSC requires visitors to show a valid picture ID and to register with security. A visitor's badge, which must be worn while at the NWFSC facility, will be issued to non-federal employees participating in the meeting.

Dated: March 25, 2005.

Regina L. Spallone,

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

[FR Doc. 05–6312 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition Under the North American Free Trade Agreement (NAFTA)

March 25, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for modification of the NAFTA rules of origin for woven cotton boxer shorts made from certain fabrics.

SUMMARY: On March 2, 2005 the Chairman of CITA received a request from Alston & Bird LLP, on behalf of Robinson Manufacturing Company (Robinson), alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the NAFTA region in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rule of origin. Robinson requests that the NAFTA rule of origin for boxer shorts classified under HTSUS 6207.11 should be modified to allow the use of non-North American woven fabrics of the type described below.

The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether woven fabrics of the type described below can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 29, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On March 2, 2005 the Chairman of CITA received a request from Alston & Bird LLP, on behalf of Robinson Manufacturing Company, alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for boxer shorts classified under HTSUS 6207.11 should be modified to allow the use of non-North American woven fabrics of the type described below. Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification.

Specifications	
Fabric 1	
HTSUS	5210.11.60
Fiber Content	51 to 60% cotton, 49 to 40% polyester
Grams/ Square Meter	100 to 112
Finish	Greige
Weave	Plain
Average Yarn No.	55 to 65
Fabric 2	
HTSUS	5210.51.60
Fiber Content	51 to 60% cotton, 49 to 40% polyester
Grams/ Square Meter	105 to 112
Finish	Printed
Weave	Plain
Average Yarn No.	50 to 60
Fabric 3	
HTSUS	5210.41.80
Fiber Content	51 to 60% cotton, 49 to 40% polyester
Grams/ Square Meter	85 to 90
Finish	Yarn Dyed
Weave	Plain
Average Yarn No.	69 to 75
Fabric 4	
HTSUS	5210.41.60
Fiber Content	51 to 60% cotton, 49 to 40% polyester
Grams/ Square Meter	77 to 82
Finish	Yarn Dyed
Weave	Plain
Average Yarn No.	43 to 48
Fabric 5	
HTSUS	5210.51.60
Fiber Content	51 to 60% cotton, 49 to 40% polyester
Grams/ Square Meter	92 to 98
Finish	Printed

Weave	Plain
Average Yarn No.	43 to 48
Fabric 6	
HTSUS	5210.51.40
Fiber Content	51 to 60% cotton, 49 to 40% polyester
Grams/ Square Meter	107 to 113
Finish	Printed
Weave	Plain
Average Yarn No.	33 to 37
Fabric 7	
HTSUS	5208.42.40
Fiber Content	100% cotton
Grams/ Square Meter	100 to 105
Finish	Yarn Dyed
Weave	Plain
Average Yarn No.	47 to 53
Fabric 8	
HTSUS	5208.41.40
Fiber Content	100% cotton
Grams/ Square Meter	95 to 100
Finish	Yarn Dyed
Weave	Plain
Average Yarn No.	37 to 42
Fabric 9	
HTSUS	5208.52.30
Fiber Content	100% cotton
Grams/ Square Meter	112 to 118
Finish	Printed
Weave	Plain
Average Yarn No.	38 to 42
Fabric 10	
HTSUS	5208.51.40
Fiber Content	100% cotton
Grams/ Square Meter	93 to 97
Finish	Printed
Weave	Plain
Average Yarn No.	38 to 42

CITA is soliciting public comments regarding this request, particularly with respect to whether the woven fabrics described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than April 29, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these woven fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of woven fabrics stating that it produces one or more of the woven fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–1398 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

ACTION: Notice of advisory committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday, April 7, 2005, at the Institute for Defense Analyses (IDA), and on Friday, April 8, 2005 in the Pentagon, Washington, DC.

The Committee meets twice per year to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on reducing the threat from weapons of mass destruction. The Committee will receive classified briefings on chemical and biological warfare defense, nuclear deterrence transformation, combating weapons of mass destruction, and intelligence requirements. The Committee will hold classified discussions on these and related national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

DATES: Thursday, April 7, 2005, (8 a.m. to 4 p.m.) and Friday, April 8, 2005, (8 a.m. to 9:30 a.m.)

ADDRESSES: Institute for Defense Analyses, Board Room, 4850 Mark Center Drive, Alexandria, Virginia and the USD (AT&L) Conference Room (3D1019), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Dou Culp, USAF, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road MS 6201, Fort Belvoir, VA 22060–6201. *Phone:* (703) 767–5717.

Dated: March 23, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–6207 Filed 3–29–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas *per diem* rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 238. This bulletin lists revisions in the *per diem* rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 238 is being published in the **Federal Register** to assure that travelers are paid *per diem* at the most current rates.

DATES: *Effective Date:* April 1, 2005.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in *per diem* rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 237. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in *per diem* rates to agencies and establishments outside the Department of Defense. For more information or questions about *per diem* rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–06–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGE IN CIVILIAN BULLETIN 238 ARE UPDATES TO THE RATES FOR ALASKA.				
ALASKA				
ADAK	120	79	199	07/01/2003
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
BARROW	159	95	254	05/01/2002
BETHEL	119	77	196	06/01/2004
BETTLES	135	62	197	10/01/2004
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER				
05/16 - 09/15	109	63	172	07/01/2003
09/16 - 05/15	99	63	162	07/01/2003
CORDOVA				
05/01 - 09/30	110	74	184	04/01/2005
10/01 - 04/30	85	72	157	04/01/2005
CRAIG				
04/15 - 09/14	95	61	156	04/01/2005
09/15 - 04/14	125	64	189	04/01/2005
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	89	75	164	06/01/2004
DENALI NATIONAL PARK				
06/01 - 08/31	114	60	174	04/01/2005
09/01 - 05/31	80	57	137	04/01/2005
DILLINGHAM	114	69	183	06/01/2004
DUTCH HARBOR-UNALASKA	121	73	194	04/01/2005
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
ELMENDORF AFB				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
FAIRBANKS				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	89	75	164	06/01/2004
FT. RICHARDSON				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
FT. WAINWRIGHT				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
GLENNALLEN				
05/01 - 09/30	125	73	198	04/01/2005
10/01 - 04/30	89	69	158	04/01/2005

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HEALY				
06/01 - 08/31	114	60	174	04/01/2005
09/01 - 05/31	80	57	137	04/01/2005
HOMER				
05/15 - 09/15	125	73	198	04/01/2005
09/16 - 05/14	76	68	144	04/01/2005
JUNEAU				
05/01 - 09/30	109	80	189	04/01/2005
10/01 - 04/30	79	77	156	04/01/2005
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
05/01 - 08/31	129	82	211	04/01/2005
09/01 - 04/30	79	77	156	04/01/2005
11/01 - 03/31	69	75	144	04/01/2003
KENNICOTT	189	85	274	04/01/2005
KETCHIKAN				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK				
04/15 - 09/14	95	61	156	04/01/2005
09/15 - 04/14	125	64	189	04/01/2005
KODIAK	112	80	192	04/01/2005
KOTZEBUE				
05/15 - 09/30	141	86	227	02/01/2005
10/01 - 05/14	135	85	220	02/01/2005
KULIS AGS				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
MCCARTHY	189	85	274	04/01/2005
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
NOME	120	84	204	04/01/2005
NUIQSUT	180	53	233	05/01/2002
PETERSBURG	90	64	154	06/01/2004
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/01 - 09/30	145	79	224	04/01/2005
10/01 - 04/30	62	71	133	04/01/2005
SITKA-MT. EDGECUMBE				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 09/30	119	66	185	04/01/2005
10/01 - 04/30	99	64	163	04/01/2005
SKAGWAY				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
SLANA				
05/01 - 09/30	139	55	194	02/01/2005
10/01 - 04/30	99	55	154	02/01/2005
SPRUCE CAPE	112	80	192	04/01/2005
ST. GEORGE	129	55	184	06/01/2004
TALKEETNA	100	89	189	07/01/2002
TANANA	120	84	204	04/01/2005
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	90	66	156	06/01/2004
10/01 - 04/30	60	63	123	06/01/2004
UMIAT	180	107	287	04/01/2005
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	129	74	203	04/01/2005
10/02 - 04/30	79	69	148	04/01/2005
WASILLA				
05/01 - 09/30	134	78	212	04/01/2005
10/01 - 04/30	80	73	153	04/01/2005
WRANGELL				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	135	67	202	06/01/2004
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	89	224	09/01/2004
HAWAII				
CAMP H M SMITH	129	91	220	06/01/2004
EASTPAC NAVAL COMP TELE AREA	129	91	220	06/01/2004
FT. DERUSSEY	129	91	220	06/01/2004
FT. SHAFTER	129	91	220	06/01/2004
HICKAM AFB	129	91	220	06/01/2004
HONOLULU (INCL NAV & MC RES CTR)	129	91	220	06/01/2004
ISLE OF HAWAII: HILO	100	80	180	06/01/2003
ISLE OF HAWAII: OTHER	150	79	229	06/01/2003
ISLE OF KAUAI	158	93	251	06/01/2004
ISLE OF MAUI	159	95	254	06/01/2004
ISLE OF OAHU	129	91	220	06/01/2004
KEKAHA PACIFIC MISSILE RANGE FAC	158	93	251	06/01/2004
KILAUEA MILITARY CAMP	100	80	180	06/01/2003
LANAI	400	148	548	06/01/2004
LUALUALEI NAVAL MAGAZINE	129	91	220	06/01/2004
MCB HAWAII	129	91	220	06/01/2004

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
MOLOKAI	93	91	184	06/01/2004
NAS BARBERS POINT	129	91	220	06/01/2004
PEARL HARBOR [INCL ALL MILITARY]	129	91	220	06/01/2004
SCHOFIELD BARRACKS	129	91	220	06/01/2004
WHEELER ARMY AIRFIELD	129	91	220	06/01/2004
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	129	90	219	09/01/2004
SAIPAN	121	92	213	09/01/2004
TINIAN	85	70	155	09/01/2004
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	98	83	181	08/01/2003
12/15 - 04/14	135	87	222	08/01/2003
ST. JOHN				
04/15 - 12/14	110	91	201	08/01/2003
12/15 - 04/14	185	98	283	08/01/2003
ST. THOMAS				
04/15 - 12/14	163	95	258	08/01/2003
12/15 - 04/14	220	99	319	08/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WAKE ISLAND						
WAKE ISLAND	60		32		92	09/01/1998

Dated: March 23, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–6206 Filed 3–29–05; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Arts in Education Model Development and Dissemination Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of final priority, requirements, and definitions.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces a priority, requirements, and definitions under the Arts in Education Model Development and Dissemination program. We may use this priority, and these requirements and definitions for competitions in fiscal year (FY) 2005 and later years. We take this action to focus Federal financial assistance on an identified national need for the enhancement, expansion, documentation, evaluation, and dissemination of innovative, cohesive models that are based on research and have demonstrated that they effectively: (1) Integrate standards-based arts education into the core elementary and middle school curricula; (2) strengthen standards-based arts instruction in these grades; and (3) improve students' academic performance, including their skills in creating, performing, and responding to the arts. We intend the priority, requirements, and definitions to enable the Department to award grants that increase the amount of information on effective models for arts education that is available nationally and that integrate the arts with standards-based education programs.

DATES: *Effective Date:* This priority and these requirements and definitions are effective April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W214, Washington, DC 20202–5930. Telephone: (202) 260–1280 or via Internet: *Diane.Austin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Arts in Education Model Development and Dissemination Grant program is authorized by Title V, Part D, Subpart 15 of the Elementary and Secondary Education Act of 1965, as reauthorized by the No Child Left Behind Act of 2001 (ESEA). It provides resources that local educational agencies (LEAs) and other eligible applicants can use in pursuit of the objectives of the No Child Left Behind Act of 2001 (NCLB), which aims for all elementary and secondary students to achieve to high standards. This program provides an opportunity for eligible entities to implement and expand effective model programs in schools identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA.

We published a notice of proposed priority, requirements, and definitions for this program in the **Federal Register** on January 13, 2005 (70 FR 2397). The notice of proposed priority, requirements, and definitions included a discussion of the significant issues and analysis carried out in the determination of the priority, definitions, and application requirements. (See pages 2398 through 2399 of that notice.)

Except for minor editorial revisions, there are no differences between the notice of proposed priority, requirements, and definitions and this notice of final priority, requirements, and definitions.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, requirements, and definitions, nine parties submitted comments. An analysis of the comments we received and our responses follows.

We discuss substantive issues under the title of the priority, requirement, or definition to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes that we are not authorized to make under the applicable statutory authority.

A. Proposed Priority

Comment: One commenter stated that the priority should give preference to applicants in rural areas because, the commenter believes, rural areas with migrant populations and large second language populations are overlooked while a great deal of funding is directed to urban areas.

Discussion: This program provides an opportunity for eligible entities to develop programs in schools, including schools identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA. One of the application selection criteria requires applicants to describe the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. This criterion provides an opportunity for applicants, both urban and rural, to provide evidence of need. The criterion should thus give both urban and rural applicants an opportunity to receive funding.

Change: None.

Comment: One commenter suggested that the priority include professional development for teachers and teaching artists.

Discussion: We agree that professional development for both teachers and teaching artists can be an important component of an arts education program. However, requiring that applicants include professional development for teachers and teaching artists would be too prescriptive. For example, not all high-quality projects might include the involvement of teaching artists in the project design, and not all projects might include professional development for both teachers and teaching artists. A broader priority is more appropriate.

Change: None.

Comments: One commenter suggested that the program be expanded to include high schools as well as elementary and middle schools to avoid the "disconnect" between middle and high school arts programs. Two additional comments, however, supported the priority as written.

Discussion: We agree that arts education is important in high school, but believe that this program should continue to serve elementary and middle school only. High school students more frequently have the opportunity to take art classes from teachers who are highly qualified in their subject area. Elementary and middle school teachers often are required to include the arts standards as a part of the core curriculum even if they have little or no pre-service arts instruction. The priority as proposed, therefore, would increase the opportunity for students in elementary and middle school grades to receive high-quality arts-infused instruction.

Change: None.

B. Proposed Application Requirement

Comment: One commenter suggested that the percentage of low-income students in at least one of the elementary or middle schools to be served by the project be increased from 35 percent to 50 percent.

Discussion: The requirement that at least one school receiving services have at least 35 percent of its students meeting the definition of "low-income" under Title I, Section 1113(a)(5) of the ESEA focuses the program on low-income schools, but allows a somewhat broader universe of schools to participate. We believe the smaller percentage requirement is appropriate for the purposes of this program.

Change: None.

C. Proposed Definitions

Comment: One commenter suggested that the definition of "art" include creative writing arts.

Discussion: Creative writing is generally considered in the domain of the humanities and is not included in the National Arts Standards.

Change: None.

Comment: One commenter suggested that the definition of "integrating" include "(i) promoting the transfer of learning between the arts and other subjects through lessons with dual (arts and academic) learning objectives."

Discussion: Applicants will have the opportunity to develop projects with multiple learning objectives. We believe that the original definition, which is simpler and more flexible, will effectively promote the transfer of learning.

Change: None.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, these requirements or these definitions, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

This priority supports projects that enhance, expand, document, evaluate, and disseminate innovative cohesive models that are based on research and have demonstrated their effectiveness in (1) integrating standards-based arts education into the core elementary or middle school curriculum, (2) strengthening standards-based arts instruction in the elementary or middle school grades, and (3) improving the academic performance of students in elementary or middle school grades, including their skills in creating, performing, and responding to the arts.

In order to meet this priority, an applicant must demonstrate that the model project for which it seeks funding (1) serves only elementary school or middle school grades, or both and (2) is linked to State and national standards intended to enable all students to meet challenging expectations and to improving student and school performance.

Requirements

Application Requirement

To be eligible for Arts in Education Model Development and Dissemination funds, applicants must propose to address the needs of low-income children by carrying out projects that serve at least one elementary or middle school in which 35 percent or more of the children enrolled are from low-income families (based on data used in meeting the poverty criteria in Title I, Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA)).

Eligibility Requirement

To be eligible to receive funding under the Arts in Education Model Development and Dissemination program, an applicant must be:

(1) One or more LEAs, including charter schools that are considered LEAs under State law and regulations, that may work in partnership with one or more of the following:

- A State or local non-profit or governmental arts organization,
- A State educational agency (SEA) or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community-or faith-based organization; or

(2) One or more State or local non-profit or governmental arts organizations that must work in partnership with one or more LEAs and may partner with one or more of the following:

- An SEA or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community-or faith-based organization.

Note: If more than one LEA or arts organization wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of the Education Department General Administrative Regulations.

Definitions

As used in this notice—

Arts includes music, dance, theater, media arts, and visual arts, including folk arts.

Integrating means (i) encouraging the use of high-quality arts instruction in other academic/content areas and (ii) strengthening the place of the arts as a core academic subject in the school curriculum.

Based on research, when used with respect to an activity or a program, means that, to the extent possible, the activity or program is based on the most rigorous theory, research, and evaluation available and is effective in improving student achievement and performance and other program objectives.

Executive Order 12866

This notice of final priority, requirements, and definitions has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority, requirements, and definitions are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, requirements, and definitions, we have determined that the benefits of the final priority, requirements, and definitions justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed priority, requirements and definitions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.351D, Arts in Education Model Development and Dissemination Grant Program.)

Program Authority: 20 U.S.C. 7271.

Dated: March 24, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–6262 Filed 3–29–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Arts in Education Model Development and Dissemination Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.351D.

DATES: *Applications Available:* March 30, 2005.

Deadline for Notice of Intent to Apply: April 29, 2005.

Deadline for Transmittal of Applications: May 31, 2005.

Deadline for Intergovernmental Review: July 28, 2005.

Eligible Applicants: (1) One or more local educational agencies (LEAs), including charter schools that are considered LEAs under State law and regulations, that may work in partnership with one or more of the following:

- A State or local non-profit or governmental arts organization,
- A State educational agency (SEA) or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community-or faith-based organization; or

(2) One or more State or local non-profit or governmental arts organizations that must work in partnership with one or more LEAs and may partner with one or more of the following:

- An SEA or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community-or faith-based organization.

Note: If more than one LEA or arts organization wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of the Education Department General Administrative Regulations (EDGAR).

Estimated Available Funds: $3.9 million. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $225,000–$275,000 for the first year of the project. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (*see* 34 CFR 75.253).

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Arts in Education Model Development and Dissemination program (AEMDD) supports the enhancement, expansion, documentation, evaluation, and dissemination of innovative, cohesive models that are based on research and have demonstrated that they effectively: (1) Integrate standards-based arts education into the core elementary and middle school curricula; (2) strengthen standards-based arts instruction in these grades; and (3) improve students' academic performance, including their skills in creating, performing, and responding to the arts. Projects funded through the AEMDD program are intended to increase the amount of information on effective models for arts education that is nationally available and that integrate the arts with standards-based education programs.

Priorities: This competition includes one absolute priority and one competitive preference priority.

Absolute Priority: This priority is from the notice of final priority, requirements, and definitions for this program, published elsewhere in this issue of the **Federal Register**. For FY 2005 and any subsequent year in which we make awards on the basis of the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

This priority supports projects that enhance, expand, document, evaluate, and disseminate innovative cohesive models that are based on research and have demonstrated their effectiveness in (1) integrating standards-based arts education into the core elementary or middle school curriculum, (2) strengthening standards-based arts instruction in the elementary or middle school grades, and (3) improving the academic performance of students in elementary or middle school grades, including their skills in creating, performing, and responding to the arts.

In order to meet this priority, an applicant must demonstrate that the model project for which it seeks funding (1) serves only elementary school or

middle school grades, or both and (2) is linked to State and national standards intended to enable all students to meet challenging expectations and to improving student and school performance.

Competitive Preference Priority: This priority is from the notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586). For FY 2005 and any subsequent year in which we make awards on the basis of the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets this priority. These points are in addition to any points the application earns under the selection criteria.

When using the priority to give competitive preference to an application, the Secretary will review applications using a two-stage process. In the first stage, the application will be reviewed without taking the priority into account. In the second stage of review, the applications rated highest in stage one will be reviewed for competitive preference. We consider awarding additional (competitive preference) points only to those applicants with top-ranked scores on their selection criteria. We expect that up to 12 applicants will receive these additional competitive preference points.

This priority is:

The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—*e.g.*, students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—*e.g.*, students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cutting point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

If the priority is used as a competitive preference priority, points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

Application Requirement: To be eligible for Arts in Education Model Development and Dissemination funds, applicants must propose to address the needs of low-income children by carrying out projects that serve at least one elementary or middle school in which 35 percent or more of the children enrolled are from low-income families (based on data used in meeting the poverty criteria in Title I, Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA)).

Definitions: As used in the absolute priority in this notice—

Arts includes music, dance, theater, media arts, and visual arts, including folk arts.

Integrating means (i) encouraging the use of high-quality arts instruction in other academic/content areas and (ii) strengthening the place of the arts as a core academic subject in the school curriculum.

Based on research, when used with respect to an activity or a program, means that, to the extent possible, the activity or program is based on the most rigorous theory, research, and evaluation available and is effective in improving student achievement and performance and other program objectives.

As used in the competitive preference priority in this notice—*Scientifically based research* (section 9101(37) of the ESEA as amended by NCLB, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi-experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score ("cut score") are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the "cut score" is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which the outcome of interest is measured multiple times before and after the treatment for program participants only.

Program Authority: 20 U.S.C. 7271.

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priority, requirements, and definitions for this program, published elsewhere in this issue of the **Federal Register**. (c) The notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3.9 million. Contingent upon the availability of funds and quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $225,000–$275,000 for the first year of the project. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (*see* 34 CFR 75.253).

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) One or more LEAs, including charter schools that are considered LEAs under State law and regulations, that may work in partnership with one or more of the following:

- A State or local non-profit or governmental arts organization,
- An SEA or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community- or faith-based organization; or

(2) One or more State or local non-profit or governmental arts organizations that must work in partnership with one or more LEAs and may partner with one or more of the following:

- An SEA or regional educational service agency,
- An institution of higher education, or
- A public or private agency, institution, or organization, such as a community- or faith-based organization.

Note: If more than one LEA or arts organization wish to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of EDGAR.

2. *Cost Sharing and Matching:* This program does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions.

Under section 5551(f)(2) of (ESEA), the Secretary requires that assistance provided under this subpart be used only to supplement, and not to supplant, other assistance or funds made available from non-Federal sources for the activities assisted under this subpart.

This restriction also has the effect of allowing projects to recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements in 34 CFR 75.563 and 34 CFR 76.564 through 569. As soon as they decide to apply, applicants are urged to contact the ED Indirect Cost Group at (202) 377–3833 for guidance about obtaining a restricted indirect cost rate to use on the Budget Information form (ED Form 524) included with the application package.

3. *Coordination Requirement:* Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out with funds awarded

with appropriate activities of public or private cultural agencies, institutions, and organizations, such as museums, arts education associations, libraries and theaters.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.351D.

You may also obtain the application package for the program via the Internet at the following address: *http://www.ed.gov/programs/artsedmodel/applicant.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent To Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This e-mail notification should be sent to Diane Austin at *artsdemo@ed.gov.*

Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit for Program Narrative: The program narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit Part III to the equivalent of no more than 30 single-sided, double-spaced pages printed in 12-font type or larger.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, curriculum vitae, or bibliography of literature cited. However, you must include all of the program narrative in Part III.

3. *Submission Dates and Times: Applications Available:* March 30, 2005.

Deadline for Notice of Intent To Apply: April 29, 2005.

Deadline for Transmittal of Applications: May 31, 2005.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 28, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the Arts in Education Model Development and Dissemination Program-CFDA Number 84.351D must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under section VII or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Department's e-Application system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W214, Washington, DC 20202–5950. Fax: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.351D),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260; or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center—Stop 4260,
Attention: (CFDA Number 84.351D),
7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.351D),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m , Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from § 75.210 of EDGAR. The maximum score

for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The notes following any selection criteria are guidance to help applicants in preparing their applications, and are not required by statute or regulations. The criteria are as follows:

(a) *Need for project* (10 points). The Secretary considers the need for the proposed project. In determining the need for the project the Secretary considers the following factors:

(1) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance* (20 points). In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(2) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(3) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(4) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(c) *Quality of the project design* (35 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(2) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(4) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(d) *Quality of the management plan* (15 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(e) *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for a three-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* In response to the Government Performance and Results Act (GPRA), the Department has established the following performance measure for assessing the effectiveness of the AEMDD program: The percentage of students participating in arts models programs who demonstrate higher achievement than those in control or comparison groups. Grantees funded

under this competition will be expected to collect and report to the Department data on the numbers of these students applicable to their project.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W214, Washington, DC 20202–5950. Telephone: (202) 260–1280 or by e-mail: *artsdemo@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: March 24, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–6263 Filed 3–29–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Professional Development for Arts Educators Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of final priority, requirements, and definitions.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces a priority, requirements, and definitions under the Professional Development for Arts Educators program. We may use this priority and these requirements and definitions for competitions in fiscal year (FY) 2005 and later years. We take this action to focus Federal financial assistance on an identified national need for professional development for arts educators and other instructional staff that focuses on the development, enhancement, and expansion of standards-based arts instruction or that integrates arts instruction with other subject area content, and to improve student achievement of low-income students in kindergarten through grade 12 (K–12). We intend the priority, requirements, and definitions to enable the Department to award grants that improve the performance of needy children and that increase the amount of information on effective professional development for arts educators that is available nationally.

EFFECTIVE DATE: This priority and these requirements and definitions are effective April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Carol Sue Fromboluti, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W223, Washington, DC 20202–5950. Telephone: (202) 205–9654 or via Internet: *Carol.Fromboluti@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Through this program, the Department intends to fund model professional development programs for arts educators and other instructional staff of K–12 students in high-poverty schools. The purpose of this program is to strengthen standards-based arts education programs and to help ensure that all students meet challenging State academic content standards and challenging State student academic achievement standards in the arts.

We published a notice of proposed priority, requirements, and definitions for this program in the **Federal Register** on January 13, 2005 (70 FR 2399). The notice of proposed priority, requirements, and definitions included a discussion of the significant issues and analysis used in the determination of the priority, definitions, and application requirements (see pages 2400 through 2401 of that notice).

This notice of final priority, requirements, and definitions contains several changes from the notice of proposed priority, requirements, and definitions. We have added a definition for the term "arts," and we have clarified that instructional staff may be included in professional development activities funded through program grants.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, requirements, and definitions, eight parties submitted comments. An analysis of the comments and the changes in the priority, requirements, and definitions since publication of the notice of proposed priority, requirements, and definitions follows.

We discuss substantive issues under the title of the priority, requirement, or definition to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes that we are not authorized to make under the applicable statutory authority.

Proposed Application Requirement

Comment: We received two comments on the proposed application requirement, which would require applicants to propose to carry out professional development programs for art educators and other instructional staff of K–12 low-income children and youth by implementing projects in schools in which 50 percent or more of the children enrolled are from low-income families (based on the poverty criteria in Title I, Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA)). One commenter supported this requirement, and the other suggested that we include both "at-risk" and "special-needs" children in the 50 percent low-income requirement.

Discussion: The priority is intended to ensure that the program benefits low-income students and helps schools that educate large concentrations of those students. Research has shown that such schools have the greatest difficulty in educating all students to high standards. We do not believe that the suggestions for changing the priority would serve this purpose. While we understand the sentiment underlying this request, we believe that keeping the requirement as written will target services toward the maximum number of low-income students and schools.

Change: None.

Proposed Eligibility Requirement

Comment: We received two comments on the proposed eligibility requirement under which eligibility would be limited to a local educational agency (LEA), which may be a charter school that is considered an LEA under State law and regulations, that is acting on behalf of an individual school or schools that meet the poverty criterion with respect to children from low-income families and that must work in partnership with one or more of the following—

(1) A State or local non-profit or governmental arts organization;

(2) A State educational agency (SEA) or regional educational service agency;

(3) An institution of higher education; or

(4) A public or private agency, institution, or organization, including a museum, an arts education association, a library, a theater, or a community- or faith-based organization.

These commenters argued that many State and local non-profit or governmental arts organizations have demonstrated their ability to take the lead in developing sustainable and institutionalized professional development programs within public schools and should be eligible to apply for a grant. They contend that some large school districts are out of touch with the site-based planning efforts of individual schools that have long-standing partnerships with local non-profit or governmental arts organizations. Accordingly, the commenters believe these local organizations may be in a better position to assume the responsibilities of a grantee.

Discussion: Under the proposed eligibility requirement, an LEA must be the applicant. Since the goal of this program is to develop model programs of professional development for arts educators and other instructional staff, we believe that the programs that are most effective will be those that are part of a school system-supported effort. For this reason, we believe that the LEA should be the only eligible applicant, working in partnership with other qualifying organizations.

Change: None.

Proposed Definitions

Comment: We received several comments on the proposed definition of arts educator. One commenter recommended that we include arts specialists, classroom teachers, and professional artists who work in schools, community centers, and other learning institutions in the definition.

Discussion: We agree with the commenter's suggestion. Although we believe that the original definition includes all teachers who work in arts instruction, including classroom teachers and arts specialists who integrate the arts with core academic areas, we think it is appropriate to clarify that those types of arts instructors may receive professional development training.

Change: In response to this comment, and because the program statute allows for the professional development of arts educators and "other instructional staff" section 5551(d)(5) of the ESEA, we have added the words "other instructional staff" to the text of the priority and requirements. This clarifies that the program permits the inclusion of classroom teachers, teaching artists, and paraprofessionals in all professional development opportunities.

Comment: Commenters recommended including the literary arts, the media arts, and folk arts as areas in which educators could work and be eligible to take part in professional development opportunities.

Discussion: Activities in the folk arts and media arts would address the National Art Standards since they fall under the umbrella of music, dance, theatre, and the visual arts for which there are established national standards. On the other hand, we believe that the literary arts are generally considered in the domain of the humanities, and they are not included in the National Arts Standards.

Change: In response to this comment and based on our own internal review, we are further clarifying the terminology used in the notice by adding a definition of the term "arts" to include music, dance, theater, media arts, and visual arts, including folk arts. We are also amending the definition of "arts educator" to make it consistent with this language.

Comment: We received a comment on the definition of the word "integrating" that suggested we use the wording "the use of high-quality arts instruction within other academic content areas to make the structural connections between the arts and other subjects or as a means of teaching about and through the arts."

Discussion: We believe the original language provides for greater simplicity, scope, and flexibility.

Change: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, these requirements or these definitions, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority: This priority supports professional development programs for K–12 arts educators and other instructional staff that use innovative instructional methods and current knowledge from education research and focus on—

(1) The development, enhancement, or expansion of standards-based arts education programs; or

(2) The integration of standards-based arts instruction with other core academic area content.

In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding is linked to State and national standards intended to enable all students to meet challenging expectations, and to improving student and school performance.

Requirements

Application Requirement

To be eligible for Professional Development for Arts Educators Program funds, applicants must propose to carry out professional development programs for arts educators and other instructional staff of K–12 low-income children and youth by implementing projects in schools in which 50 percent or more of the children enrolled are from low-income families (based on the poverty criteria in Title I, Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA)).

Eligibility Requirement

To be eligible to receive funding under the Professional Development for Arts Educators program, an applicant must be—

A local educational agency (LEA), which may be a charter school that is

considered an LEA under State law and regulations, that is acting on behalf of an individual school or schools that meets the poverty criterion with respect to children from low-income families that is specified in the application requirement elsewhere in this notice, and that must work in partnership with one or more of the following—

(1) A State or local non-profit or governmental arts organization;

(2) A State educational agency (SEA) or regional educational service agency;

(3) An institution of higher education; or

(4) A public or private agency, institution, or organization, including a museum, an arts education association, a library, a theater, or a community-or faith-based organization.

Definitions: As used in this notice—

Arts includes music, dance, theater, media arts, and visual arts, including folk arts.

Arts educator means a teacher who works in music, dance, theater, media arts, or visual arts, including folk arts.

Integrate means to strengthen (i) the use of high-quality arts instruction within other academic content areas, and (ii) the place of the arts as a core academic subject in the school curriculum.

Executive Order 12866

This notice of final priority, requirements, and definitions has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority, requirements, and definitions are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, requirements, and definitions, we have determined that the benefits of the priority, requirements, and definitions justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We fully discussed the costs and benefits of this regulatory action in the notice of proposed priority, requirements, and definitions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and action for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.351C Professional Development for Arts Educators)

Program Authority: 20 U.S.C. 7271.

Dated: March 24, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–6264 Filed 3–29–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Professional Development for Arts Educators; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.351C.

DATES: *Applications Available:* March 30, 2005.

Deadline for Notice of Intent to Apply: April 29, 2005.

Deadline for Transmittal of Applications: May 20, 2005.

Deadline for Intergovernmental Review: July 19, 2005.

Eligible Applicants: A local educational agency (LEA), which may be a charter school that is considered an LEA under State law and regulations, that is acting on behalf of an individual school or schools that meets the poverty criterion with respect to children from low-income families that is specified in the application requirement section elsewhere in this notice, and that must work in partnership with one or more of the following—

- A State or local non-profit or governmental arts organization;
- A State educational agency (SEA) or regional educational service agency;
- An institution of higher education; or
- A public or private agency, institution, or organization, including a museum, an arts education association, a library, a theater, or a community- or faith-based organization.

Estimated Available Funds: $6,262,000. Contingent upon the availability of funds and quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $100,000–$350,000 for the first year of the project. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Average Size of Awards: $250,480.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program supports the implementation of high-quality professional development model programs in elementary and secondary education for music, dance, drama, media arts, or visual arts, including folk arts, educators and other arts instructional staff of kindergarten through grade 12 (K–12) students in high-poverty schools. The purpose of this program is to strengthen standards-based arts education programs and to help ensure that all students meet challenging State academic content standards and challenging State student academic achievement standards in the arts.

Priority: This priority is from the notice of final priority, requirements, and definitions for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2005 and any subsequent year in which we make awards on the basis of the list of unfunded applications from this

competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

This priority supports professional development programs for K–12 arts educators and other instructional staff that use innovative instructional methods and current knowledge from education research and focus on—

(1) The development, enhancement, or expansion of standards-based arts education programs; or

(2) The integration of standards-based arts instruction with other core academic area content.

In order to meet this priority, an applicant must demonstrate that the project for which it seeks funding is linked to State and national standards intended to enable all students to meet challenging expectations, and to improving student and school performance.

Application Requirement: To be eligible for Professional Development for Arts Educators Program funds, applicants also must propose to carry out professional development programs for arts educators and other instructional staff of K–12 low-income children and youth by implementing projects in schools in which 50 percent or more of the children enrolled are from low-income families (based on the poverty criteria in Title I, Section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA)).

Definitions:

For the purpose of this program—

Arts include music, dance, theater, media arts, and visual arts, including folk arts.

Arts educator means a teacher who works with music, dance, theater, media arts, or visual arts, including folk arts.

Integrate means to strengthen (i) the use of high-quality arts instruction within other academic content areas, and (ii) the place of the arts as a core academic subject in the school curriculum.

Program Authority: 20 U.S.C. 7271.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, and 99. (b) The notice of final priority, requirements, and definitions for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,262,000. Contingent upon the availability of funds and quality of applications, we may make additional awards in FY 2006 from the list of unfunded applications from this competition.

Estimated Range of Awards: $100,000-$350,000 for the first year of the project. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Average Size of Awards: $250,480.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* An LEA, which may be a charter school that is considered an LEA under State law and regulations, that is acting on behalf of an individual school or schools that meets the poverty criterion with respect to children from low-income families that is specified in the application requirement section elsewhere in this notice, and that must work in partnership with one or more of the following—

- A State or local non-profit or governmental arts organization;
- A State educational agency (SEA) or regional educational service agency;
- An institution of higher education; or
- A public or private agency, institution, or organization, including a museum, an arts education association, a library, a theater, or a community- or faith-based organization.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions. Under section 5551(f)(2) of the ESEA, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, any other assistance or funds made available from non-Federal sources for the activities assisted under this subpart. This restriction also has the effect of allowing projects to recover indirect costs only on the basis of a restricted indirect cost rate, according to the requirements in 34 CFR 75.563 and 34 CFR 76.564 through 569. As soon as they decide to apply, applicants are urged to contact the ED Indirect Cost Group at (202) 377–3833 for guidance about obtaining a restricted indirect cost rate to use on the Budget Information form (ED Form 524) included with the application package.

3. *Coordination Requirement:* Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out through its grant with appropriate activities of public or private cultural agencies, institutions, and organizations, such as museums, arts education associations, libraries, and theaters.

IV. Application and Submission Information

1. *Address To Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.351C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent To Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail

message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The e-mail notification should be sent to Carol Sue Fromboluti at *carol.fromboluti@ed.gov*.

Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit for Program Narrative: The program narrative (Part III of the application) is where you, the applicant, address the selection criteria (*i.e.*, within the context of the absolute priority) as well as the requirements that reviewers use to evaluate your application. Applicants are strongly encouraged to limit Part III to the equivalent of no more than 25 pages using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the program narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the program narrative in Part III. A complete description of the requirements for the program narrative section is found in the application package in Section C: Application Forms and Instructions.

3. *Submission Dates and Times:*

Applications Available: March 30, 2005.

Deadline for Notice of Intent to Apply: April 29, 2005.

Deadline for Transmittal of Applications: May 20, 2005.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 19, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the Professional Development for Arts Educators program—CFDA Number 84.351C—must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order

to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carol Sue Fromboluti, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W223, Washington, DC 20202–5950. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.351C), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.351C), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.351C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The notes following any selection criteria are guidance to help applicants in preparing their applications, and are not required by statute or regulations. The criteria are as follows:

(a) *Significance* (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the project design* (15 points). The Secretary considers the quality of the design of the proposed

project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(3) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(c) *Quality of project services* (25 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(2) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(d) *Quality of project personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources* (10 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of the management plan* (5 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(g) *Quality of the project evaluation* (15 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(2) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings.

Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grants Administration:* Applicants should budget for a three-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Secretary has developed a performance measure for assessing the effectiveness of the Professional Development for Arts Educators program. The measure is: The percentage of participating teachers who receive professional development that is sustained and intensive. In implementing this measure, the Department will collect from grantees data on the extent to which they provide professional development that occurs over the course of the school year, which may include the summer, and that includes a sufficient number of hours of participation to make a significant difference in teaching and learning.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carol Sue Fromboluti, U.S. Department of Education, 400 Maryland Avenue,

SW., room 4W223, Washington, DC 20202–5943. Telephone: (202) 205–9654 or by e-mail: *carol.fromboluti@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: March 24, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 05–6265 Filed 3–29–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; Smaller Learning Communities—Special Competition for Supplemental Reading Program Research Evaluation; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215L.

DATES: *Applications Available:* March 30, 2005.

Deadline for Transmittal of Applications: May 16, 2005.

Deadline for Intergovernmental Review: July 13, 2005.

Eligible Applicants: Local educational agencies (LEAs), including schools funded by the Bureau of Indian Affairs (BIA schools) and educational service agencies that meet the requirements specified in the *Educational Service Agencies* section of the *Application Requirements* in the notice of final priorities, requirements, definitions and selection criteria for this competition (NFP), published elsewhere in this issue of the **Federal Register**, are eligible to apply on behalf of two or four large high schools that agree to all of the requirements of participation in the research evaluation. Additional eligibility requirements aware listed in the *Eligibility* section of the *Application Requirements* in the NFP, published elsewhere in this issue of the **Federal Register**.

Estimated Available Funds: $40,000,000.

Estimated Range of Awards: $1,250,000–$5,000,000. Additional information regarding awards and budget determinations is in the *Budget Information for Determination of Award* section in the *Application Requirements* in the NFP, published elsewhere in this issue of the **Federal Register**.

Estimated Number of Awards: 8–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Smaller Learning Communities (SLC) program is to promote academic achievement through the planning, implementation or expansion of small, safe, and successful learning environments in large high schools to help ensure that all students graduate with the knowledge and skills necessary to make successful transitions to college and careers. The purpose of this special competition is to fund, using a portion of FY 2004 SLC program funds, a national research evaluation of supplemental reading programs in a special type of SLC structure called freshman academies, and, in addition, to support a broader range of activities to create or expand SLCs in participating schools.

Priorities: This competition includes one absolute priority and one competitive preference priority. Both of these priorities are from the NFP, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For this special competition, *Priority 1* is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

The priority is:

Priority 1—Participation in a National Research Evaluation that Assesses the Effectiveness of Supplemental Reading Programs in Freshman Academies

To be eligible for consideration under this priority, an applicant must—

(1) Apply on behalf of two or four large high schools that are currently implementing freshman academies;

(2) Provide a detailed description of literacy classes and/or other activities implemented within the last two years that were designed to promote the reading achievement of striving ninth-grade readers (as defined in the NFP, published elsewhere in this issue of the **Federal Register**) at any of the schools on behalf of which the LEA has applied;

(3) Provide documentation of the LEA's and schools' willingness to participate in a large-scale national evaluation that uses scientifically based research methods. Each LEA must include in its application a letter from its superintendent and the principals of the high schools named in the application, agreeing to meet the requirements of the research design, and each LEA must include in its application a letter from its research office or research board agreeing to meet the requirements of the research design, if such approval is needed according to local policies;

(4) Agree to implement two designated supplemental reading programs for striving ninth-grade readers, one in each eligible high school, adhering strictly to the design of the reading program, with the understanding that the supplemental reading program will be either the Strategic Instruction Model or Reading Apprenticeship Academic Literacy, as assigned to each school by the evaluation contractor;

(5) Assign a language arts or social studies teacher, providing his or her name, resume, and a signed letter of interest, in each participating high school to: (a) Participate in professional development necessary to implement the supplemental reading program (which will include travel to Washington, DC, or another off-site location during the first two weeks in August of 2005); (b) teach the selected supplemental reading program to participating students for a minimum of 225 minutes per week for each week of the 2005–2006 and 2006–2007 school years; (c) complete two surveys; (d) assist with the administration of surveys and student assessments; (e) work with the LEA, school officials, MDRC, and AIR to recruit 125 or more students for the program and the larger research evaluation; (f) determine students'

eligibility to participate in the research evaluation, with the guidance of the evaluation contractor; and (g) work with the LEA, school officials, MDRC, and AIR to obtain parental consent for students to participate in assessments and other data collections;

(6) Designate a substitute or replacement teacher in the event that the teacher of the supplemental reading program takes a leave of absence, resigns, or is otherwise unwilling or unable to participate; and

(7) Agree to provide, prior to the start of school years 2005–06 and 2006–07, for each participating high school, a list of at least 125 striving ninth-grade readers who are eligible to participate in the research evaluation; work with the contractor to assign by lottery 50 of those students in each participating high school to the supplemental reading program and assign the remaining students to other activities in which they would otherwise participate, such as a study hall, electives, or other activity that does not involve supplemental reading instruction; provide students selected for the supplemental reading program with a minimum of 225 minutes per week of instruction in the supplemental reading program for each week of the school year; and allow enough flexibility in the schedules of all eligible students so that students who are not initially selected by lottery to participate in the supplemental reading program may be reassigned, at random, to the program if students who were initially selected for the program transfer to another school, drop out, or otherwise discontinue their participation in supplemental reading instruction during the school year.

Competitive Preference Priority: For this special competition, *Priority 2* is a competitive preference priority. Under 34 CFR 75.105(c)(2) we award 25 additional points to applications that meet this priority. These points are in addition to any points the application earns under the selection criteria.

The priority is:

Priority 2—Number of Schools

The Secretary gives priority to applications from LEAs applying on behalf of four high schools that are implementing freshman academies and that commit to participate in the research evaluation.

Application Requirements: Additional requirements for all projects funded through this competition are in the NFP, published elsewhere in this issue of the **Federal Register**.

These additional requirements are: *Eligibility; School Report Cards; Consortium Applications and Governing Authority; Educational Service Agencies; Budget Information for Determination of Award; Student Placement within the Broader SLC Project; Performance Indicators for the Broader SLC Project; Evaluation of Broader SLC Projects; Participation in the Research Evaluation;* and *High-Risk Status and Other Enforcement Mechanisms.*

Definitions: In addition to the definitions in the authorizing statute and 34 CFR 77.1, the definitions in the NFP, published elsewhere in this issue of the **Federal Register**, apply.

Program Authority: 20 U.S.C. 7249.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99; and (b) the priorities, requirements, definitions, and selection criteria contained in the NFP, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $40,000,000.

Estimated Range of Awards: $1,250,000–$5,000,000.

Additional information regarding awards and budget determinations is in the *Budget Information for Determination of Award* section in the *Application Requirements* in the NFP, published elsewhere in this issue of the **Federal Register**.

Estimated Number of Awards: 8–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including BIA schools and educational service agencies that meet the requirements specified in the *Educational Service Agencies* section of the *Application Requirements* in the NFP, published elsewhere in this issue of the **Federal Register**, are eligible to apply on behalf of two or four large high schools that agree to all of the requirements of participation in the research evaluation. Additional eligibility requirements are listed in the *Eligibility* section of the *Application Requirements* in the NFP, published elsewhere in this issue of the **Federal Register**.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Matthew Fitzpatrick, U.S. Department of Education, 400 Maryland Avenue, SW., room 11120, Potomac Center Plaza, Washington, DC 20202–7241. Telephone: (202) 245–7770. Fax: (202) 245–7170.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

You may also obtain an application package via Internet from the following address: *http://www.ed.gov/programs/slcp/applicant.html*.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that exceed the page limit if you apply these standards, or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: March 30, 2005.

Deadline for Transmittal of Applications: May 16, 2005.

Applications for grants under this competition must be submitted by mail

or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 13, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.* If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215L Special Competition), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.215L Special Competition), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of the address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

b. *Submission of Applications by Hand Delivery.* If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215L Special Competition), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this special competition are described in this section. The maximum score for all selection criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

Need for Participation in the Supplemental Reading Program (10 Points)

In determining the need for participation in the supplemental reading program, we will consider the extent to which the applicant will—

(1) Involve schools that have the greatest need for assistance as indicated by such factors as: Student achievement scores in English or language arts; student achievement scores in other core curriculum areas; enrollment; attendance and dropout rates; incidents of violence, drug and alcohol use, and disciplinary actions; percentage of students who have limited English proficiency, come from low-income families, or are otherwise disadvantaged; or other need factors as identified by the applicant (7 points); and

(2) Address the needs it has identified in accordance with paragraph (1) through participation in the supplemental reading program activities (3 points).

Foundation for Implementation of the Supplemental Reading Program (50 Points)

In determining the foundation for implementation of the supplemental reading program, we will consider the extent to which—

(1) Administrators, teachers, and other school staff within each school support the school's proposed involvement in the supplemental reading program and have been and will continue to be involved in its planning, development, and implementation, including, particularly, those teachers who will be directly affected by the proposed project, as evidenced in part by a letter of interest from the language arts or social studies teacher who will teach the supplemental reading program (15 points);

(2) Parents, students, and other community stakeholders support the proposed implementation of the supplemental reading program and have been and will continue to be involved in its planning, development, and implementation (3 points);

(3) The proposed implementation of the supplemental reading program is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement between all students and students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, or students with limited English proficiency (4 points);

(4) The applicant demonstrates that it has carried out sufficient planning and preparatory activities, outreach, and consultation with teachers, administrators, and other stakeholders to enable it to participate effectively in the supplemental reading program at the beginning of the 2005–6 school year (5 points);

(5) The applicant articulates a plan for using information gathered from the evaluation of the supplemental reading program to inform decision and policymaking at the LEA and school levels (3 points); and

(6) The applicant, in its description of literacy classes and/or other activities (implemented, within the last two years, at each of the high schools on behalf of which the LEA is applying in this competition) that were designed to promote the reading achievement of striving ninth-grade readers, demonstrates that those activities will not affect the outcomes of the research evaluation, and that the ninth-grade teachers in each school have not previously received professional development in either the Strategic Instruction Model, Reading Apprentice Academic Literacy, or a similar supplemental reading program (20 points).

Quality of the Project Design for the Broader SLC Project (15 Points)

In determining the quality of the project design for the broader SLC project we will consider the extent to which—

(1) The applicant demonstrates a foundation for implementing the broader SLC project, creating or expanding SLC structures or strategies in the school environment, including demonstrating—

(A) That it has the support and involvement of administrators, teachers, and other school staff;

(B) That it has the support of parents, students, and other community stakeholders;

(C) The degree to which the proposed broader SLC project is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement; and

(D) The degree to which the applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed broader SLC project at the beginning of the 2005–6 school year (5 points);

(2) The applicant will implement or expand strategies, new organizational structures, or other changes in practice that are likely to create an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed (5 points); and

(3) The applicant will provide high-quality professional development throughout the project period that advances the understanding of teachers, administrators, and other school staff of effective, research-based instructional strategies for improving the academic achievement of students, including, particularly, students with academic skills that are significantly below grade level; and provide the knowledge and skills they need to participate effectively in the development, expansion, or implementation of an SLC (5 points).

Quality of the Management Plan (15 Points)

In determining the quality of the management plan for the proposed project, we consider the following factors—

(1) The adequacy of the proposed management plan to allow the participating schools to implement effectively the research evaluation and broader SLC project on time and within budget, including clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks (3 points);

(2) The extent to which time commitments of the project director and other key personnel, including the teachers who will be responsible for providing instruction in the supplemental reading program, are appropriate and adequate to implement effectively the supplemental reading program and broader SLC project (2 points);

(3) The qualifications, including relevant training and experience, of the project director, program coordinator, and other key personnel who will be responsible for implementing the broader SLC project (3 points);

(4) The qualifications, including relevant training and years of experience, of the teachers who will be responsible for providing instruction in the supplemental reading program, as indicated by a resume and signed letter of interest (4 points); and

(5) The adequacy of resources, including the extent to which the budget is adequate, the extent to which the budget provides sufficient funds for the implementation of the supplemental reading program, and the extent to which costs are directly related to the objectives and design of the research evaluation and broader SLC activities (3 points).

Quality of the Broader SLC Project Evaluation (10 Points)

In determining the quality of the broader SLC project evaluation to be conducted on the applicant's behalf by an independent, third-party evaluator, we consider the following factors—

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed broader SLC project (2 points);

(2) The extent to which the evaluation will collect and annually report accurate, valid, and reliable data for each of the required performance indicators, including student achievement data that are disaggregated for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency (2 points);

(3) The extent to which the evaluation will collect additional qualitative and quantitative data that will be useful in assessing the success and progress of implementation, including, at a minimum, accurate, valid, and reliable data for the additional performance indicators identified by the applicant in the application (2 points);

(4) The extent to which the methods of evaluation will provide timely and regular feedback to the LEA and the school on the success and progress of implementation and will identify areas for needed improvement (2 points); and

(5) The qualifications and relevant training and experience of the independent evaluator (2 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* We identify the specific performance indicators and annual performance objectives that applicants must identify in their applications and use to measure the progress of each school in the *Performance Indicators for the Broader SLC Project* section of the Application

Requirements in the NFP, published elsewhere in this issue of the **Federal Register**.

Upon being awarded, grant recipients will be required to provide baseline data responding to each of the specific performance indicators for the three years preceding the baseline year. We will provide grant recipients with specific instructions regarding this reporting requirement. We also require grantees to include in their annual performance reports and final performance reports, which are required under the *Reporting* section of this notice, comparable data, if available, for the preceding three school years so that trends in performance will be more apparent.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Matthew Fitzpatrick, U.S. Department of Education, 400 Maryland Avenue, SW., room 11120, Potomac Center Plaza, Washington, DC 20202–7241. Telephone: (202) 245–7809 or by e-mail: *matthew.fitzpatrick@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: March 25, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–6315 Filed 3–29–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Smaller Learning Communities Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces final priorities, requirements, definitions, and selection criteria for a special competition under the Smaller Learning Communities (SLC) program. The Assistant Secretary may use these priorities, requirements, definitions, and selection criteria for a special competition using a portion of fiscal year (FY) 2004 funds and also in future years. The priorities, requirements, definitions, and selection criteria announced in this notice will not be used for all FY SLC 2004 competitions. Projects funded using these priorities, requirements, definitions, and selection criteria will create and/or expand SLC activities as well as participate in a national research evaluation of supplemental reading programs. The Department will conduct another SLC competition later this year, awarding additional FY 2004 funds, for projects that will not participate in the national research evaluation. Requirements, priorities, definitions, and selection criteria for that competition were proposed in a notice in the **Federal Register** on February 25, 2005.

We announce these priorities, requirements, definitions, and selection criteria to focus Federal financial assistance on an identified national need for scientifically based data on supplemental reading programs for adolescents.

DATES: *Effective Date:* These final priorities, requirements, definitions, and selection criteria are effective April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Matthew Fitzpatrick, U.S. Department of Education, 400 Maryland Avenue, SW., room 11120, Potomac Center Plaza, Washington, DC 20202–7120. Telephone: (202) 245–7809.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

Improving adolescent literacy is one of the major challenges facing high schools today. High school students must have strong literacy skills in order to acquire the knowledge and skills in English/language arts, mathematics, science, social studies, and other courses that they need in order to prepare for further learning, for careers, and for active participation in our democracy. Too many young people are now entering high school without these essential skills. At a time when they will soon enter high school, one-quarter of all eighth-grade students and more than 40 percent of those in urban schools scored below the basic level on the National Assessment of Education Progress (NAEP) assessment of reading in 2003. According to one estimate, at least one-third of entering ninth graders are at least two years behind grade level in their reading skills (Balfanz, *et al.*, 2002). Many of these young people become discouraged and drop out before they reach the twelfth grade. Large numbers of those who do persist through their senior year leave high school nearly as unprepared for the future as when they entered it. Twenty-eight percent of twelfth-grade public school students scored below the basic level on the NAEP 2002 reading assessment. These students face a bleak future in an economy and society that demand more than ever before, higher levels of reading, writing, and oral communication skills.

Recognizing the importance of improving the literacy skills of America's children and youth, President Bush established, as key priorities, the implementation of scientifically based approaches to reading in the early grades and the development of new knowledge about how best to help adolescents read well.

One current initiative, the Adolescent Literacy Research Network, created by the Department's Office of Vocational and Adult Education (OVAE) and the Office of Special Education and Rehabilitative Services (OSERS) in collaboration with the National Institute of Child Health and Human Development (NICHD), supports six five-year experimental research projects. These projects are examining cognitive, perceptual, behavioral, and other mechanisms that influence the development of reading and writing abilities during adolescence, as well as the extent to which interventions may

narrow or close literacy gaps for adolescents.

While these and other long-term, scientifically based research studies promise to provide a stronger foundation for designing more effective literacy interventions for adolescents, a number of noteworthy supplemental reading programs for adolescents are already available and have attracted great attention from high school leaders concerned about the literacy skills of their freshman students. High schools that have created freshman academy SLCs to ease the transition of ninth-grade students to high school are among those most interested in addressing the needs of ninth graders whose reading skills are significantly below grade level. Unfortunately, however, there is little or no scientifically based evidence that schools can consult to inform their decision-making regarding the selection and implementation of these reading programs.

To augment the research initiative of the Adolescent Literacy Research Network, the Department is now seeking to partner with local educational agencies (LEAs) in a national research evaluation that will examine the effectiveness of two supplemental reading programs that will be implemented within freshman academy SLCs. Section 5441(c)(2)(B) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), authorizes SLC funds to be used to "research, develop, and implement strategies for effective and innovative changes in curriculum and instruction, geared to challenging State academic content standards and State student academic achievement standards." The Department announces in this notice priorities, requirements, definitions, and selection criteria for use in connection with a special competition under the SLC program that will provide a new opportunity for interested LEAs that are implementing freshman academy SLCs to partner with us to evaluate the effectiveness of two promising supplemental reading programs for ninth-grade students who are participating in freshman academies and whose reading skills are two to four years below grade level.

The Department's Institute of Education Sciences (IES) has awarded a contract to MDRC and the American Institutes of Research (AIR) to conduct this evaluation of supplemental reading programs. AIR solicited proposals from vendors of classroom-based supplemental reading programs seeking to participate in this initiative. When evaluating supplemental reading programs for this initiative, MDRC and AIR considered whether the vendors' supplemental reading programs were suitable for implementation within freshman academies, were research-based, and were designed to address all aspects of reading, from basic alphabetic skills to higher-level comprehension and writing. They also evaluated the extent to which the programs were designed to address issues of how to motivate adolescents to read. MDRC and AIR convened an independent panel of experts on adolescent literacy in January 2005 to evaluate the programs submitted for consideration. The panel focused its assessment on the extent to which a program incorporates the features judged by experts in the field to be indicative of a high-quality adolescent reading program and the extent to which there is research-based evidence of the program's effectiveness.

Based on the expert panel's recommendations, MDRC and AIR selected the two most promising programs for evaluation through this initiative. These programs are (1) Strategic Instruction Model, from the University of Kansas's Center for Research on Learning (*http://www.kucrl.owg*), and (2) Reading Apprenticeship Academic Literacy from the Strategic Literacy Initiative, from WestEd (*http://www.wested.org/cs/we/view/pj/179*). Both programs can be implemented to meet the needs of ninth-grade students who are reading two to four years below grade level. They both provide instruction in advanced decoding skills, vocabulary, comprehension, writing, and metacognition. Both give students opportunities to read a wide range of material and prepare them for work in other content areas.

Interested LEAs that are selected to participate in this initiative will implement the supplemental reading programs during the 2005–06 and 2006–07 school years in high schools that have established freshman academy SLCs. In an LEA that receives a grant on behalf of two large high schools, one of those high schools will be randomly assigned to implement one of the two reading programs; the other high school will implement the other program. Similarly, in an LEA that receives a grant on behalf of four large high schools, two of those schools will each be randomly assigned to implement one of the two reading programs and the remaining two high schools will be assigned a reading program in a manner that ensures that two high schools implement one program, and two implement the other. The programs will serve ninth-grade students in freshman academy SLCs whose reading skills are two to four years below grade level. Working with MDRC and AIR, each high school will select by lottery approximately 50 students from a pool of a minimum of 125 eligible ninth-grade students enrolled in a freshman academy to participate in the supplemental reading program; the remaining students will continue in their elective course, study hall, or other activity in which they would otherwise participate. The evaluators will work with each LEA and high school to assess the effectiveness of the supplemental reading program with two consecutive cohorts of ninth-grade students in 2005–6 and 2006–7. After the completion of the 2006–07 school year, participating high schools will have gained valuable data about the effectiveness of these supplemental reading programs in their schools. These data will help them to decide whether to expand the supplemental reading program to include all eligible students, to select and implement another supplemental reading program, or to implement no program at all.

The Department will award 60-month grants using the priorities, requirements, definitions, and selection criteria announced in this notice. In addition to supporting the other broader SLC activities at each participating high school, each grant will fully fund the costs of implementing the supplemental reading program, technical assistance from the program vendor, and the cost of participating in the evaluation.

The evaluation will provide researchers, policy-makers, school administrators, teachers, and parents throughout the United States with important information about these supplemental reading programs and adolescent literacy development, and answer three important questions:

(1) Do specific supplemental reading programs that support personalized and intensive instruction for striving ninth-grade readers significantly improve reading proficiency?

(2) What are the effects of supplemental reading programs on in-school outcomes such as attendance and course-taking behavior, and on longer-term outcomes such as student performance on State assessments in the tenth or eleventh grade?

(3) Which students benefit most from participation in the programs?

LEAs and participating high schools will benefit in a number of ways from partnering with the Department in this initiative. They will make an important contribution to improving our now-limited knowledge of how we can help most effectively at-risk young people

who enter high school with limited literacy skills. They will receive grant funds to support the implementation of a promising supplemental reading program and high-quality professional development for the teachers who will provide instruction. After the second year of the grant, once the two-year period of supplemental reading program implementation has been completed, participating schools will be free to expand the program to include all eligible students or implement a new program, if they choose. Finally, the grant will also provide sufficient funds to support a broader SLC project that expands or creates new SLC structures and strategies in participating high schools. Those funds will be available for use throughout the 60-month grant period.

We published a notice of proposed priorities, requirements, definitions, and selection criteria for a special competition using a portion of FY 2004 funds and subsequent years funds (NPP) in the **Federal Register** on January 27, 2005 (70 FR 3910). This notice of final priorities, requirements, definitions, and selection criteria contains several significant changes from the NPP. We fully explain these changes in the *Analysis of Comments and Changes* section that follows.

Analysis of Comments and Changes

In response to our invitation in the NPP, 13 parties submitted comments. An analysis of the comments and of any changes in the priorities, requirements, definitions, or selection criteria since publication of the NPP follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comments: A number of commenters requested clarification about the definition of a supplemental reading program and requested more guidance about what activities would exclude LEAs from eligibility.

Discussion: In order to gauge the effectiveness of the comprehensive supplemental reading programs being studied, it is essential that students in the "control group" (*i.e.* students who do not participate in the supplemental reading program) not receive instruction that is or has been influenced by the presence of another supplemental reading program in their school that is similar to the programs being studied. Moreover, teachers who have received professional development in or who have previously participated in a similar supplemental reading program may, even unknowingly, incorporate elements unique to those supplemental reading programs into their regular English classes, and upset the integrity and reliability of the research study. We understand that most high schools provide some sort of extra help in reading for struggling readers in all grades and do not intend to exclude schools from participation in this study for that reason. For the purposes of this study, however, it is important that the extra help given to striving ninth-grade readers not be in the form of a comprehensive, year-long classroom-based supplemental reading program similar to the programs being evaluated through this study.

Changes: We have retained the requirement that LEAs cannot apply on behalf of schools if those schools have recently implemented a comprehensive supplemental reading program, but we have added a more precise definition for "supplemental reading program." In addition, we have added to *Priority 1* a requirement that LEAs that wish to apply on behalf of schools that have implemented other types of reading interventions must provide a detailed description of their past reading intervention activities. We will consider each school on a case-by-case basis and have modified the *Foundation for Implementation of the Supplemental Reading Program* selection criterion to reflect that we will consider the extent to which the applicant demonstrates an appropriate foundation for participation in the research study, without the presence of reading programs that might affect the outcomes of the study. We also have modified this criterion to reflect that we will consider whether the teachers have previously received professional development in a supplemental reading program.

Comments: A number of commenters sought clarification as to whether LEAs would be able to apply on behalf of schools that are currently carrying out activities funded through an SLC grant.

Discussion: The NPP stated that we would "accept applications from LEAs whether or not they are applying on behalf of schools that have previously received funding under the Federal SLC program." We meant for this language to convey that LEAs may apply on behalf of schools currently receiving SLC funds, on behalf of schools that have never received funding, or on behalf of schools that received funding that has now expired.

Changes: We have revised the Eligibility section to clarify that we will accept applications from LEAs whether or not they are applying on behalf of schools that have previously received funding under the Federal SLC program or that are currently receiving funding under the Federal SLC program.

Comments: One commenter stated that the requirement that participating schools should have an active enrollment of at least 1,000 students is too restrictive.

Discussion: The SLC program serves large high schools. Consistent with language in the Conference Report for Consolidated Appropriations Act, 2004 (Pub. L. 108–199), the Department has decided that to be considered a large high school for purposes of this program, the school must enroll 1,000 or more students.

Changes: None.

Comments: One commenter stated that alternative high school programs that have an active enrollment of at least 1,000 students and meet all other eligibility requirements should be eligible to apply.

Discussion: LEAs are welcome to apply on behalf of any eligible high schools under their purview, provided that the schools satisfy the requirements we establish through this notice. A public alternative program would be considered a high school for the purposes of this special SLC competition if that program is recognized by a State educational agency as an independent high school.

Changes: None.

Comments: A number of commenters requested that schools be eligible to apply even if they have recently implemented a supplemental reading program, provided that they can offer evidence that the supplemental reading program formerly implemented in the school was ineffective.

Discussion: Ineffective reading programs might not fit the full definition of "supplemental reading programs" as defined elsewhere in this notice. Applicants should review this definition to determine if their previous reading program differs from the supplemental reading programs we describe. If their previous reading program would not be considered a supplemental reading program under the definition in this notice, then they may apply.

Changes: None.

Comments: Several commenters were concerned that so-called "vertical" SLCs (*i.e.*, those SLCs which include students in grade nine, but also students in grades 10 through 12) were not clearly included in the definition of freshman academy.

Discussion: For the purposes of conducting a cohesive evaluation, we prefer to work with schools that are implementing fairly similar freshman SLCs in all of the schools participating

in the study. That said, we balance this hope for a set of fairly homogenous SLC structures to be involved in the study against our need to secure a sufficient number of qualified applications. We also understand that other forms of SLCs might better meet the needs of students of different schools. Therefore, in our proposed definition of freshman academy, we stated that: "A freshman academy may include ninth-grade students exclusively or it may be part of an SLC, sometimes called a "house," that groups together a small number of ninth-through twelfth-grade students for instruction by the same core group of academic teachers. The term freshman academy refers only to the ninth-grade students in the house." We think that this language clearly conveys that schools with a sufficient number of striving ninth-grade readers who are enrolled in "vertical" SLCs are eligible to apply to participate in the study. For schools with vertical SLCs, we count the ninth-grade students in those SLCs as the "freshman academy."

Changes: None.

Comments: One commenter asked that we add additional requirements to our definition of freshman academy, requiring schools to provide evidence that their freshman academy SLCs incorporate a number of qualities such as elements of autonomy, identity, and interdisciplinary teaching teams.

Discussion: We recognize that there are many opinions about how freshman academies should be organized. After careful analysis, we have selected a wide variety of unique and challenging requirements that applicants must meet in order to even be eligible to participate in this study. We feel that imposing additional requirements on schools could significantly hinder our ability to collect a sufficient number of applications, without which the entire study would be impossible.

Changes: None.

Comments: One commenter expressed concern that this initiative might send the message that reading instruction for striving readers is somehow limited to the ninth grade and suggested that we consider requiring schools to incorporate literacy interventions for all students in the school.

Discussion: An initiative to strengthen reading instruction for struggling ninth-grade readers should not be read as a statement that the Department believes that reading instruction in later grades is unimportant. Many students with low-level reading skills are unable to continue past the ninth grade and drop out before reaching further grades. As we stated in the NPP, one-quarter of all eighth-grade students and more than 40 percent of those in urban schools scored below the basic level on the National Assessment of Education Progress (NAEP) reading assessment in 2003. According to one estimate, at least one-third of entering ninth graders are at least two years behind grade level in their reading skills (Balfanz, *et al.*, 2002).

Changes: None.

Comments: One commenter suggested that the proposed priority for districts applying on behalf of four schools puts rural districts at a disadvantage compared to their urban counterparts, and reduces the generalizability of any future research findings based on this study.

Discussion: We agree that the proposed priority may give larger LEAs, such as LEAs in urban areas and those in States that organize their school districts by county, an advantage in the competition, although this outcome is not the intent of the priority. As we explained in the NPP, maintaining the integrity of the random assignment process would be more challenging if we permitted a larger number of districts to participate in the study. Accordingly, while we agree that studying the implementation of the supplemental reading programs across a greater number of districts with a broad range of demographic conditions could possibly strengthen certain aspects of the research evaluation, we believe that the potential benefits from doing so are outweighed by the benefits of conducting this study in the most coherent manner possible, with a smaller number of districts.

Changes: None.

Comment: One commenter requested that we not require districts to apply on behalf of pairs of schools so that districts with just one school can apply.

Discussion: The design of the research study depends upon comparing the results of the implementation of supplemental reading programs across schools within a district. The pairing of schools permits us to study the comparative effectiveness of these programs, not just the effectiveness of each program in individual schools. In order to reduce the chance that we will exclude districts with only one school, we allow LEAs to join together and submit consortium applications on behalf of two or four schools, so long as those LEAs share a geographical border.

Changes: None.

Comments: One commenter felt that the proposed special competition would be an inefficient use of funding and that there is currently no need for more research in this area.

Discussion: As we noted in the NPP, there is little or no scientifically based research in this area.

Changes: None.

Comment: One commenter requested that we remove the stipulation in our definition of "striving ninth grade readers" that these students must be in the ninth grade "for the first time," and pointed out that many students lacking basic literacy skills are unable to be promoted to the tenth grade.

Discussion: We agree, and note that removing this stipulation might allow more schools to be eligible to apply.

Change: We removed the words "for the first time" from our definition of "striving ninth-grade readers."

Comment: One commenter suggested that we require written commitment from the teachers and school administrators directly involved with implementation of the supplemental reading program.

Discussion: We agree that requiring participating teachers and school administrators to provide written commitment that they will implement the supplemental reading programs in accordance with our requirements may help to promote faithful implementation of the supplemental reading program. In the NPP, we proposed to require LEAs to provide a letter committing to the requirements of the supplemental reading program, if the LEA did not require approval by a district research office or research board. We did not, however, propose to require a letter of commitment from the individual teachers responsible for implementing the supplemental reading program.

Changes: We have added a new requirement to *Priority 1* for applicants to provide written commitments from the superintendent and the principal at each school on whose behalf the application is made, whether or not the district also requires approval from a research office or research board, that they will meet the requirements of the research design. We also added a requirement under *Priority 1* for the full-time teacher implementing the supplemental reading program to provide a letter of interest and a resume. We also revised the selection criteria to highlight that we consider the experience of the teacher, as evidenced in part by his or her resume and letter of interest.

Comments: One commenter requested more information about the supplemental reading programs selected for the study and an assurance that the programs would be tailored to meet the needs of adolescent readers rather than being an extension of programs tailored for younger readers.

Discussion: The two supplemental reading programs selected for this study have been developed specifically for a high school audience.

Changes: None.

Comment: One commenter described the supplemental reading program being implemented in a potential applicant district and asked whether the research design for this study could allow for three groups of students—one group enrolled in the supplemental reading program we assign, one group enrolled in the district's current reading program, and one group as a "control group."

Discussion: In order to make conclusions about the effectiveness of the two supplemental reading programs we are studying in this evaluation, we must study the implementation of these programs in at least 32 schools (16 schools per program). Studying the effectiveness of a third reading program would require an equal number of schools to implement that third program because studying a program in only one school would not produce enough data to assess its effectiveness. Moreover, elsewhere in this notice we prohibit applicants from implementing any supplemental reading program similar to the reading programs being studied.

Changes: None.

Comments: One commenter requested that preference be given to applications from so-called "unit" districts that do not include eighth-grade "feeder" schools.

Discussion: We appreciate the unique challenges faced by high school districts that play little role in the education of their students before the students enroll in their high school(s). The focus of this special competition, however, is to fund a national research evaluation of the supplemental reading programs at the ninth-grade level. So long as participating schools meet the unique requirements set forth in this notice, we do not believe that the administrative relationship between those schools and their feeder middle schools should influence the weight we give their applications.

Changes: None.

Comments: One commenter requested that we add a requirement for schools to implement a "Pre-Freshman" academy, in addition to the ninth-grade freshman academy, in order to foster better transitions with the eighth-grade feeder schools.

Discussion: We appreciate the importance of alignment and smooth transitions between eighth-grade and ninth-grade schooling experiences for students. That said, we have decided not to impose an additional requirement on applicants to implement a pre-freshman academy because we believe that imposing additional requirements on applicants could significantly hinder our ability to fund a sufficient number of applications, without which the entire study will be impossible. Moreover, participating schools may carry out activities to improve the transition from the eighth to the ninth grade as part of their broader SLC project, provided that their efforts do not disturb the faithful implementation of the supplemental reading programs being studied under the national research evaluation.

Changes: None.

Comment: One commenter expressed concern that random assignment by lottery of students into the supplemental reading programs would be too difficult to implement.

Discussion: We understand the difficulties related to implementing a complex research study such as the one we will conduct through this special competition. We will work with the contractors and reading program vendors to ensure that schools have proper support and guidance throughout the assignment process, including help with implementing the lottery and in obtaining parental consent.

Changes: We have made a few changes to *Priority 1* and the *Participation in the Research Evaluation* requirement to clarify that applicants will work with the contractors to carry out certain aspects of the supplemental reading program's implementation, including implementation of the lottery, the administration of surveys and diagnostic assessments of the student's reading skills, and recruitment and analysis of student eligibility to participate in the program.

Comment: One commenter suggested we budget more funds to cover the salary and benefits of the teacher implementing the supplemental reading program.

Discussion: We agree that, under the language proposed in the NPP, we did not budget enough funds to cover the salary and benefits of the teacher implementing the supplemental reading program.

Changes: We have increased the amount of funds to be reserved for the supplemental reading program, from $230,000 to $250,000, and therefore increased the total maximum award amount to $1,250,000 per school. We now require that each school reserve $150,000 for implementation of the supplemental reading program during the 2005–06 school year and $100,000 for the implementation of the program during the 2006–07 school year. We have also added a requirement that each school set aside approximately $25,000 of these reserved supplemental reading program funds during the first year and $15,000 during the second year to cover materials and support provided by the supplemental reading program developers.

Comment: One commenter requested that learning disabled students not be excluded from the definition of "striving ninth-grade readers."

Discussion: In drafting our definition of striving ninth-grade readers, we excluded learning-disabled students because we assumed that in most instances those students receive other intensive forms of supplemental instruction outside of the regular English/language arts classroom. However, we agree that if these students are not receiving any other forms of supplemental instruction, and they are two to four years behind grade level in their reading skills, they should be included within the definition of striving ninth-grade readers.

Changes: We have removed the language from the definition of striving ninth-grade readers that excluded students with learning disabilities, and have added language to the section entitled *Eligibility* to specify that students with learning disabilities may be included in the pool of eligible students if they are not receiving other forms of supplemental instruction and otherwise meet the definition of a striving ninth-grade reader.

Other Changes: Upon our internal review, we have made the following changes, in order to clarify some possibly confusing language in the NPP:

(1) In *Priority 1*, we have changed "recruit 125 or more students for the program" to "work with the LEA, school officials, MDRC, and AIR to recruit 125 or more students for the program"; we have changed "obtain parental consent" to "work with the LEA, school officials, MDRC, and AIR to obtain parental consent"; we have changed "Assign a language arts teacher" to "Assign a language arts or social studies teacher"; and we have added the language "Designate a substitute or replacement teacher in the event that the teacher of the supplemental reading program takes a leave of absence, resigns, or is otherwise unwilling or unable to participate."

(2) In *Priority 1*, we have added a requirement that applicants must designate a substitute or replacement teacher in the event that the teacher of the supplemental reading program takes a leave of absence, resigns, or is otherwise unwilling or unable to participate. We state elsewhere in this

notice that the LEA and participating high schools must provide a full-time teacher to provide instruction in the supplemental reading program for 225 minutes each week. This language did not leave room for the teacher to take a leave of absence or otherwise fail to provide all of the instruction for the program. By adding this requirement, we are clarifying that substitutes can be used in the event that the teacher is unwilling or unable to participate.

(3) In *Priority 1*, the section entitled *Participation in the National Research Evaluation*, and the *Selection Criteria*, we have changed the words "English/language arts teacher" to "English/language arts or social studies teacher." The original language was meant to convey that the teacher implementing the supplemental reading program should teach a subject that incorporates literacy instruction. Social studies teachers fit that definition, and, therefore, should have been included.

(4) In the *Eligibility* section, we added language to clarify when educational service agencies are eligible to apply for a grant under this competition.

(5) In the section entitled *Participation in the Research Evaluation*, we have changed "The LEA must" to "The LEA and the participating high schools must"; and we have changed "a project coordinator who would participate in the professional development" to "a project coordinator who would be able to participate in the professional development." We also have changed "The LEA must provide transcripts and State assessment data for the entire pool of eligible students for the 2005–6, 2006–7, 2007–8 and 2008–9 school years" to "The LEA must provide transcripts and State assessment data for the entire pool of eligible students for the 2004–5, 2005–6, 2006–7, 2007–8 and 2008–9 school years." We have added "2004–2005" to the list of school years for which the LEA must provide the Department with transcripts and State assessment data because we state that we will consider data from the 2004–5 school year in other sections of the notice. Adding 2004–2005 to this section simply adds clarity and internal consistency within this notice.

(6) In the definition of Striving Ninth-Grade Readers, we have changed "who took the State's eighth-grade standardized assessment with minimal accommodations" to "who took the State's eighth-grade standardized reading or language arts assessment in English with minimal accommodations."

(7) In the *Selection Criteria*, we removed paragraph (3) from the *Need for Participation in the Supplemental Reading Program*. This paragraph referred to the broader SLC project, not the supplemental reading program, and was needlessly confusing. The new criterion which has been added to the *Quality of the Project Design of the Broader SLC Project* addresses some of the same issues covered by the deleted criterion.

Note: This notice of final priorities, requirements, definitions, and selection criteria does not solicit applications. In any year in which we choose to use these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1—Participation in a National Research Evaluation That Assesses the Effectiveness of Supplemental Reading Programs in Freshman Academies

To be eligible for consideration under this priority, an applicant must—

(1) Apply on behalf of two or four large high schools that are currently implementing freshman academies;

(2) Provide a detailed description of literacy classes and/or other activities implemented within the last two years that were designed to promote the reading achievement of striving ninth-grade readers (as defined elsewhere in this notice) at any of the schools on behalf of which the LEA has applied;

(3) Provide documentation of the LEA's and schools' willingness to participate in a large-scale national evaluation that uses scientifically based research methods. Each LEA must include in its application a letter from its superintendent and the principals of the high schools named in the application, agreeing to meet the requirements of the research design, and each LEA must include in its application a letter from its research office or research board agreeing to meet the requirements of the research design, if such approval is needed according to local policies;

(4) Agree to implement two designated supplemental reading programs for striving ninth-grade readers, one in each eligible high school, adhering strictly to the design of the reading program, with the understanding that the supplemental reading program will be either the Strategic Instruction Model or Reading Apprenticeship Academic Literacy, as assigned to each school by the evaluation contractor;

(5) Assign a language arts or social studies teacher, providing his or her name, resume, and a signed letter of interest, in each participating high school to: (a) Participate in professional development necessary to implement the supplemental reading program (which will include travel to Washington, DC, or another off-site location during the first two weeks in August of 2005); (b) teach the selected supplemental reading program to participating students for a minimum of 225 minutes per week for each week of the 2005–2006 and 2006–07 school years; (c) complete two surveys; (d) assist with the administration of surveys and student assessments; (e) work with the LEA, school officials, MDRC, and AIR to recruit 125 or more students for the program and the larger research evaluation; (f) determine students' eligibility to participate in the research evaluation, with the guidance of the evaluation contractor; and (g) work with the LEA, school officials, MDRC, and AIR to obtain parental consent for students to participate in assessments and other data collections;

(6) Designate a substitute or replacement teacher in the event that the teacher of the supplemental reading program takes a leave of absence, resigns, or is otherwise unwilling or unable to participate; and

(7) Agree to provide, prior to the start of school years 2005–06 and 2006–07, for each participating high school, a list of at least 125 striving ninth-grade readers who are eligible to participate in the research evaluation; work with the contractor to assign by lottery 50 of those students in each participating high school to the supplemental reading program and assign the remaining

students to other activities in which they would otherwise participate, such as a study hall, electives, or other activity that does not involve supplemental reading instruction; provide students selected for the supplemental reading program with a minimum of 225 minutes per week of instruction in the supplemental reading program for each week of the school year; and allow enough flexibility in the schedules of all eligible students so that students who are not initially selected by lottery to participate in the supplemental reading program may be reassigned, at random, to the program if students who were initially selected for the program transfer to another school, drop out, or otherwise discontinue their participation in supplemental reading instruction during the school year.

Priority 2—Number of Schools

The Secretary gives priority to applications from LEAs applying on behalf of four high schools that are implementing freshman academies and that commit to participate in the research evaluation.

Requirements

Application Requirements

The Assistant Secretary announces the following application requirements for this special SLC competition. These requirements are in addition to the content that all SLC grant applicants must include in their applications as required by the program statute under title V, part D, subpart 4, section 5441(b) of the ESEA. A discussion of each application requirement follows:

Eligibility

To be considered for funding, an applicant must be an LEA, including schools funded by the Bureau of Indian Affairs (BIA schools) and educational service agencies, that applies on behalf of two or four large high schools that have implemented, and continue to implement, at least one freshman academy SLC by no later than the 2004–2005 school year.

An educational service agency is only eligible if it can show in its application that the entity or entities with governing authority over the eligible high schools on whose behalf the educational service agency is applying supports the application.

LEAs must identify in their applications the names of the two or four large high schools proposed to participate in the research evaluation, the number of students currently enrolled in each school, disaggregated by grade level, and the number enrolled in freshman academies. We will not accept applications from LEAs on behalf of one, three, or more than four schools. We require that each school include grades 11 and 12 and have an enrollment of 1,000 or more students in grades 9 through 12.

Enrollment figures must be based upon data from the current school year or data from the most recently completed school year. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application.

The LEA also must provide an assurance that each of the schools identified in its application: (1) Is implementing at least one freshman academy SLC during the 2004–05 school year; (2) will continue to implement at least one freshman academy SLC during the 2005–06 and 2006–07 school years; and (3) did not implement a classroom-based supplemental reading program, as defined elsewhere in this notice, for striving ninth-grade readers during the 2004–05 school year. For each school identified in the application, LEAs also must provide evidence that a minimum of 125 striving ninth-grade readers (as defined elsewhere in this notice) were enrolled at the school during each of the 2003–04 and 2004–05 school years. Students with learning disabilities may be included among the pool of striving ninth-grade readers if they do not receive other intensive supplemental literacy instruction outside of the regular English/language arts classroom, and otherwise meet the definition of striving ninth-grade readers stated elsewhere in this notice. We will accept applications from LEAs whether or not they are applying on behalf of schools that have previously received funding under the Federal SLC program or that are currently receiving funding under the Federal SLC program. Eligible schools would be those currently implementing freshman academy SLCs, though the freshman academies need not have been funded through a prior Federal SLC grant.

School Report Cards

We require that LEAs provide, for each of the schools included in the application, the most recent "report card" produced by the State or the LEA to inform the public about the characteristics of the school and its students, including information about student academic achievement and other student outcomes. These "report cards" must include, at a minimum, the following information that LEAs are required to report for each school under section 1111(h)(2)(B)(ii) of the ESEA: (1) Whether the school has been identified for school improvement; and (2) information that shows how the academic assessments and other indicators of adequate yearly progress compare to those of students in the LEA and the State, as well as performance of the school's students on the statewide assessment as a whole.

Consortium Applications and Governing Authority

In an effort to encourage systemic, LEA-level reform efforts, we permit an individual LEA to submit only one application on behalf of multiple schools. Accordingly, the LEA is required to specify in its application which high schools would participate.

In addition, we require that an LEA applying for a grant under this competition apply only on behalf of a high school or high schools for which it has governing authority, unless the LEA is an educational service agency applying in the manner described in the section in this notice entitled *Educational Service Agencies*. An LEA, however, may form a consortium with another LEA with which it shares a geographical border and submit a joint application for funds. In such an instance, the consortium must apply on behalf of either two or four high schools and follow the procedures for group applications described in 34 CFR 75.127 through 75.129 in the Education Department General Administrative Regulations (EDGAR). For example, an LEA that wishes to apply for a grant but only has one eligible high school may partner with a neighboring LEA, if the neighboring LEA has another eligible high school.

Educational Service Agencies

We permit an educational service agency to apply on behalf of eligible high schools only if the educational service agency includes in its application evidence that the entity or entities that have governing authority over each of the eligible high schools supports the application.

Budget Information for Determination of Award

LEAs may receive up to $1,250,000 per school during the 60-month project period. This is an increase from the maximum range of awards ($550,000 to $770,000) that we established in the previous SLC program competitions, plus an additional $250,000 to cover additional expenses related to participation in the research evaluation.

In its budget calculations, each school will reserve $150,000 for implementation of the supplemental reading program during the 2005–06 school year and $100,000 for the implementation of the program during the 2006–07 school year. Of this amount, approximately $25,000 must be reserved the first year, and $15,000 must be reserved the second year, to cover materials and support provided by the supplemental reading program developers. These funds will also support the salary and benefits of one full-time-equivalent teacher who will be responsible for providing the supplemental reading program instruction and performing administrative functions related to the conduct of the research evaluation, professional development, technical assistance provided by the program developer, and the purchase of curriculum materials and the technology necessary to deliver instruction. The remaining $1,000,000 will be available to support other activities related to the creation or expansion of SLCs in the school. For one application, LEAs may receive up to $5,000,000, if applying on behalf of four schools. Grants will support participation in the research evaluation over the first two years of the project period, and a broader SLC project, including such activities as extensive redesign and improvement efforts, professional development, or direct student services, over five years.

Applicants are required to provide detailed, yearly budget information for the total grant period requested. Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, we anticipate awarding the entire amount at the time of the initial award.

The actual size of awards will be based on a number of factors. These factors include the scope, quality, and comprehensiveness of the proposed program and the range of awards indicated in the application notice.

Student Placement within the Broader SLC Project

Applicants must include in their applications a description of how students will be selected or placed in the broader SLC project such that students will not be placed according to skills or any other measure, but will be placed at random or by student/parent choice and not pursuant to testing or other judgments.

Performance Indicators for the Broader SLC Project

We require applicants to identify in their applications specific performance indicators and annual performance objectives for these indicators and one core indicator. Specifically, we require applicants to use the following performance indicators to measure the progress of each school:

(1) The percentage of students who score at the proficient and advanced levels on the mathematics assessments used by the State to measure adequate yearly progress under part A of title I of the ESEA, as well as these percentages disaggregated by the following subgroups:

(A) Major racial and ethnic groups.

(B) Students with disabilities.

(C) Students with limited English proficiency.

(D) Economically disadvantaged students.

(2) At least two other appropriate indicators the LEA identifies, such as rates of average daily attendance, year-to-year retention, achievement and gains in English proficiency of limited English proficient students; incidence of school violence, drug and alcohol use, and disciplinary actions; or the percentage of students completing advanced placement courses or passing advanced placement tests.

Applicants must identify annual performance objectives for each indicator in their application.

Evaluation of Broader SLC Projects

We require each applicant to provide an assurance that it will support an evaluation of its broader SLC project that provides information to the project director and school personnel and that will be useful in gauging the project's progress and in identifying areas for improvement. Each evaluation must include an annual report for each of the five years of the project period and a final report to be completed at the end of the fifth year. We require grantees to submit each of these reports to the Department. We require that the evaluation be conducted by an independent third-party evaluator selected by the LEA whose role in the project is limited to conducting the evaluation.

Participation in the Research Evaluation

We require each applicant to provide an assurance that it and each participating high school will take several actions to assist in implementing the research evaluation, including:

(1) The LEA and the participating high schools must implement the supplemental reading program adhering strictly to the design of the program, including purchasing all necessary instructional materials, technology, professional development, and student materials in sufficient time for the program to be implemented at the start of the 2005–06 and 2006–07 school years and in sufficient quantity to serve approximately 50 students each year.

(2) The LEA and the participating high school(s) must agree to allow a contractor to use a lottery to assign randomly 50 of the expected 125 or more students determined to be eligible to participate in the supplemental reading class and the remainder to serve as non-participants.

(3) The LEA must provide a language arts or social studies teacher for each participating high school who will receive professional development in the supplemental reading program (five days during summer 2005 and at least two follow-up days during each of the 2005–2006 and 2006–2007 school years), assist the contractor in recruiting and determining the eligibility of students, and teach the supplemental reading program to the participating students for a minimum of 225 minutes per week for each week of the 2005–2006 and 2006–07 school years. This teacher is required to complete two brief surveys (at the beginning and end of the 2005–2006 and 2006–2007 school years) to provide information on his or her preparation, professional development, and experiences.

(4) The LEA must agree to work jointly with the contractor to administer a diagnostic group assessment of reading skills at the beginning and the end of the ninth-grade year to assess whether or not those students participating and not participating in the supplemental reading program have made gains in reading skills. This reading assessment might also need to be administered again at the end of the tenth-grade year.

(5) The LEA must provide transcripts and State assessment data for the entire pool of eligible students for the 2004–05, 2005–06, 2006–07, 2007–08, and 2008–09 school years, in a manner and to the extent consistent with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99).

(6) The LEA must designate a project coordinator who will be eligible to participate in the professional development and serve as a resource and coordinator for teachers involved in the research study. This project coordinator must also work with the LEA's technology office (if necessary) and the curriculum developers to

organize the purchase of computer equipment and software needed to implement the supplemental reading program. The project coordinator may not be the language arts or social studies teacher responsible for teaching the supplemental reading program.

(7) The LEA and participating high schools must allow enough flexibility in developing the participating students' daily schedules to accommodate the supplemental reading program, which can be implemented either in a 45-minute language arts period or through a larger period of 90 minutes, depending on the schools' scheduling.

(8) The LEA and participating high schools must allow the evaluation team to observe both the classrooms implementing the supplemental reading program and other English or language arts classrooms in the school.

High-Risk Status and Other Enforcement Mechanisms

Because the requirements listed in this notice are material requirements, failure to comply with any requirement or with any elements of the grantee's application will subject the grantee to administrative action, including but not limited to designation as a "high-risk" grantee, the imposition of special conditions, or termination of the grant. Circumstances that might cause the Department to take such action include, but are not limited to: The grantee's failure to implement the designated supplemental reading programs in a manner that adheres strictly to the design of the program; the grantee's failure to purchase all necessary instructional materials, technology, professional development, and student materials in sufficient time for the programs to be implemented at the start of the 2005–06 and 2006–07 school years; and the grantee's failure to adhere to any requirements or protocols established by the evaluator.

Definitions

In addition to the definitions in the authorizing statute and 34 CFR 77.1, the following definitions also apply to this special competition. We may apply these definitions in any year in which we run an SLC supplemental reading program competition.

Broader SLC Project means an SLC project at the site of the high school aside from, and in addition to, that high school's implementation of a supplemental reading program and participation in the research evaluation.

Freshman Academy means a form of SLC structure that groups ninth-grade students into an environment in which a core group of teachers and other adults within the school knows the needs, interests, and aspirations of each ninth-grade student well, closely monitors each student's progress, and provides the academic and other support each student needs to transition to high school and succeed. Student enrollment in (or exclusion from) a freshman academy is not based on skills, testing, or measures other than ninth-grade status and student/parent choice or random assignment. A freshman academy differs from a simple grouping of ninth-graders in that it incorporates programs or strategies designed to ease the transition for students from the eighth grade to high school. A freshman academy may include ninth-grade students exclusively or it may be part of an SLC, sometimes called a "house," that groups together a small number of ninth- through twelfth-grade students for instruction by the same core group of academic teachers. The term freshman academy in this situation refers only to the ninth-grade students in the house.

Large High School means an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

Research evaluation means the study of the effectiveness of supplemental reading programs that are implemented within freshman academies and that is being sponsored by the Department of Education and is described elsewhere in this notice.

Smaller Learning Community (or SLC) means an environment in which a core group of teachers and other adults within the school knows the needs, interests, and aspirations of each student well, closely monitors each student's progress, and provides the academic and other support each student needs to succeed.

Striving Ninth-Grade Readers means those students who are enrolled in the ninth grade and who read English at a level that is two to four grades below their current grade level, as determined by an eighth-grade standardized test of reading. The term includes those students with limited English proficiency who are enrolled in ninth grade, who read English at a level that is two to four grades below their current grade level, and who took the State's eighth-grade standardized reading or language arts assessment in English with minimal accommodations (defined as having the test directions read to them orally, having access during the test to a dictionary, and/or being able to take the test without a time limit).

Supplemental Reading Program means a comprehensive, full-year, classroom-based program that provides instruction for students reading two to four years below their grade level as a supplement to regular English language arts classes. After-school or summer enrichment classes are not considered to be supplemental reading programs. English language arts classes that are targeted toward struggling readers, but are not supplemental to another regular English language arts class, are not considered to be supplemental reading programs.

Selection Criteria

The following selection criteria will be used to evaluate applications for new grants under this special competition. We may apply these criteria in any year in which we conduct an SLC supplemental reading program competition.

Need for Participation in the Supplemental Reading Program

In determining the need for participation in the supplemental reading program, we will consider the extent to which the applicant will—

(1) Involve schools that have the greatest need for assistance as indicated by such factors as: Student achievement scores in English or language arts; student achievement scores in other core curriculum areas; enrollment; attendance and dropout rates; incidents of violence, drug and alcohol use, and disciplinary actions; percentage of students who have limited English proficiency, come from low-income families, or are otherwise disadvantaged; or other need factors as identified by the applicant; and

(2) Address the needs it has identified in accordance with paragraph (1) through participation in the supplemental reading program activities.

Foundation for Implementation of the Supplemental Reading Program

In determining the foundation for implementation of the supplemental reading program, we will consider the extent to which—

(1) Administrators, teachers, and other school staff within each school support the school's proposed involvement in the supplemental reading program and have been and will continue to be involved in its planning, development, and implementation, including, particularly, those teachers who will be directly affected by the proposed project, as evidenced in part by a letter of interest from the language arts or social studies teacher who will teach the supplemental reading program;

(2) Parents, students, and other community stakeholders support the proposed implementation of the supplemental reading program and have been and will continue to be involved in its planning, development, and implementation;

(3) The proposed implementation of the supplemental reading program is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement between all students and students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, or students with limited English proficiency;

(4) The applicant demonstrates that it has carried out sufficient planning and preparatory activities, outreach, and consultation with teachers, administrators, and other stakeholders to enable it to participate effectively in the supplemental reading program at the beginning of the 2005–6 school year;

(5) The applicant articulates a plan for using information gathered from the evaluation of the supplemental reading program to inform decision and policymaking at the LEA and school levels; and

(6) The applicant, in its description of literacy classes and/or other activities (implemented, within the last two years, at each of the high schools on behalf of which the LEA is applying under this competition) that were designed to promote the reading achievement of striving ninth-grade readers, demonstrates that those activities will not affect the outcomes of the research evaluation, and that the ninth-grade teachers in each school have not previously received professional development in either the Strategic Instruction Model, Reading Apprenticeship Academic Literacy, or a similar supplemental reading program.

Quality of the Project Design for the Broader SLC Project

In determining the quality of the project design for the broader SLC project we will consider the extent to which—

(1) The applicant demonstrates a foundation for implementing the broader SLC project, creating or expanding SLC structures or strategies in the school environment, including demonstrating—

(A) That it has the support and involvement of administrators, teachers, and other school staff;

(B) That it has the support of parents, students, and other community stakeholders;

(C) The degree to which the proposed broader SLC project is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement; and

(D) The degree to which the applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed broader SLC project at the beginning of the 2005–6 school year;

(2) The applicant will implement or expand strategies, new organizational structures, or other changes in practice that are likely to create an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed; and

(3) The applicant will provide high-quality professional development throughout the project period that advances the understanding of teachers, administrators, and other school staff of effective, research-based instructional strategies for improving the academic achievement of students, including, particularly, students with academic skills that are significantly below grade level; and provide the knowledge and skills they need to participate effectively in the development, expansion, or implementation of a SLC.

Quality of the Management Plan

In determining the quality of the management plan for the proposed project, we consider the following factors—

(1) The adequacy of the proposed management plan to allow the participating schools to implement effectively the research evaluation and broader SLC project on time and within budget, including clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks;

(2) The extent to which time commitments of the project director and other key personnel, including the teachers who will be responsible for providing instruction in the supplemental reading program, are appropriate and adequate to implement effectively the supplemental reading program and broader SLC project;

(3) The qualifications, including relevant training and experience, of the project director, program coordinator, and other key personnel who will be responsible for implementing the broader SLC project;

(4) The qualifications, including relevant training and years of experience, of the teachers who will be responsible for providing instruction in the supplemental reading program, as indicated by a resume and signed letter of interest; and

(5) The adequacy of resources, including the extent to which the budget is adequate, the extent to which the budget provides sufficient funds for the implementation of the supplemental reading program, and the extent to which costs are directly related to the objectives and design of the research evaluation and broader SLC activities.

Quality of the Broader SLC Project Evaluation

In determining the quality of the broader SLC project evaluation to be conducted on the applicant's behalf by an independent, third-party evaluator, we consider the following factors—

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed broader SLC project;

(2) The extent to which the evaluation will collect and annually report accurate, valid, and reliable data for each of the required performance indicators, including student achievement data that are disaggregated for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency;

(3) The extent to which the evaluation will collect additional qualitative and quantitative data that will be useful in assessing the success and progress of implementation, including, at a minimum, accurate, valid, and reliable data for the additional performance indicators identified by the applicant in the application;

(4) The extent to which the methods of evaluation will provide timely and regular feedback to the LEA and the school on the success and progress of implementation and will identify areas for needed improvement; and

(5) The qualifications and relevant training and experience of the independent evaluator.

Executive Order 12866

This notice of final priorities, requirements, definitions, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities, requirements, definitions, and selection criteria are those resulting from

statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, requirements, definitions, and selection criteria, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the NPP.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.215L, Smaller Learning Communities Program.)

Program Authority: 20 U.S.C. 7249.

Dated: March 25, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–6316 Filed 3–29–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–59–000, et al.]

MxEnergy Electric Inc., et al.; Electric Rate and Corporate Filings

March 21, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. MxEnergy Electric Inc.; Total Gas & Electricity (PA), Inc.

[Docket Nos. EC05–59–000 and ER04–170–005]

Take notice that on March 16, 2005, MxEnergy Electric Inc. (MxEnergy Electric) and Total Gas & Electricity (PA), Inc. (TG&E PA) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization for the disposition of jurisdictional facilities related to the internal corporate reorganization of Applicants' upstream owner MxEnergy Inc. (MxEnergy). Applicants state as a result of the reorganization, TG&E PA will be a wholly-owned direct subsidiary of MxEnergy Electric, which, in turn, will be a wholly-owned indirect subsidiary of a newly formed holding company (MxEnergy Holdings Inc.) owned by the existing shareholders of MxEnergy. In addition, MxEnergy Electric submitted a notice of change in status, triennial updated market analysis, and revised tariff sheet incorporating language required by Order No. 652 issued February 2, 2005 in Docket No. RM04–14–000.

Comment Date: 5 p.m. Eastern Time on April 6, 2005.

2. San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange; Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket Nos. EL00–95–126 and EL00–98–113]

Take notice that on March 16, 2005, the California Independent System Operator (CAISO) tendered for filing a refund report pursuant to the Commission's order issued February 14, 2005 in Docket No. EL00–95–091, *et al.*, 110 FERC ¶ 61,144 (2005).

Comment Date: 5 p.m. Eastern Time on April 6, 2005.

3. Roseburg Forest Products Company

[Docket Nos. ER01–2830–002]

Take notice that on March 16, 2005, Roseburg Forest Products Company (RFP) submitted an updated market power analysis. RFP also submitted revised tariff sheets incorporating its market behavior rules pursuant to *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* Docket Nos. EL01–118–000 and EL01–118–001, 105 FERC ¶ 61,218 (Nov. 17, 2003).

Comment Date: 5 p.m. Eastern Time on April 6, 2005.

4. Allegheny Energy Supply Company, LLC; Monongahela Power Company

[Docket No. ER04–81–001]

Take notice that on March 15, 2005, Allegheny Energy Supply Company, LLC and Monongahela Power Company submitted their report of refunds pursuant to the Commission's order issued February 14, 2005 in Docket No. ER04–81–000, 110 FERC ¶ 61,152 (2005).

Comment Date: 5 p.m. Eastern Time on April 5, 2005.

5. Pacific Gas and Electric Company

[Docket Nos. ER04–377–005 and ER04–743–003]

Take notice that on February 8, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing a refund compliance report pursuant to the Commission's Order Approving Uncontested Settlement, issued December 22, 2004, 109 FERC ¶ 61,352 (2004).

PGE states that a copy of this filing has been served on La Paloma, the California Independent System Operator Corporation, the California Public Utilities Commission and the official service list.

Comment Date: 5 p.m. Eastern Time on March 31, 2005.

6. The Union Light, Heat and Power Company, The Cincinnati Gas & Electric Company

[Docket No. ER04–1248–002]

Take notice that on March 15, 2005, The Union Light, Heat and Power Company (ULH&P) and the Cincinnati Gas & Electric Company (CG&E) submitted a compliance filing pursuant to the Commission's March 3, 2005 Order, 110 FERC ¶ 61, 212 (2005).

ULH&P and CG&E state that copies of the filing were served on parties on the official service list.

Comment Date: 5 p.m. Eastern Time on April 5, 2005.

7. American Electric Power Service Corporation

[Docket No. ER05–286–001]

Take notice that on March 15, 2005, American Electric Power Service Corporation (AEPSC), in response to the Commission's deficiency letter issued January 19, 2005 in Docket No. ER05–286–000, submitted for filing an amendment to its December 2, 2004 filing of Notices of Cancellation for a Network Service Agreement and a Network Operating Agreement between Oklahoma Municipal Power Authority and Central and South West Services, Inc., designated agent for Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company. AEPSC request an effective date of January 1, 2005 for the cancellations.

AEPSC states that it served copies of the filing on Oklahoma Municipal Power Authority and the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment Date: 5 p.m. Eastern Time on April 5, 2005.

8. Pinelawn Power LLC

[Docket No. ER05–305–002]

Take notice that on March 16, 2005, Pinelawn Power LLC submitted a filing in compliance with the Commission's order issued February 15, 2005 in Docket Nos. ER05–305–000 and 001, 110 FERC ¶ 61,160 (2005).

Comment Date: 5 p.m. Eastern Time on April 6, 2005.

9. Portland General Electric Company

[Docket No. ER05–585–001]

Take notice that on March 16, 2005, Portland General Electric Company (PGE) tendered for filing new and revised tariff sheets to its Open Access Transmission Tariff (OATT) to incorporate the changes to the Pro Forma Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) issued by the Commission in FERC Order No. 2003–B on December 20, 2004 and formatting requirements of Order No. 614. This filing is an amendment to PGE's filing of February 14, 2005 in Docket No. ER05–585–000. PGE requests an effective date of January 19, 2005 for the requested changes.

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 April 6, 2005.

10. Cabrillo Power I and Cabrillo Power II LLC

[Docket No. ER05–708–000]

Take notice that on March 15, 2005, Cabrillo Power I LLC (Cabrillo I) and Cabrillo Power II LLC (Cabrillo II) (jointly, Cabrillo) tendered for filing an amendment to certain sheets of Cabrillo I's First Revised Rate Schedule FERC No. 2 and Cabrillo II's First Revised Rate Schedule FERC No. 2 to incorporate the Reliability Must-Run Service Agreement between the California Independent System Operator Corporation and Cabrillo I and Cabrillo II. Cabrillo requests an effective date of April 1, 2005.

Cabrillo states that copies of the filing were served upon the official service list in Docket No. ER04–308–000.

Comment Date: 5 p.m. Eastern Time on April 5, 2005.

11. Virginia Electric and Power Company

[Docket No. ER05–709–000]

Take notice that on March 16, 2005, Virginia Electric and Power Company (Dominion) tendered for filing copies of a letter agreement between Dominion and Virginia Municipal Electric Association No. 1 (VMEA). Dominion states that the letter agreement provides for a delivery point requested by VMEA to the agreement for the Purchase of Electricity for Resale between Dominion and VMEA, First Revised Rate Schedule FERC No. 109. Dominion requests an effective date of March 17, 2005.

Dominion states that copies of the filing were served upon VMEA, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: 5 p.m. Eastern Time on April 6, 2005.

12. AEP Texas North Company

[Docket No. ER05–710–000]

Take notice that on March 16, 2005, American Electric Power Service Corporation (AEPSC) as agent for AEP Texas North Company (AEPTNC) submitted for filing an interconnection agreement between AEPTNC and Western Farmers Electric Cooperative reflecting all of the present interconnection arrangements between the parties and replaces the previous interconnection arrangements agreed to in 1966. AEPTNC requests an effective date of March 7, 2005.

AEPSC states that copies were served on Western Farmers Electric Cooperative and the Public Utility Commission of Texas.

Comment Date: 5 p.m. Eastern Time on April 6, 2005.

13. AEP Texas North Company

[Docket No. ER05–711–000]

Take notice that on March 16, 2005, American Electric Power Service Corporation (AEPSC) as agent for AEP Texas North Company (AEPTNC) submitted for filing an executed interconnection agreement between AEPTNC and Buffalo Gap Wind Farm, LLC. AEPSC states that the agreement provides for the interconnection of Buffalo Gap's future wind farm generation project near Abilene, Texas. AEPTNC seeks an effective date of February 28, 2005.

AEPSC states that it has served copies of the filing on Buffalo Gap and the Public Utility Commission of Texas.

Comment Date: 5 p.m. Eastern Time on April 6, 2005.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–1397 Filed 3–29–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0002, FRL–7892–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Final Authorization for Hazardous Waste Management, EPA ICR Number 0969.07, OMB Control Number 2050–0041

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request an existing approved collection. This ICR is scheduled to expire on July 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 31, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0002, to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathleen Rafferty, Office of Solid Waste, mailcode 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–0589; fax number: 703–308–8609; e-mail address: *rafferty.kathy@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2005–0002, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are the Federal Government, and State, Local, or Tribal Governments.

Title: Final Authorization for Hazardous Waste Management.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of section 3006 of RCRA.

A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed transfer, as required by 40 CFR 271.23. Further, EPA may withdraw a State's authorized program under § 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with § 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with § 271.21 and submit revised organizational charts as required under § 271.6, in accordance with § 271.21. These paperwork requirements are mandatory under section 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 399 hours per response.

Estimated Number of Respondents: 50.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 19,968 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 16, 2005.

Maria P. Vickers,

Acting Director, Office of Solid Waste.

[FR Doc. 05–6293 Filed 3–28–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0237; FRL–7891–9]

Animal Feeding Operations Consent Agreement and Final Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice to extend signup period for consent agreement and final order, and reopening for public comment.

SUMMARY: On January 31, 2005 (70 FR 4958), EPA announced an opportunity for animal feeding operations (AFOs) to sign a voluntary consent agreement and final order (air compliance agreement). This supplemental notice announces an extension to the signup period for the consent agreement and final order, as well as the reopening of the public comment period.

DATES: Comments must be received on or before May 2, 2005. The signup period is extended to July 1, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0237, by one of the following methods:

- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0237. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information; such as copyrighted materials, 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 form at Docket ID No. OAR–2004–0237, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information on the air compliance agreement, contact Mr. Bruce Fergusson, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance, U.S. EPA, Ariel Rios Building, Washington, DC 20460, telephone number (202) 564–1261, fax number (202) 564–0010, and electronic mail: *fergusson.bruce@epa.gov.*

For information on the monitoring study, contact Ms. Sharon Nizich, Organic Chemicals Group, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park NC 27711, telephone number (919) 541–2825, fax number (919) 541–3470, and electronic mail: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment and for affected industry members to make informed decisions about participation, the comment period is being reopened on EPA's air compliance agreement to address emissions from certain AFOs. The comment period will reopen April 1, 2005 until May 2, 2005. Any public comments received in the time period from March 3 through March 31, 2005, will be considered as timely comments for the purpose of this action. The air compliance agreement is part of the Agency's ongoing effort to minimize air emissions from such operations and to ensure compliance with the Clean Air Act and other laws.

Due to substantial public response and to accommodate further outreach and communication with interested participants. we are extending the signup period for the air compliance agreement to July 1, 2005.

Interested parties should refer to the January 31, 2005 **Federal Register** notice (70 FR 4958) to view the consent agreement and final order at Appendix 1, Attachment A—Farm Information Sheet, and Attachment B—National Air Emissions Monitoring Study Protocol.

Dated: March 23, 2005.

Sally L. Shaver,

Director, Emission Standards Division, Office of Air Quality Planning and Standards.

Robert A. Kaplan,

Director. Special Litigation and Projects Division, Office of Civil Enforcement Office of Enforcement and Compliance Assurance.

[FR Doc. 05–6279 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0281; FRL–7705–6]

Pesticides and National Strategies for Health Care Providers; Notice of Funds Availability; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of February 9, 2005, announcing that EPA's Office of Pesticide Programs (OPP) is soliciting proposals to provide financial assistance to continue an effort to improve the training of health care providers in recognition, diagnosis, treatment, and prevention of pesticide poisonings among those who work with pesticides. This document is being issued to correct a date error.

FOR FURTHER INFORMATION CONTACT: Allie Fields, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 305–7666; fax number: (703) 308–2962; e-mail address: *fields.allie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the **Federal Register** notice of February 9, 2005, a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this under docket identification (ID) number OPP–2004–0281. 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**" listing 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, to access the index listing of the contents of the official pulic docket, an to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Correction Do?

In the **Federal Register** of February 9, 2005 (70 FR 6864) (FRL–7681–1), EPA published a notice soliciting proposals to continue an effort to improve the training of health care providers in recognition, diagnosis, treatment, and prevention of pesticide poisonings among those who work with pesticides. The document listed an incorrect date.

The document is corrected as follows:

1. On page 6864, second column, under "**DATES**", second line, change "March 28, 2005" to read "April 30, 2005".

2. On page 6867, second column, under paragraph"3. *Submission dates and times*", sixth line, change"March 28, 2005" to read "April 30, 2005".

List of Subjects

Environmental protection, Grants, Pesticides, Training.

Dated: March 11, 2005.

Marty Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. 05–6182 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7892–5]

Notice of Request for Proposals for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 6 is soliciting proposals from eligible applicants interested in applying for Federal assistance for Water Quality Cooperative Agreements (WQCA) under the Clean Water Act (CWA) Section 104(b)(3). Funding is for projects conducted within the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas. Region 6 EPA intends to award an estimated $700,000 to eligible applicants through assistance agreements ranging in size, on average, from $40,000 up to $200,000 (Federal) for innovative projects/demonstrations/studies relating to the prevention, reduction, and elimination of water pollution. From the proposals received, EPA estimates up to 4 to 7 projects may be selected to submit full applications. The Agency reserves the right to reject all proposals and make no awards.

DATES: EPA will consider all proposals received on or before 5 p.m. Central Standard Time May 16, 2005. Proposals received after the due date will not be considered for funding.

ADDRESSES: Proposals should be mailed to: Terry Mendiola (6WQ–AT), U.S. Environmental Protection Agency, Region 6, Water Quality Protection Division,1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight delivery may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov.*

SUPPLEMENTARY INFORMATION:

Required Overview Content:

Federal Agency Name—Environmental Protection Agency, Region 6, Water Quality Protection Division, State Tribal Programs Section.

Funding Opportunity Title—Water Quality Cooperative Agreements.

Announcement Type—Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number—CFDA 66.463—Water Quality Cooperative Agreements.

DATES: May 16, 2005—Proposals due to EPA.

June 28, 2005—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package.

I. Funding Opportunity Description

EPA Region 6's Water Quality Protection Division is requesting proposals from eligible applicants for unique and innovative projects that address watershed-based permitting, water quality trading, water quality modeling training, water quality standards development and refinement,

the Illinois River watershed in Arkansas and Oklahoma, and nutrient criteria.

Funding is authorized under the provisions of the CWA Section 104(b)(3), 33 U.S.C. 1254(b)(3). The regulations governing the award and administration of WQCAs are in 40 CFR part 30 (for institutions of higher learning, hospitals, and other nonprofit organizations) and 40 CFR part 31 (for States, local governments, and interstate agencies).

An organization whose proposal is selected for possible Federal assistance must complete an EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, see 40 CFR-30.12 and 31.10).

High Priority Areas for Funding Consideration

WQCAs awarded under section 104(b)(3) may only be used to conduct and promote the coordination and acceleration of activities such as research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, "demonstrations" are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. A project that is accomplished though the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge, however worthwhile the project may be, is not a demonstration. Research projects may include the application of the practices when they contribute to learning about an environmental concept or problem.

The EPA Water Quality Management Division in Region 6 has identified six priority areas for funding consideration. These priorities reflect EPA's Strategic Goal 2. Clean and Safe Water, Subobjective 2.2.1 Improve Water Quality on a Watershed basis. EPA will award WQCAs for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution in the subject areas shown below in bold. Funding will be awarded only for the areas as described below.

Watershed-Based Permitting

Watershed-based National Pollutant Discharge Elimination System (NPDES) permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin. The proposal must include the development of a watershed-based NPDES permitting strategy for a watershed within Region 6. The strategy should consider cumulative impacts to water quality over the entire watershed and develop an efficient permitting methodology. The watershed-based permitting strategy should be flexible to account for unique watershed characteristics and can be utilized for other watersheds in the Region. The strategy should comply with the December, 2003, Watershed-Based National Pollutant Discharge Elimination System Permitting Implementation Guidance and validated through the appropriated NPDES permitting authority to ensure the strategy is credible. This effort should help develop and issue NPDES permits that better protect entire watersheds.

Water Quality Trading

Water quality trading is an approach that offers greater efficiency in achieving water quality goals on a watershed basis. The proposal must identify opportunities and develop a credible and successful framework for water quality trading programs for nutrients at reduced costs in a Region 6 watershed. The framework should identify the watershed in Region 6, the suitability of pollutants for trading, the criteria and financial attractiveness based on current and future market analysis. The trading framework must be in accordance with EPA's January 13, 2003, Water Quality Trading Policy and integrate the permitting needs for potential development of an NPDES permit. The development of a water quality trading approach should improve and preserve water quality.

Cross-Program Training on Water Quality Modeling

The Total Maximum Daily Load (TMDL), NPDES, Assessment and Monitoring, Watershed Protection, Non-point Source (NPS), and Grant Support Programs are trying to better integrate efforts to develop TMDLs using water quality models and implementation of TMDLs through the NPDES and NPS programs. However, little cross-program coordination, related to water quality model activities, is available to regulators and TMDL and NPDES developers, which results in resource duplication, missed opportunities for innovative approaches to resolution, and mis-communication of intent. A cross-program training for TMDL and wasteload allocation (WLA) models for the Region 6 States is needed to help alleviate this issue. The training program should include the water quality models, TMDL process, TMDL sampling and modeling quality assurance project plans used by EPA and the Region 6 States for developing TMDLs for the 303(d) listed waterbodies and wasteload allocations for point sources. Successful completion of this training program would provide Region 6 States avenues to better coordinate resources and investigate innovative resolutions to water quality issues, especially at the watershed level, in support of State and National goals to reduce impaired waters in those states.

Water Quality Standards Development and Refinement

Research and/or studies leading to the development and refinement of waterbody classification systems, narrative or numeric criteria, and antidegradation policies.

Illinois River Watershed in Arkansas and Oklahoma

Research and/or studies leading to an improved characterization of water quality conditions in the Illinois River relative to the goals of the CWA. Preference will be given to proposals submitted by multiple entities within the watershed that offer the potential to resolve differences in water quality standards and assessment methods.

Nutrient Criteria

Development of effects based nutrient criteria and assessment methods, based on the relationship(s) between evidence of impairment of biological integrity, and/or other response indicators, and instream nutrient concentrations observed at reference waterbodies.

II. Award Information

Region 6 EPA intends to award an estimated $700,000 to eligible applicants through assistance agreements ranging in size, on average, from $40,000 up to $200,000 (Federal). From the proposals received, EPA estimates up to 4 to 7 projects may be selected to submit full applications. The average size of an award is anticipated to be approximately $100,000. Awards will be made in the late summer of 2005. Typically, the project and budget period for these awards is one to two years, with an average of about two years. Organizations who have an existing agreement under this program are eligible to compete for new awards,

including supplementation to existing projects.

It is expected that all the awards under this program will be cooperative agreements. States and interstate agencies meeting the requirements in 40 CFR 35.504 may include the funds for WQCA in a Performance Partnership Grant (PPG) in accordance with the regulations governing PPGs in 40 CFR part 35, subparts A and B. For states and interstate agencies that choose to do so, the regulations provide that the workplan commitments that would have been included in the WQCA must be included in the PPG workplan.

A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the CWA are State water pollution control agencies, interstate agencies, other public or nonprofit agencies, institutions, organizations, and other entities as defined by the CWA. The Tribal Water Quality Programs Request for Proposals will be issued under a separate notice. Proposals received for projects outside of Region 6 will not be considered.

2. Cost Sharing or Matching

A minimum match of five percent will be required for all approved projects and should be included in the total funding requested for each proposal submitted.

3. Threshold Eligibility Criteria

Proposals to purchase land, perform construction, fail to conform to the submission requirements of this notice, or appear to be from a for-profit organization will not be reviewed and considered.

Additionally, the priority specific criteria listed below will also be considered threshold eligibility criteria. To be eligible to compete for funding, ALL PRIORITY SPECIFIC CRITERIA MUST BE ADDRESSED/MET for the priority area in which it was submitted.

The following threshold eligibility criteria will be used to evaluate the subject priority area:

Watershed-Based Permitting, specifically, the development of a watershed-based NPDES permitting strategy for a watershed within Region 6. The following specific criteria will be used to determine eligibility for this priority area:

- The project should identify the watershed within EPA Region 6 State(s).
- Strategy should establish goals such as flow, concentrations and pollutant loads for the watershed.
- Identify water quality parameters and compile existing data of the identified parameters of concern.
- Identify strong community partnership with State entities, industries, and municipalities to adopt watershed-basin permitting approach.
- Develop a template for watershed-based permitting strategy that can be transferable to other watersheds within the state and potentially to other Region 6 States.

Water Quality Trading, specifically, identification of opportunities and development of a credible and successful framework for water quality trading programs for nutrients at reduced costs in a Region 6 watershed. The following specific criteria will be used to determine eligibility for this priority area:

- The framework should describe the legal mechanisms to facilitate trading.
- The specific nutrients should be identified which are suitable for trading on a watershed basis.
- Framework should clearly define the units of trade necessary for trading to occur.
- Framework must create and establish the duration of credits generated to comply with a monthly, seasonal or annual limitation.
- Develop procedures to account for the generation and use of credits in NPDES permits and discharge monitoring reports in order to track the generation and use of credits between sources and assess compliance.
- Include provisions to ensure the framework incorporates an enforcement mechanism.
- Framework must define a public participation process and public access process.
- The framework must describe the program evaluation process.

Cross-Program Training on Water Quality Modeling, specifically, development of a cross-program training for TMDL and WLA models for Region 6 States. The following specific criteria will be used to determine eligibility for this priority area:

- The project should investigate and select the water quality models used by EPA and Region 6 States.
- Demonstrate that the water quality models, training materials, tools and approaches are effective in developing TMDLs and WLAs by providing at least one training session for each EPA Region 6 State.
- Apply the current EPA and Region 6 States' water quality models and related regulations, polices and guidance.
- The training program should integrate the water quality modeling needs for the TMDL and the NPDES programs in EPA Region 6.

Water Quality Standards Development and Refinement, specifically, research and/or studies leading to the development and refinement of waterbody classification systems, narrative or numeric criteria, and antidegradation policies. The following specific criteria will be used to determine eligibility for this priority area:

- Demonstrate approaches or provide tools that may be applied in other areas.
- Apply the latest scientific approaches or innovative techniques to establish and validate the relationship(s) between pollutant concentrations and response indicators.
- Result in recommendations that can be applied to a class of waters, rather than individual waters.
- Results in the development of water quality standards and assessment methods that will be adopted by the appropriate state water quality agency.

Illinois River Watershed in Arkansas and Oklahoma, specifically, research and/or studies leading to an improved characterization of water quality conditions in the Illinois River relative to the goals of the CWA. Preference will be given to proposals submitted by multiple entities within the watershed that offer the potential to resolve differences in water quality standards and assessment methods. The following specific criteria will be used to determine eligibility for this priority area:

- Evaluation of relationships between designated use attainment and water quality conditions.
- Results in specific recommendations for changes in water quality management practices or processes, land use practices, best management practice implementation, or other corrective actions needed to meet the goals of the CWA.

Nutrient Criteria, specifically, the development of effects based nutrient criteria and assessment methods, based on the relationship(s) between evidence of impairment of biological integrity, and/or other response indicators, and instream nutrient concentrations observed at reference waterbodies. The following specific criteria will be used to determine eligibility for this priority area:

- Apply the latest scientific approaches or innovative techniques to establish and validate the relationship(s) between elevated nutrient concentrations and indicator response.

• Result in recommendations for numeric water quality criteria standards or criteria that can be applied to a class of waters (rather than individual waters).

• Demonstrate approaches or provide tools that may be applied in other areas.

• Include mechanisms for technology transfer.

4. Timing of Eligibility

The applicant must be eligible for award consideration at the time of proposal submission.

IV. Application and Submission Information

1. Address To Submit Proposals

Applicants may submit proposals only in hard copy. Proposals should be mailed to: Terry Mendiola (6WQ–AT), U.S. Environmental Protection Agency, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202–2733. Overnight Delivery may be sent to the same address. Please mail three copies of the proposal(s).

Full application packages should not be submitted at this time; Region 6 is only requesting proposals. Proposal format and content is included below. Upon notification of final selections, applicants will be instructed how financial assistance application packages can be obtained.

2. Proposal Format and Contents

Proposals should be no more than four pages with a minimum font size of 10 pitch in Wordperfect/Word or equivalent. Pages in excess of four will not be considered. Failure to follow the format or to include all requested information will result in the proposal not being considered for funding. It is recommended that confidential information not be included in this proposal. The following format should be used for all proposals:

Name of Project:

Priority Area Addressed: Only one priority area should be listed. If more than one addressed, select most pertinent. (*i.e.*, Watershed Based Permitting, Water Quality Trading, Nutrient Criteria, etc.)

Point of Contact: (Individual and Agency/Organization Name, Address, Phone Number, Fax Number, E-mail Address)

Is This a Continuation of a Previously Funded Project (if so, please provide the status of the current grant or cooperative agreement):

Proposed Federal Amount:

Proposed Non-Federal Match (minimum of 5%):

The match is based on the total project cost not the Federal amount. To determine a proposed minimum match of 5%, use the following example:

Federal amount = $25,000
Total Project Cost = T
The Federal amount is 95% of T, therefore:
$25,000 = T x 0.95
$25,000/0.95 = T
$26,316 = T (round the decimal)
If the total project cost is $26,316, then:
$26,316 × 0.05 = $1,316 non-Federal match

Proposed Total Award Amount:

Description of General Budget Proposed To Support Project:

Project Description: (Should not exceed three pages of single-spaced text)

Expected Accomplishments or Product, With Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.

Environmental Results and Outcomes:

Describe Applicant's Capability To Perform Work:

Describe How the Project Meets the Evaluation Criteria Specified in Section V. Application Review Information:

3. Submission Dates and Times

EPA will consider all proposals received on or before 5 p.m. Central Standard Time May 16, 2005. Proposals received after the due date will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs may be applicable to awards, resulting from this announcement. Applicants selected for funding may be required to provide a copy of their proposal to their State Point of Contact (SPOC) or the States where the project will be conducted for review, pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs. This review is not required with the proposal.

5. Funding Restrictions

The following information should be considered in developing proposal(s):

• Construction projects, except for the construction required to carry out a demonstration project, and acquisition of land are not eligible for funding under this program.

• New or on-going programs to implement routine environmental controls will not be considered for funding under this program.

• Funding is for projects conducted within the states of Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

• It is encouraged that indirect cost be limited to 15 percent.

• Although proposals may meet more than one of the priority areas listed in *Section I. Funding Opportunity Description,* select most pertinent and identify that priority area in the proposal format.

6. Proprietary Information Identification

EPA recommends that no confidential information be included in proposals. However, in accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c)(2) prior to disclosure.

V. Application Review Information

1. Criteria

EPA Region 6 will award WQCA on a competitive basis and evaluate proposals based on the criteria detailed below (maximum points for each element are shown). In addition to the selection criteria detailed below, other factors as geographic diversity, programmatic priorities, project diversity and program diversity may be considered in selecting proposals for award. The following criteria will be used to evaluate each eligible proposal:

• The adequacy of proposal to meet priority specific criteria (Section III. 3.). (25)

• The extent to which the proposed project uses innovative techniques that effectively leads to the protection of water quality as identified by the priorities in this notice (Section I.). These priorities reflect EPA's Strategic Goal 2. Clean and Safe Water, Subobjective 2.2.1 Improve Water Quality on a Watershed Basis. (20)

• The extent to which the results of the proposed project, or tools developed, can be transferred to others and the quality of the communication strategy to actually achieve transfer. (10)

• The realistic expectation that meaningful environmental benefit will result from the proposed work, and the quality of the evaluation component to assess or measure the environmental outcome(s). This may include projects that improve program integrity or efficiency as well as those with direct environmental benefits. (20)

• The capability of the applicant to effectively perform and complete the tasks and deliver the products of the

project or activity, as well as the capability to effectively manage the cooperative agreement. (10)

• Cost effectiveness and reasonableness of the proposal. (10)

• Applicant's past performance, if applicable. (5)

2. Review and Selection Process

Each eligible proposal will be evaluated and ranked by a panel comprised of several EPA Region 6 employees. Members of the review panel will base their evaluation on the selection criteria disclosed in this notice (Section V.1). Final selection of proposals will be made by the Director of the Water Quality Protection Division, EPA Region 6.

VI. Award Administration Information

1. Award Notices

Selected organizations will be notified in writing and requested to submit full applications. Applications, including workplans, are subject to EPA review and approval. It is expected that unsuccessful applicants will be notified in writing. EPA reserves the right to withdraw the funding offer if a complete application (including an approved QMP) is not received within four months of selection notice.

2. Administrative and National Policy Requirements

Applicants whose proposals contemplate contracting for services or products must comply with applicable regulations relating to competitive procurement and preparation of cost or price analyses in accordance with 40 CFR 30.40 through 30.48 (for institutions of higher learning, hospitals, and other nonprofit organizations) and 40 CFR 31.36 (for States, local governments, and interstate agencies). Identifying a contractor in a proposal does not exempt the applicant from these requirements and gives the appearance that the proposal is from a for-profit organization. As stated in Section III. Eligibility Information, proposals that appear to be from a for-profit organization will not be reviewed or considered. Applicants requested to submit a full application will be required to confirm compliance with competitive procurement procedures.

Additionally, applicants requested to submit a full application will be required to comply with the Quality Assurance requirements (40 CFR 30.54 and 31.45) if projects involve environmentally related measurements or data generation. Prior to award, a Quality Management Plan must be submitted and approved by EPA.

Applicants must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number with the full application. Organizations may obtain the number by calling, toll free, 1–866–705–5711.

Applicants requested to submit a full application may incur pre-award costs 90 calendar days prior to award provided such costs are included in the application, the costs meet the definition of pre-award costs and are approved by EPA. Pre-award costs are those costs incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance and are in conformance with the appropriate statute and cost principles. The approval of pre-award costs should be reflected in the budget period on the assistance agreement and if applicable, under a term and condition of the assistance agreement. Recipients incur pre-award costs at their own risk (*i.e.*, EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

Assistance agreement competition-related disputed will be resolved in accordance with the dispute resolution procedures published in 70 FR 3629, 3630 (January 26, 2005) which can be found at: *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05–1371.htm*. Copies may also be requested by contacting the Agency Contact below.

3. Reporting

Post award reporting requirements include, at a minimum, submission of semi-annual project status reports with submission of a final report prior to the end of the budget/project period. Recipients will be required to report direct and indirect environmental benefits that result from the work accomplished through the cooperative agreement award. Means of submission and report format will be negotiated in the workplan.

VII. Agency Contacts

Point of Contact: Terry Mendiola by telephone at 214–665–7144 or by e-mail at *mendiola.teresita@epa.gov*.

VIII. Other Information

This Federal Register Notice will be posted on the Region 6 Water Quality Protection Division, Assistance Programs Branch Web site *http://www.epa.gov/earth1r6/6wq/at/sttribal.htm*. This Web site may also contain additional information about this request. Deadline extensions, if any, will be posted on this web site and not in the **Federal Register**. A list of selected projects will also be posted to this Web site.

Dated: March 23, 2005.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–6300 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0005; FRL–7702–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on April 12–14, 2005, in Research Triangle Park, NC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acetone, acrylic acid, allyl alchohol, aluminum phosphide, ammonia, bis-chloromethyl ether, carbon tetrachloride, chloroform, chloromethyl methyl ether, diketene, epichlorohydrin, hexafluoroacetone, iron pentacarbonyl, methanol, methyl chlorosilane, methyl dichlorosilane, methyl t-butyl ether, nitrogen mustard bis(2-chloroethyl) ethylamine, nitrogen mustard bis(2-chloroethyl)methyl amine, nitrogen mustard tris(2-chloroethyl)amine, sulfur dioxide.

DATES: A meeting of the NAC/AEGL Committee will be held from 9:00 a.m. to 5:30 p.m. on April 12, 2005; 8:30 a.m. to 5:30 p.m. on April 13, 2005 and from 8:00 a.m. to 12 noon on April 14, 2005.

ADDRESSES: The meeting will be held at the U.S. EPA Office of Research and Development, 109 T.W. Alexander Drive, Building C, Auditorium, North Carolina, Research Triangle Park, 27709.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGLvalues for their programs. As such, 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 DFO 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–2005–0005. 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.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for June 2005 in Washington, DC.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: March 17, 2005.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 05–6183 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EDOCKET ID No.: ORD–2005–0013; FRL–7892–4]

Board of Scientific Counselors, Computational Toxicology Subcommittee Meeting—Spring 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a Computational Toxicology Subcommittee meeting of the Board of Scientific Counselors (BOSC).

DATES: The meeting will be held on Monday, April 25, 2005 from 10:30 a.m. to 5:30 p.m. (registration is from 10 a.m. to 10:30 a.m.), and will continue on Tuesday, April 26, 2005 from 8:30 a.m. to 12:30 p.m. All times noted are eastern time. The meeting may adjourn early on Tuesday if all business is finished. Written comments, and requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting date.

ADDRESSES: The meeting will be held at the U.S. EPA Research Triangle Park Campus, EPA Main Building (Room C111A), 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711.

Document Availability

Any member of the public interested in receiving a draft BOSC agenda or making an oral presentation during the meeting may contact Ms. Lorelei Kowalski, Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. In general, each individual making an oral presentation will be limited to a total of three minutes. The draft agenda can be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Submitting Comments

Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Lorelei Kowalski, Designated Federal Officer, via telephone/voice mail at (202) 564–3408, via e-mail at *kowalski.lorelei@epa.gov,* or by mail at

Environmental Protection Agency, Office of Research and Development, Mail Code 8104–R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

Proposed agenda items for the meeting include, but are not limited to: background and direction of ORD's Computational Toxicology Center; summary of FY04 ORD computational toxicology activities; ORD presentations on four research themes (information technology, prioritization, biological models, and cumulative risk); and subcommittee discussion/work sessions. The meeting is open to the public.

Information on Services for the Handicapped: Individuals requiring special accommodations at this meeting should contact Lorelei Kowalski, Designated Federal Officer, at (202) 564–3408, at least five business days prior to the meeting so that appropriate arrangements can be made to facilitate their participation.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD–2005–0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy of the draft agenda may be viewed at the Board of Scientific Counselors, Computational Toxicology Subcommittee Meeting—Spring 2005 Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

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

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

For 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, confidential business information (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.

B. 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 identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, 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. *EDOCKET.* 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 EDOCKET at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, *www.epa.gov,* select "Information Sources," "Dockets," and "EDOCKET." Once in the system, select "search," and then key in Docket ID No. ORD–2005–0013. 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 electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD–2005–0013. 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.B.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: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. ORD–2005–0013.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC., Attention Docket ID No. ORD–2005–0013 (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: March 24, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05–6294 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0346; FRL–7704–3]

Ethofumesate Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the benzofuranyl alkylsulfonate pesticide ethofumesate, 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 Reregistration Eligibility Decision (RED) for ethofumesate 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–2004–0346, must be received on or before May 31, 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: Nathan Mottl , Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0208; fax number: (703) 308–7042; e-mail address:*mottl.nathan@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–2004–0346. 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–2004–0346. 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–2004–0346. 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–2004–0346.

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–2004–0346. 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 and environmental fate and effects risk assessments, and related documents for ethofumesate, and is encouraging the public to suggest risk management ideas or proposals. Ethofumesate is a selective herbicide used during preplant, preemergence and postemergence for control of broadleaf and grass weeds. Primary uses are for sugar beets, turf for sod and golf courses, and grass for seed. Other special local need uses include uses on spinach and Swiss chard crops which are grown for seed. New uses on carrots and garden beets are also being incorporated into this assessment. EPA developed the risk assessments for ethofumesate 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).

The risk assessments identified potential risks of concern for ethofumesate including reentry activities for workers, residential dermal exposure to turf (adult females), and risk concerns to non-target terrestrial plants. With this comment period, EPA is giving the public the opportunity to provide information to refine these risk estimates and/or provide potential mitigation options.

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

ethofumesate, compared to the general population.

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, (69 FR 26819)(FRL–7357–9) 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 ethofumesate, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its limited use, small number of users, few affected stakeholders, and/or other factors. 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 ethofumesate. 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: March 16, 2005

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–5725 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0402; FRL–7707–1]

Preliminary Risk Assessments for the Contaminants of Pentachlorophenol (Hexachlorobenzene and Dioxins/Furans); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's six-phase public participation reregistration process for pentachlorophenol (PCP). The Preliminary Risk Assessment (PRA) for PCP was published in the **Federal Register** on November 30, 2004, with a 60–day public comment period which ended on January 31, 2005. This notice announces the availability of the PRAs for hexachlorobenzene (HCB) and dioxins/furans, which are contaminants produced during the manufacture of PCP, and opens a 60–day public comment period.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0402, must be received on or before May 31, 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: Heather A. Garvie, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; fax number: (703) 308–8481; e-mail address: *garvie.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use PCP products. 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 ID number OPP–2004–0402. 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/.* Copies of the PRAs for PCP and its contaminants HCB and dioxins/furans can also be obtained via *http://docket.epa.gov/edkpub/index.jsp/.*

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–2004–0402. 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–2004–0402. 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–2004–0402.

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–2004–0402. 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

The production of pentachlorophenol (PCP) for wood preserving began on an experimental basis in the 1930s. In 1947, nearly 7 million pounds of PCP were reported to have been used in the United States by the commercial wood preserving industry. Pentachlorophenol was one of the most widely used biocides in the United States prior to regulatory actions to cancel and restrict certain non-wood preservative uses in 1987. Prior to the 1987 **Federal Register** notice which announces Agency action to cancel and restrict certain non-wood uses of PCP, it was registered for use as a herbicide, defoliant, mossicide, and disinfectant. The 1987 notice also specified maximum allowable amounts of HCB and dioxins/furans that could be present in formulations of PCP.

Indoor applications of PCP are prohibited in accordance with the restrictions included in the *U.S. EPA Position Document 4 for Wood Preservative Pesticides: Creosote, Pentachlorophenol and Inorganic Arsenicals* (1984, amended 1986). The use of PCP to treat wood intended for use in interiors is prohibited, except for a few low-exposure uses (i.e., those support structures which are in contact with the soil in barns, stables, and similar sites and which are subject to decay or insect infestation). Pentachlorophenol is a restricted use pesticide authorized for sale and use by certified applicators only. There are currently eight active products containing PCP (Chemical Code 063001) according to OPP.

III. What Action is the Agency Taking?

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions on HCB and dioxin/furans, contaminants of PCP. This notice starts the 60-day public comment period for the PRAs for HCB and dioxins/furans. The Agency is providing the opportunity, through this notice, for interested parties to provide written comments to the Agency on the PRAs for the chemicals specified in this notice. Such comments 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 these specific chemicals. Comments should be limited to issues raised within the PRAs and associated documents. EPA may provide other opportunities for public comment on other science issues associated with PCP. Failure to comment on any issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted on or before May 31, 2005.

EPA will review all comments received and address them accordingly. The Agency will then announce and conduct a public technical briefing on the revised risk assessments to provide an opportunity for the public to learn more about the data, information, and methods used to develop the revised risk assessment. The revised assessment will then be made available to the public, and the public will be invited to submit risk management ideas and/or proposals. By allowing access and opportunity for comments on the PRAs, the Agency is seeking to strengthen stakeholder involvement and help ensure its decisions under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by the Food Quality Protection Act (FQPA), are transparent, and based on the best available information.

List of Subjects

Environmental protection, Dioxin, Furan, Hexachlorobenzene(HCB), Pentachlorophenol (PCP), Pesticides and pests,Wood preservatives.

Dated: March 24, 2005.

Jack E. Housenger,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 05–6297 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0373; FRL–7704–1]

Imazamethabenz-methyl; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide imazamethabenz-methyl, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide imazamethabenz-methyl through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0373, must be received on or before April 29, 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: Craig Doty, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0122; fax number: (703) 308–8041; e-mail address: *doty.craig@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–2004–0373. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 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, 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. 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–2004–0373. 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–2004–0373. 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–2004–0373.

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–2004–0373. 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 has reassessed five existing tolerances or legal residue limits for imazamethabenz-methyl, and on February 28, 2005, reached a tolerance reassessment decision for this low risk pesticide. Imazamethabenz-methyl is an imidazolinone herbicide used for the control of selected annual grass and broadleaf weeds with a single early postemergence broadcast application to barley, wheat or sunflowers using ground or aerial equipment. The Agency is now issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for imazamethabenz-methyl, known as a TRED, as well as related risk assessments and technical support documents.

EPA developed the imazamethabenz-methyl TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the imazamethabenz-methyl tolerances included in this notice.

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** of May 14, 2004 (69 FR 26819) (FRL–7357–9) 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 issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like imazamethabenz-methyl, which pose no risk concerns and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the imazamethabenz-methyl TRED.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Imazamethabenz-methyl, however, poses no risks that require mitigation. The Agency therefore is issuing the imazamethabenz-methyl TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. 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. These comments will become part of the Agency Docket for imazamethabenz-methyl. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

EPA will consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register.** In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented.

B. What is the Agency's Authority for Taking this 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: March 16, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–6045 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0365; FRL–7706–2]

Tributyltin Methacrylate; Product Cancellation Order; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of February 16, 2005, announcing the cancellation of a

registration for a product containing tributyltin methacrylate, EPA Registration No. 44891–6. This notice announces an amendment to the February 16, 2005 notice and cancellation order to correct the effective date of the cancellation order.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703 308–8019; fax number: 703 308–8041; e-mail address: *bloom.jill@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 identification (ID) number OPP–2004–0365. 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. What Does this Correction Do?

The original cancellation order for EPA Registration No. 44891-6, an antifouling paint product containing tributyltin methacrylate, was published in the **Federal Register** on February 16, 2005 (70 FR 7941)(OPP–2004–0365; FRL–7699–6). Today's notice corrects the effective date of cancellation as stated in that notice consistent with the registrant's request for voluntary cancellation and to allow formulation of the registrant's last remaining technical material. The Agency received a March 7, 2005 request from the registrant seeking such correction. The effective date of the cancellation cited in the February 16, 2005 notice was the date of publication of that notice (or February 16, 2005); the corrected effective date of cancellation is December 1, 2005. The change in the effective date of the cancellation extends the period during which the registrant may formulate the product but does not increase the overall amount of TBT material that will be available to be used for formulation. The technical material that will be available to be used for formulation during this time period was all within the registrant's possession and control at the time the registrant requested voluntary cancellation. The correction does not affect the existing stocks provision set forth in the cancellation order and the February 16, 2005 notice. The registration affected by this correction and the effective date of cancellation are shown in the table below.

REGISTRATION SUBJECT TO CANCELLATION AND EFFECTIVE DATE OF CANCELLATION

EPA Registration	Product Name	Effective Date of Cancellation
44891–6	Sea Hawk Biocop Antifouling Coating	December 1, 2005

The February 16, 2005 cancellation order is hereby corrected as follows:

On page 7941, in the second column, under **DATES**, the text should read: "The cancellation is effective December 1, 2005."

On page 7942, in the first column, under Unit IV., in the first paragraph, the second sentence now reading "Accordingly, the Agency orders that the tributyltin methacrylate registration identified in the Table of Unit II is hereby canceled," is corrected to read "Accordingly, the Agency orders that the tributyltin methacrylate registration identified in the Table of Unit II is canceled effective December 1, 2005."

The existing stocks provisions remain as stated in the February 16, 2005 notice.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 18, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–6044 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0077; FRL–7705–5]

Petition to Revoke or Modify Tolerances Established for Carbaryl; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a January 10, 2005, petition from the Natural Resources Defense Council (NRDC), available in docket number OPP–2005–0077, requesting that the Agency revoke, or in the

alternative, modify all tolerances for the pesticide carbaryl. The petitioner, NRDC, requests this action to obtain what they believe would be proper application of the safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408, as amended by the Food Quality Protection Act (FQPA) of 1996. NRDC is filing this petition in response to a Notice of Availability for the Carbaryl Interim Reregistration Eligibility Decision (IRED), published in the **Federal Register** on October 27, 2004. The carbaryl IRED is available on the EPA website *http://www.epa.gov/edocket* under docket number OPP–2003–0376 and on the Agency's pesticide web page, *http://www.epa.gov/pesticides/reregistration/status.htm.*

DATES: Comments, identified by docket identification (ID) number OPP–2005–0077, must be received on or before May 31, 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: Christina Scheltema, Special Review and Reregistration Division (SRRD) (Mail Code 7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@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 identification (ID) number OPP–2005–0077. 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. 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–2005–0077. 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–2005–0077. 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–2005–0077.

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–2005–0077. 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. What Action is the Agency Taking?

EPA requests public comment during the next 60 days on a petition (available in docket number OPP–2005–0077) received from the NRDC requesting that the Agency revoke, or as an alternative, modify all tolerances (maximum legal residue limits) for the pesticide carbaryl. The petitioner claims that EPA erred in making its safety finding that there is a reasonable certainty of no harm from dietary residues of carbaryl and, therefore, EPA must modify or revoke all tolerances established under section 408 of the FFDCA, as amended by the FQPA. In addition, NRDC is petitioning the Agency to cancel all uses of carbaryl because NRDC believes carbaryl cannot perform its intended function without causing unreasonable adverse affects on the environment. See U.S. Code section 136 *et seq.* of FIFRA. NRDC filed its petition in pursuant to section 408(d) of FFDCA, and in response to a Notice of Availability for the Carbaryl Interim Reregistration Eligibility Decision (IRED), published in the **Federal Register** on October 27, 2004 (69 FR 62663) (FRL–7679–9).

EPA's assessment of human health and environmental risks of carbaryl, and finding on whether the tolerances for carbaryl comply with the safety standard in FFDCA section 408, as amended by the FQPA, are contained in the IRED document for carbaryl, which is available on EPA's website at *http://www.epa.gov/edocket*, under docket number OPP–2003–0376 and on the pesticide web page at *http://www.epa.gov/pesticides/reregistration/status.htm.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 24, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–6296 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0085; FRL–7705–3]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only

in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Tasha Gibbons, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0022; e-mail address: *gibbons.tasha@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, 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–2005–0085. 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. 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. EUP

EPA has issued the following EUP: *70341–EUP–4.* Issuance. IPM Tech, Inc., 4134 North Vancouver Ave., Suite 105, Portland, OR 97217. This EUP allows the use of 104.79 pounds of the attracticide containing 6.29 pounds of permethrin, .1592 pounds of the phermone (E)-9-dodecen-1-yl acetate, and .0084 pounds of the phermone (E)-9,11-dodecadien-1-yl acetate on 250 acres of loblolly and shortleaf pine to evaluate the control of Nantucket pine tip moths. The program is authorized only in the States of Georgia and Virginia. The EUP is effective from March 2, 2005, to March 5, 2006.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits, Pesticides and pests.

Dated: March 21, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–6043 Filed 3–29–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–549]

Members of Consumer Advisory Committee Named; Announcement of Date and Agenda of First Meeting and Future 2005 Meeting Dates

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the appointment of members to the Consumer Advisory Committee ("Committee") of the Federal Communications Commission ("Commission"). The Commission further announces the date and agenda of the Committee's first meeting as well as future meeting dates in calendar year 2005.

DATES: The first meeting of the Committee will take place on Friday, April 29, 2005, 9 a.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer & Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *scott.marshal@fcc.gov*.

SUPPLEMENTARY INFORMATION:

On December 14, 2004, the Commission issued a public notice announcing the re-chartering of the Committee and solicited applications for membership (*see* DA 04–3892), as subsequently published in the **Federal Register** at 69 FR 78024, December 29, 2004. By public notice dated and released March 8, 2005 (DA 05–549), the Commission announced the appointment of members to its Consumer Advisory Committee and further announced the agenda, date and time of the committee's first meeting in 2005. Additional meeting dates in 2005 were also announced. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Functions

The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

During its two (2) year term, the Committee will address a number of topics including, but not limited to, the following areas:

Consumer protection and education (*e.g.*, cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations, such as American Indians and persons living in rural areas);

Access by people with disabilities (*e.g.*, telecommunications relay services, closed captioning, accessible billing, and access to telecommunications products and services);

Impact upon consumers of new and emerging technologies (*e.g.*, availability of broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies); and Implementation of

Commission rules and consumer participation in the FCC rulemaking process.

Members

The Commission received seventy (70) applications for membership on the Committee, from twenty-three (23) states and the District of Columbia. After a careful review of these applications, thirty-five (35) members were appointed to the Committee. Of this number, nine (9) members represent consumer interests; ten (10) members represent disability interests; two (2) members represent the interests of state regulators, two (2) members represent tribal interests and eleven (11) members represent industry interests. In addition, one (1) individual has been selected to serve based upon his expertise in telecommunications law and policy. The Committee's slate is designed to be representative of the Commission's many constituencies, and the expertise and diversity selected will provide a balanced point of view as required by the Federal Advisory Committee Act. In addition, Chairman Michael K. Powell has appointed Shirley L. Rooker, President, Call For Action, as the Committee's Chairperson and Commissioner Charles Davidson, Florida Public Service Commission, as the Committee's Vice Chairperson. All appointments are effective immediately and shall terminate November 19, 2006, or when the committee is terminated, whichever is earlier.

The roster of the Committee, as appointed by Chairman Powell, is as follows:

1. AARP, Debra Berlyn;
2. Affiliated Tribes of NW Indians, John F. Stensgar;
3. Alliance for Public Technology, Daniel Phythyon;
4. Benton Foundation, Charles Benton;
5. Brugger Consulting, David Brugger;
6. Call For Action, Shirley L. Rooker (CAC Chairperson);
7. Cellular Telecommunications and Internet Association, Carolyn Brandon;
8. Community Broadcasters Association, Louis A. Zanoni;
9. Community Technology Foundation of California, Laura Efurd;
10. Consumer Electronics Association, Julie M. Kearney;
11. Consumers First, Inc., Jim Conran;
12. Deaf and Hard of Hearing Consumer Action Network, Claude Stout;
13. Florida Public Service Commission, Commissioner Charles Davidson (CAC Vice Chairperson);
14. Georgia Centers for Advanced Telecommunications Technology, Helena Mitchell;
15. Hamilton Telephone Company, d/b/a Hamilton Relay Service, Dixie Ziegler;
16. Ideal Group, Inc., Steve Jacobs;
17. Inclusive Technologies, Jim Tobias;
18. International Association of Audio Information Services, George (Mike) Duke;
19. Rebecca Ladew (representing the interests of users of speech-to-speech technology);
20. League for the Hard of Hearing, Joseph Gordon;
21. Media Access Group WGBH, Larry Goldberg;
22. National Association of Broadcasters, Marsha MacBride;
23. National Association of Regulatory Utility Commissioners, Commissioner Ron Jones;
24. National Association of State Relay Administration, Brenda Kelly-Frey;
25. National Association of State Utility Consumer Advocates, Joy M. Ragsdale;
26. National Cable and Telecommunications Association, Loretta P. Polk;
27. National Captioning Institute, Joel Snyder;
28. Nextel Communications, Inc., Kent Y. Nakamura;
29. NYC Wireless, Laura Forlano;
30. Mark Pranger (individual with expertise in telecommunications law and policy);
31. Sprint Corporation, Brent Burpee;
32. Time Warner, Inc., Tom Wlodkowski;
33. T-Mobile, Thomas Sugrue;
34. Verizon Communications, Richard T. Ellis, and
35. Linda Oliver West (representing the interests of the Native American community and other consumers concerned with telecommunications services in rural America).

Meeting Dates

Future meetings of the Committee during calendar year 2005 will take place on Friday, July 15th, and Friday, November 18th, at the same time and location.

At its April 29, 2005 meeting, the Committee will address matters of internal business and organization, including the establishment of working groups, and will consider various consumer issues within the jurisdiction of the Commission. Meetings are open to the public.

The Committee is organized under, and operates in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988). Minutes of meetings are available for public inspection at the FCC and are posted on the Commission's Web site at *http://www.yfcc.gov/cgb/cac*. Meetings are broadcast on the Internet in Real Audio/Real Video format with captioning at *http://www.fcc.gov/cgb/cac*. Meetings are sign language interpreted with real-time transcription and assistive listening devices available. Meeting agendas and handout materials are provided in accessible formats. The meeting site is accessible to people with disabilities. Members of the public may address the Committee or may send written comments to: Scott Marshall, Designated Federal Officer of the Committee.

Federal Communications Commission.

Jay Keithley,

Acting Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–6319 Filed 3–29–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011075–067.

Title: Central America Discussion Agreement.

Parties: APL Co. PTE Ltd.; A.P. Moller-Maersk A/S; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; Trinity Shipping Line, S.A.; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Washington, DC 20036.

Synopsis: The amendment deletes Lykes Lines Limited, LLC as a party to the agreement effective April 5, 2005, increases the financial guarantees required of the members, adds a new section dealing with responsibility for civil penalties, and makes other technical changes.

Agreement No.: 011909.

Title: Maersk Sealand/Great Western Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Great Western Steamship Company.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Washington, DC 20036.

Synopsis: The agreement authorizes Maersk Sealand to charter space to Great Western on an "as needed, as available" basis in the trade between ports on the Pacific Coast of the United States and ports in China.

Dated: March 25, 2005.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–6276 Filed 3–29–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License number: 004586F.
Name: All Continental Group, Inc.
Address: 924 E Main Street, Suite 106, Alhambra, CA 91801.
Date revoked: February 24, 2005.
Reason: Failed to maintain a valid bond.

License number: 017226F.
Name: All Dimensions, Inc.
Address: P.O. Box 536, Newburg, IN 47629.
Date revoked: February 4, 2005.
Reason: Failed to maintain a valid bond.

License number: 019012NF.
Name: CTC Distributing, Ltd.
Address: 615 Blaze Blvd., Edinburg, TX 78539.
Date revoked: February 3, 2005.
Reason: Surrendered license voluntarily.

License number: 017371NF.
Name: Cargo Transport FLA, Inc. dba Marazul Shipping.
Address: 3200 NW. 112th Avenue, Miami, FL 33172.
Date revoked: January 3, 2005.
Reason: Surrendered license voluntarily.

License number: 003402F.
Name: Customs Services International, Inc.
Address: 7425 NW. 48th Street, Miami, FL 33166.
Date revoked: March 9, 2005.
Reason: Failed to maintain a valid bond.

License number: 017663N.
Name: Data Cargo Co., Inc. dba Data Cargo International.
Address: 8757 NW. 35th Lane, Miami, FL 33172.
Date revoked: February 12, 2005.
Reason: Failed to maintain a valid bond.

License number: 004385F.
Name: Elliot C. Penalosa dba EP International Shipping.
Address: 5789 Bay Hill Lane, Fontana, CA 92336.
Date revoked: March 17, 2005.
Reason: Failed to maintain a valid bond.

License number: 015829NF.
Name: Fidelity Shipping, Inc.
Address: 12201 Merit Drive, Suite 790, Dallas, TX 75251
Date revoked: March 9, 2005.
Reason: Failed to maintain valid bonds.

License number: 018121NF.
Name: General Logistics, Inc.
Address: 175–01 Rockaway Blvd., Jamaica, NY 11434.
Date revoked: January 31, 2005.
Reason: Surrendered license voluntarily.

License number: 018836F.
Name: Harbor Trading Company.
Address: 4200 Creekside Avenue, Toledo, OH 43612.
Date revoked: March 14, 2005.
Reason: Surrendered license voluntarily.

License number: 018238N.
Name: J.M.P. Shipping, L.L.C.
Address: 10185 Lakeside Drive, Coral Gables, FL 33156.
Date revoked: January 28, 2005.
Reason: Surrendered license voluntarily.

License number: 017025F.
Name: Milton C. Merion, LLC.
Address: 8627 Agusta Street, Philadelphia, PA 19152–1132.
Date revoked: February 2, 2005.
Reason: Surrendered license voluntarily.

License number: 018100F.
Name: Overseas Shipping, Inc.
Address: 7021 Grand National Drive, Suite 110, Orlando, FL 32819.
Date revoked: February 10, 2005.
Reason: Failed to maintain a valid bond.

License number: 018196N.
Name: PMJ International Inc.
Address: 519 Mountainview Drive, North Plainfield, NJ 07063.
Date revoked: March 17, 2005.
Reason: Failed to maintain a valid bond.

License number: 017436N.
Name: Scorpion Express Line Corp.
Address: 4995 NW. 72nd Avenue, Suite 209, Miami, FL 33166.
Date revoked: March 5, 2005.
Reason: Failed to maintain a valid bond.

License number: 016236N.
Name: Target Shipping Co., Inc.
Address: 123 North Union Avenue, Suite 101, Cranford, NJ 07016.
Date revoked: March 5, 2005.
Reason: Failed to maintain a valid bond.

License number: 003501F.
Name: Transpo Service, Ltd.
Address: P.O. Box 152, Grandview, MO 64030–1182.
Date revoked: January 26, 2005.
Reason: Surrendered license voluntarily.

License number: 018638NF.
Name: World Wide Relocation, Inc.
Address: 2550 Northwest Parkway, Elgin, IL 60123.
Date revoked: February 23, 2005.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–6274 Filed 3–29–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
004220N	Richard D. Kim dba Best Containers Express Co., 20435 S. Western Avenue, Suite B, Torrance, CA 90501–1506.	December 16, 2004.

License No.	Name/address	Date reissued
016528N	Uni International, America Corp., 880 Mondalay Avenue, #C 1211, Clearwater, FL 33767	February 5, 2005.
004635NF	World Shipping America Inc., 333 Sylvan Avenue, #209, Englewood Cliffs, NJ 07632	January 19, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–6275 Filed 3–29–05; 8:45 am]

BILLING CODE 6730–01–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 part 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:

Global Shipping & Freight International Inc., 4405 W. South Ave., Unit #C, Tampa, FL 33614, Officer: Wissam Bahloul, President (Qualifying Individual)

La Costa Logistics Services, Inc., 2842 Corte Papaya, Carlsbad, CA 92009, Officers: Yang Wang, Chief Operating Officer (Qualifying Individual), Chihlung Chao, President

Ultimate Logistics Enterprise, Inc., 13170–A Marlay Avenue, Fontana, CA 92337, Officer: Robert Kwing Tang, President, (Qualifying Individual)

Unlimited Express Corp., U.S.A., 153–40 Rockaway Blvd., 2nd Floor, Jamaica, NY 11434, Officers: Billy Wang, Treasurer (Qualifying Individual) Jacy Chen, President

SWAT Logistics Int'l Inc., 182–30 150 Road, #222, Jamaica, NY 11413, Officers: Min Qiu, President, (Qualifying Individual) Xinjian Yu, Director

Flexitank Food Grade, Inc., Calle Manuel Enrique, #145, Palo Seco, Catano, 00950, Officer: Heracilio Prieto, COO, (Qualifying Individual)

JSJ Express, Inc., 41–60 Main Street, #204, Flushing, NY 11355, Officer: James Wang, President, (Qualifying Individual)

Sun-Way Logistics (USA) Inc., 1641 W. Main Street, Suite 216, Alhambra, CA 91801, Officers: Bo Sun, Director, (Qualifying Individual) Theresa Lee, President

Embarque Tenares Corp., 2249 Washington Avenue, Bronx, NY 10457, Officer: Juan A. Luna, President, (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

USCA Forwarding—Seabell Express Inc., dba Seabell Express dba USCA Forwarding, dba USCA-Seabell Inc., 50 Harrison Street, Suite 309, Hoboken, NJ 07030, Officers: Michael Veynberg, Vice President, (Qualifying Individual), John Sims, President

Luciano Shipping, Inc., 952 Intervale Avenue, Bronx, NY 10459, Officer: Marcos Luciano, President, (Qualifying Individual)

Turk Group, Inc. dba MTG (Multi Transportation Group), 3761 South Broadway, Los Angeles, CA 90007, Officers: Cynthia K. Narksuriva, Vice President, (Qualifying Individual), Bilgin Turkesever, CEO

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Wickman Worldwide Services, Inc., 5 NW. 5th Street, Evansville, IN 47708, Officers: Edward T. Wickman, President, (Qualifying Individual), Christina M. Wickman, Director of Operations

Hiers Global Logistics, Inc., 4152 Mustang Road, Middleburg, FL 32068, Officer: Steven N. Hiers, President, (Qualifying Individual)

Dated: March 25, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–6273 Filed 3–29–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Security Bank Corporation, Macon, Georgia; to acquire 100 percent of the voting shares of SouthBank, Woodstock, Georgia.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Stockgrowers State Bank Employee Stock Ownership Plan, Ashland, Kansas; to become a bank holding company by acquiring an additional 24 percent, for a total of 35 percent, of the voting shares of Stockgrowers Banc Corporation, and thereby indirectly acquire Stockgrowers State Bank, both of Ashland, Kansas, and Peoples Bank, Coldwater, Kansas.

Board of Governors of the Federal Reserve System, March 24, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–6237 Filed 3–29–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire 100 percent of the voting shares of Capitol Bancorp Colorado Limited, Lansing, Michigan, and thereby indirectly acquire Fort Collins Commerce Bank (in organization), Fort Collins, Colorado, and by Capital Bancorp Colorado Limited, Lansing, Michigan, to become a bank holding company by acquiring 51 percent of the voting shares of Fort Collins Commerce Bank (in organization), Fort Collins, Colorado.

Board of Governors of the Federal Reserve System, March 25, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–6322 Filed 3–29–05; 8:45 am]

BILLING CODE 6210–01–P

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 Web site at *http://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 April 15, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Royal Bancshares of Pennsylvania, Inc., Narberth, Pennsylvania; to engage de novo through its subsidiary, Royal Investments of Pennsylvania, LLC, Narberth, Pennsylvania, in extending credit and servicing loans, pursuant to section 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 25, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–6321 Filed 3–29–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Adolescent Family Life (AFL) Demonstration Projects

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice; modification.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) of the Office of Population Affairs (OPA) published a notice in the **Federal Register** of February 2, 2005, Doc. 70–5536, Part III, announcing the availability of funds for Adolescent Family Life (AFL) Demonstration Projects. Since that time, the Office of Public Health and Science (OPHS) has begun to participate with the government-wide grants initiative referred to as "Grants.gov Find and Apply."

DATES: As of March 30, 2005, OPHS will begin to accept competitive electronic applications submitted through the Grants.gov website portal for this funding announcement. Competitive applications submitted through Grants.gov will be electronically transferred from the Grants.gov Web site portal to the OPHS eGrants system for processing.

To receive consideration applications must be received according to the submission requirements stated below.

SUPPLEMENTARY INFORMATION:

Modification: Information regarding OPHS' acceptance of electronic grant application submissions via the OPHS eGrants system, as well as information regarding participation with Grants.gov is contained in the following modified OPHS Competitive Application Submission Policies.

Office of Public Health and Science

Competitive Application Submission Policies

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management

confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Website Portal is encouraged.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov*, or may be requested from the OPHS Office of Grants Management at 301–594–0758.

The body of the application and required forms can be submitted using the OPHS eGrants system. In addition to electronically submitted materials, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms with the original signature of an individual authorized to act for the applicant agency or organization. The application will not be considered complete until both the electronic application components submitted via the OPHS eGrants system and any hard copy materials or original signatures are received.

Electronic grant application submissions must be submitted via the OPHS eGrants system no later than 5 p.m. Eastern Time on April 4, 2005. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on April 5, 2005.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Any application submitted electronically after 5 p.m. Eastern Time on April 4, 2005 will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hardcopy original signatures and required mail-in items to the OPHS Office of Grants Management by 5 p.m. Eastern Time on April 5, 2005 will result in the electronic application being deemed ineligible.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Website Portal

The Grants.gov Website Portal provides for applications to be submitted electronically. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov*.

The body of the application and required forms can be submitted using the Grants.gov Website Portal. Grants.gov allows the applicant to download and complete the application forms at any time, however, it is required that organizations successfully complete the necessary registration processes in order to submit the application to Grants.gov.

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, excluding the standard forms included in the Grants.gov application package (*e.g.*, Standard Form 424 Face Page, Standard Assurances and Certifications (Standard Form 424B, and Standard Form LLL) must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Electronic grant application submissions must be submitted via the Grants.gov Website Portal no later than 5 p.m. Eastern Time on April 4, 2005. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on April 5, 2005.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Any application submitted electronically via the Grants.gov Website Portal after 5 p.m. Eastern Time on April 4, 2005 will be considered late and will be deemed ineligible. Failure of the applicant to submit all required hardcopy original signatures or materials to the OPHS Office of Grants Management by 5 p.m. Eastern Time on April 5, 2005 will result in the electronic application being deemed ineligible.

Upon completion of a successful electronic application submission via the Grants.gov Website Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any

applications deemed "Invalid" by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Website Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Website Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Website Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants are encouraged to initiate electronic applications via the Grants.gov Website Portal early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Website Portal.

Mailed or Hand-Delivered Hard Copy Applications

Applications submitted in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management, on or before 5 p.m. Eastern Time on April 4, 2005. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

ADDRESSES: Applications mailed or hand-delivered must be sent to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852. For further information contact 301–594–0758.

FOR FURTHER INFORMATION CONTACT: OAPP at 301–594–4004 or *oapp@osophs.dhhs.gov.*

Dated: March 14, 2005.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 05–6272 Filed 3–29–05; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Preventing Maternal and Neonatal Bacterial Infections in Developing Settings With a High Prevalence of HIV: Assessment of the Disease Burden and Evaluation of an Affordable Intervention in Soweto, South Africa; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to conduct a clinical trial to evaluate the efficacy of chlorhexidine vaginal wipes during labor at preventing perinatal and maternal post-partum sepsis in an African setting with a high prevalence of maternal HIV infection. In conjunction with this trial, risk factors for serious neonatal and maternal peripartum infections will be evaluated, with an emphasis on the impact of maternal HIV infection on these outcomes. Prospective maternal and neonatal infections surveillance will also be established to characterize the burden of disease. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the Respiratory and Meningeal Pathogens Unit of the Medical Research Council of South Africa. No other applications are solicited.

The Respiratory and Meningeal Pathogens Unit is the only institution that possesses the requisite scientific and technical expertise, the infrastructure capacity and experience and collaborative relationships necessary to conduct the described research topics and to ensure that all aspects of this agreement can be fulfilled. The Unit has already been a single eligibility recipient of a cooperative agreement for this activity and is midway through completion of this activity. This RFA will allow for completion of the activity.

C. Funding

Approximately $800,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 2005, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program issues, contact: Trudy Messmer, Scientific Review Administrator, 1600 Clifton Road, MS C–19, Atlanta, GA 30333, Telephone: (404) 639–3770, E-mail: *TMessmer@cdc.gov.*

Dated: March 24, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–6257 Filed 3–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Development of Influenza Surveillance Network in Vietnam; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to provide support and assistance to the government of Vietnam, specifically the National Institute of Hygiene and Epidemiology for the development and improvement of the influenza surveillance network in Vietnam. This network will focus on the systematic collection of virological and epidemiological information for influenza. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the Vietnam National Institute of Hygiene and Epidemiology through their Ministry of Health. Vietnam is being targeted for this cooperative agreement due to the recent outbreaks of highly pathogenic H5N1 avian influenza cases in humans and animals. The newly arising cases in humans are cause for great concern due to the potential of an influenza pandemic capable of causing millions of deaths. Since mid-December 2004, the Ministry of Health in Vietnam has confirmed 24 cases of human infection with H5N1 avian influenza. Of the 24 confirmed cases, 13 have resulted in fatalities. For the entire year of 2004, Vietnam had 28 human cases of H5N1 and 20 fatalities. Additionally, it appears that there are a growing number of possible family clusters suggesting the ability of the virus to spread through human to human contact. In response to these recent events in Vietnam, the Department of Health and Human Services requested that the Centers for Disease Control and Prevention create a cooperative agreement with Vietnam to enhance surveillance to address the current influenza situation as soon as possible. National Institute of Hygiene and Epidemiology (NIHE) has been chosen to conduct the surveillance for avian influenza because it serves as the National Influenza Center designated by the World Health Organization (WHO) and the Ministry of Health. As such, information collected by NIHE is reported directly into WHO's Global Influenza Surveillance System where it benefits countries globally.

C. Funding

Approximately $500,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before April 29, 2005 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Ann Moen, Project Officer, CDC, National Center for Infectious Diseases, Mailstop G–16, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone: 404–639–4652, E-mail: *AMoen@cdc.gov*.

Dated: March 24, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–6244 Filed 3–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0097]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study of Qualified Health Claims: Consumer Inferences About Omega-3 Fatty Acids and Monounsaturated Fatty Acids From Olive Oil

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary experimental study of consumer inferences about qualified health claims for omega-3 fatty acids and monounsaturated fatty acids from olive oil.

DATES: Submit written or electronic comments on the collection of information by May 31, 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: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, 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.

Experimental Study of Qualified Health Claims: Consumer Inferences About Omega-3 Fatty Acids and Monounsaturated Fatty Acids From Olive Oil

FDA regulates the labeling of food products under the Nutrition Labeling and Education Act of 1990 (NLEA) and dietary supplements under the Dietary Supplement Health and Education Act of 1994 (DSHEA). NLEA regulations establish general requirements for health claims in food labeling. A manufacturer is required to provide a description of the scientific evidence supporting a proposed health claim to FDA for review and authorization before the claim may appear in labeling. NLEA health claims must be "complete, truthful, and not misleading" (§101.14(d)(iii) (21 CFR 101.14 (d)(iii)). NLEA also mandates that "the claim enables the public to comprehend the information provided and to understand the relative significance of such information in the context of a total daily diet" (§101.14 (d)(v)).

In 2003, an FDA Task Force on Consumer Health Information for Better Nutrition issued a report that provided guidance on an interim review process

for health claims on food labels that do not meet a standard of significant scientific agreement (SSA). These claims, referred to as "qualified health claims," are assigned a specific level of scientific support according to an interim evidence-based ranking system for scientific data. The report also identified the need for consumer research to examine ways to communicate the level of scientific support associated with health claims that do not meet the traditional SSA standard. In the fall of 2004, FDA issued letters of enforcement discretion for two qualified health claims. The claims relate to the reduction of risk of coronary heart disease from the consumption of monounsaturated fatty acids from olive oil and omega-3 fatty acids. The qualified health claims appear below:

1. Limited and not conclusive scientific evidence suggests that eating about 2 tablespoons (23 grams) of olive oil daily may reduce the risk of coronary heart disease due to the monounsaturated fat in olive oil. To achieve this possible benefit, olive oil is to replace a similar amount of saturated fat and not increase the total number of calories you eat in a day. One serving of this product [Name of food] contains [x] grams of olive oil.

2. Supportive but not conclusive research shows that consumption of EPA and DHA omega-3 fatty acids may reduce the risk of coronary heart disease. One serving of [name of food] provides [x] grams of EPA and DHA omega-3 fatty acids. [See nutrition information for total fat, saturated fat and cholesterol content.]

The study proposed here is part of an ongoing effort by FDA to collect data concerning qualified health claims and their impact on consumer perceptions and behavior. Previous FDA studies have examined hypothetical qualified health claims to evaluate ways to communicate the strength of scientific evidence supporting a claim. This study will examine two issued health claims to evaluate whether consumers comprehend the information contained within the claim and whether consumers understand the relative significance of the information in the context of a total diet. In addition, the study will broaden FDA's understanding about how consumers interpret qualified health claims, particularly as they pertain to the level of scientific evidence conveyed by the message and to any differences there may be between qualified health claims on dietary supplements versus foods.

The experimental study data will be collected using participants of an Internet panel of approximately 600,000 people. Participation in the experimental study is voluntary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
30 (Pre-test)	1	30	.167	5
1,600 (Experiment)	1	1,600	.167	267
Total				272

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with internet panel experiments similar to the study proposed here.

Dated: March 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–6203 Filed 3–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (61 FR 65062–65065, December 10, 1996 and as last amended at 62 FR 27614–27615, dated May 20, 1997).

This notice is to amend the functions of a component of the Office of the Administrator. Specifically, this notice changes the name of the Office of Minority Health to the Office of Minority Health and Health Disparities, and revises the functional statement as follows:

Office of Minority Health and Health Disparities (RA9)

Serves as the principal advisor and coordinator to the agency for the special needs of minority and disadvantaged populations including: (1) Providing leadership and direction to address HHS and HRSA Strategic Plan goals and objectives related to improving minority health and eliminating health disparities; (2) establishing and managing an agency-wide data collection system for minority health activities and initiatives including the White House Initiatives for Historically Black Colleges and Universities, Educational Excellence for Hispanic Americans, Tribal Colleges and Universities, Asian Americans and Pacific Islanders, and Departmental Initiatives; (3) implementing activities to increase the availability of data to monitor the impact of agency programs in improving minority health and eliminating health disparities; (4) participating in the formulation of HRSA's goals, policies, legislative proposals, priorities, and strategies as they affect health professional organizations and institutions of higher education and others involved in or concerned with the delivery of culturally-appropriate, quality health services to minorities and disadvantaged populations; (5) consulting with Federal agencies and other public and private sector agencies and organizations to collaborate in addressing minority health and health disparities issues, including enhancing cultural competence in health service providers; (6) establishing short-term and long-range objectives; and (7) participating in the focus of activities and objectives in assuring equity in access to resources and health careers for minorities and the disadvantaged.

Section RA–30 Delegation of Authority

All delegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these

authorities prior to the effective date of this delegation.

This reorganization is effective upon the date of signature.

Dated: March 21, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–6205 Filed 3–29–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel, Loan Repayment Program Review.

Date: April 13, 2005.

Time: 8 a.m. to 5 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: Laurie Friedman Donze, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6216 Filed 3–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Patient-Oriented Career Training Grant Review.

Date: April 5, 2005.

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: Roy L. White, PHD, 6701 Rockledge Drive, Room 7202, MSC 7924, Division of Extramural Affairs; Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892. 301–435–0310. *whiterl@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. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6219 Filed 3–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel, Loan Repayment Program.

Date: April 27, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Adriana Costero, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, (301) 451–4573, *acostero@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Loan Repayment Program.

Date: April 28, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Adriana Costero, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, (301) 451–4573, *acostero@niaid.nih.gov.*

(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)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6210 Filed 3–29–05; 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, Population Centers.

Date: April 19–20, 2005.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD., Scientific Review Administrator, Division of Scientific Review, National Institue of Child Health, and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301)435–6911, *hopmannm@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: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6211 Filed 3–29–05; 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, Study Designs to Evaluate Health Benefits of Workplace Policies & Practices.

Date: April 18–19, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@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.)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6212 Filed 3–29–05; 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 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 Child Health and Human Development Special Emphasis Panel, National Children's Center—Vanguard Centers.

Date: April 17–18, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@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: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6215 Filed 3–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; to review Small Research Grants (R03s).

Dated: April 14, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric H. Brown, BS, AB, MS Scientific Review Administrator, National

Institute of Arthritis, Musculoskeletal & Skin Diseases, National Institutes of Health, 6701 Democracy Blvd, Room 824, MSC 4872, Bethesda, MD 20892–4872, (301) 435–0815, *browneri@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6218 Filed 3–29–05; 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, Prevention and Treatment of Childhood Obesity in Primary Care Settings.

Date: April 18–20, 2005.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852. (301) 435–6889. *bhatnagg@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: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6222 Filed 3–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 8, 2005, 10:30 a.m. to April 8, 2005, 12 p.m., The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037 which was published in the **Federal Register** on March 16, 2005, 70 FR 12892–12894.

The time of the meeting on April 8, 2005 has been changed to 9 a.m. to 10:30 a.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6213 Filed 3–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 8, 2005, 9 a.m. to April 8, 2005, 6 p.m. The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037 which was published in the **Federal Register** on March 11, 2005, 70 FR 12227–12228.

The time of the meeting on April 8, 2005 has been changed to 10:30 a.m. to 1 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6214 Filed 3–29–05; 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 appoications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN J(02) Mullisensory Integration.

Date: March 29, 2005.

Time: 11 a.m. to 12 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. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–345–1247, *steinmem@csi.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 Family Health.

Date: April 6, 2005.

Time: 1:30 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: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0728, *lachterk@csr.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, ZRG1 BDCN B 02M: Member Conflict.

Date: April 7, 2005.

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: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@csr.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, Molecular Neurobiology.

Date: April 8, 2005.

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: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6761 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jetsemac@csr.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. 03.306, 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: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6217 Filed 3–29–05; 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, S. aureus and TNFa Signaling.

Date: April 4, 2005.

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: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.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, Cone-Beam CT.

Date: April 5, 2005.

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: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.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, Tuberculosis Immunity.

Date: April 6, 2005.

Time: 11 a.m. to 12 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: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.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, Shigella-Host Interactions.

Date: April 6, 2005.

Time: 2:20 p.m. to 3:20 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: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.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, Member Conflict: Ehrlichiosis surveillance and Epidemiology.

Date: April 7, 2005.

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: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.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, Member Conflict: Insect Immune System.

Date: April 7, 2005.

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: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.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, New Role for Bacterial Redox Proteins.

Date: April 8, 2005.

Time: 1:30 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: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.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, Oral, Dental and Craniofacial Sciences Special Review.

Date: April 18, 2005.

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: J. Terrell Hoffeld, PhD, DDS, 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, Pneumococcal Pathogenesis.

Date: April 20, 2005.

Time: 2:30 p.m. to 3:30 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: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, (301) 435–0903, *millsm@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: March 22, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–6221 Filed 3–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20753]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: For each of 6 fiscal years starting in 1999, the Transportation Equity Act for the 21st Century has made $5 million available to the Secretary of Transportation for payment of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. This notice is being published to satisfy a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. In this notice we have specified the amount of monies the Coast Guard has committed, obligated or expended during fiscal year 2004, as of September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey N. Hoedt, Chief, Office of Boating Safety, telephone 202–267–1077, fax 202–267–4285, or Mr. Phil Cappel, Chief, Program Management Division, telephone 202–267–0988, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of title 46, U.S. Code—Recreational Vessels. The responsibility to administer these funds was delegated to the Commandant of the United States Coast Guard. Subsection (c) of section 7405 of the Act directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year 1999 through 2004 shall remain available until expended.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total cumulative amount of fiscal year 1999, 2000, 2001, 2002 and 2003 funding committed, obligated and/or expended for each activity was shown in our notice published in the **Federal Register** (68 FR 74625) on December 24, 2003. The total amount of funding, transferred to the Coast Guard from the Aquatic Resources (Wallop-Breaux) Trust Fund, committed, obligated and/or expended during fiscal year 2004 for each activity is shown below.

Factory Visit Program: Funding was provided to continue the national recreational boat factory visit program, initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit approximately 2,000 recreational boat manufacturers each year to inspect for compliance with the Federal regulations, communicate with the manufacturers as to why they need to comply with the Federal regulations, and educate them, as necessary, on how to comply with the Federal regulations. ($1,875,826)

Boat Compliance Testing: Funding was provided for expansion of the boat compliance testing program whereby new manually propelled and outboard recreational boats are purchased in the open market and tested for compliance with the Federal flotation standards. The expanded program includes inboard/sterndrive boats and used boats. ($100,000)

Associated Equipment Compliance Testing: A contract was awarded to buy recreational boat "associated equipment" (*e.g.*, starters, alternators, fuel pumps, and bilge pumps) and test this equipment for compliance with Federal safety regulations. This new initiative complements the boat compliance testing program. ($150,000)

New Recreational Boating Safety Associated Travel: Travel by employees of the Office of Boating Safety was performed to carry out additional recreational boating safety actions and to gather background and planning information for new recreational boating safety initiatives. ($5,404)

New Boat Manufacturer Handbook: A contract was awarded to reprint a comprehensive and user-friendly handbook for distribution to new recreational boat manufacturers. Included in the handbook are the Federal regulations and plain language guidelines that help clarify Federal requirements. The handbook is aimed at increasing the level of new recreational boat manufacturer compliance with applicable Federal regulations. ($26,220)

Articulated Mannequins/Computer Simulation Model: The objective of this contracted program is to improve the safety of recreational boaters by fostering developmental technology for improved personal flotation devices (PFDs). This program is furthering development of flotation mannequins and a water forces computer simulation program to promote the rapid, objective evaluation of different PFD designs on various body types that are representative of the recreational boating population. The computer simulation program will be validated through the use of a family of anthropomorphic, articulated mannequins. Under the contract to develop the articulated mannequins and computer simulation model, a male model has been built and is almost perfected. Currently, a female and a child mannequin are being developed. The development of a computer simulation program will facilitate

evaluation of the effectiveness of new and unique PFD designs. ($495,034)

Carbon Monoxide Research: Under a Memorandum of Agreement between the Office of Boating Safety and the Department of Health and Human Services, U.S. Public Health Service, Federal Occupational Health Program, funding was provided to continue investigation into identifying and classifying additional recreational boating carbon monoxide related deaths and injuries. ($100,000)

Fuel Cell Development: Funding was provided to explore the possibility of transferring fuel cell technology from land based units to marine propulsion use. ($225,000)

Recreational Boating Safety (RBS) Outreach Program: Funding was provided for this program which provides full marketing, media, public information, and program strategy support to the RBS effort. The goal is to coordinate the RBS outreach campaigns some of which include: National Boating Under the Influence Campaign (BUI), You're in Command, PFD Wear, Vessel Safety Check Program (VSC), Boating Safety Education Courses, and other recreational boating safety issues on an as needed basis. ($1,640,000)

Personnel Support: Funding was provided for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($437,769)

A total of $20,844,160 of the $25,000,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000, 2001, 2002 and 2003 has been committed, obligated or expended as of September 30, 2003. Of the $5 million made available to the Coast Guard in fiscal year 2004, $3,618,119 has been committed, obligated or expended and an additional $1,437,134 of prior fiscal year funds has been committed. obligated or expended, as of September 30, 2004. Therefore, a total of $25,899,413 of the $30,000,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000, 2001, 2002, 2003 and 2004 has been committed, obligated or expended as of September 30, 2004.

Dated: March 24, 2005.

James W. Underwood,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 05–6308 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 26, 2004, 69 FR 68952.

DATES: Send your comments by April 29, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0021.

Forms(s): NA.

Affected Public: Flight Schools, Candidates for Flight Training, and Flight School Employees.

Abstract: TSA requires FAA-endorsed flight schools to notify TSA when aliens or other individuals designated by TSA apply for flight training, and to provide certain identifying and training information to TSA when for aliens and other individuals designated by TSA who apply for recurrent training, in accordance with 49 CFR part 1552 (69 FR 56324, September 20, 2004). TSA also has established standards relating to the security threat assessments TSA will conduct to determine whether such individuals are a threat to aviation or national security, and thus prohibited from receiving flight training. Finally, TSA has established standards relating to security awareness training for certain flight school employees, to include keeping records of all such training.

Number of Respondents: 23,000.

Estimated Annual Burden Hours: An estimated 342,000 hours annually.

TSA is soliciting 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.

Issued in Arlington, Virginia, on March 24, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–6301 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–62–P

INTER-AMERICAN FOUNDATION

Agenda for Meeting of the Board of Directors; Sunshine Act

March 18, 2005; 12:30 p.m.–2 p.m.

The meeting was held via a conference call.

The meeting was closed as provided in 22 CFR 1004.4(f) to discuss matters related to the evaluation of candidates for the position of President of the Inter-American foundation.

12:30 p.m. Call to order; Begin executive session.

2 p.m. Adjourn.

Agenda for Meeting of the Board of Directors, March 28, 2005; 3 p.m.–4:30 p.m.

The meeting will be held via a conference call.

The meeting was closed as provided in 22 CFR 1004.4(f) to discuss matters

related to the evaluation of candidates for the position of President of the Inter-American foundation.

3 p.m. Call to order; Begin executive session.

4:30 p.m. Adjourn.

Jocelyn Nieva,

Acting General Counsel.

[FR Doc. 05–6339 Filed 3–28–05; 10:00 am]

BILLING CODE 7025–01–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Roanoke River National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Comprehensive Conservation Plan and Environmental Impact Statement for Roanoke River National Wildlife Refuge in Bertie County, North Carolina.

SUMMARY: This notice announces that a Draft Comprehensive Conservation Plan and Environmental Impact Statement for the Roanoke River National Wildlife Refuge are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the plan identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

DATES: Meetings will be held in early 2005 in Windsor and Halifax, North Carolina, to present the plan to the public. Mailings, newspaper articles, and posters will be the avenues to inform the public of the dates and times of the meetings. Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Impact Statement for the Roanoke River National Wildlife Refuge should do so within 90 days following the date of this notice. Public comments were requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach has included scoping meetings, a review of the biological program, an ecosystem planning team newsletter, and a **Federal Register** notice.

ADDRESSES: Requests for copies of the Draft Comprehensive Conservation Plan and Environmental Impact Statement should be addressed to Bob Glennon, Natural Resource Planner, Ecosystem Planning Office, U.S. Fish and Wildlife Service, 1106 West Queen Street, Edenton, N.C. 27932; Telephone 252/482–2364; Fax 252/482–3885. Comments on the draft may be submitted to the above address or via electronic mail to: *bob_glennon@fws.gov*. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: The Service analyzed three alternatives for future management of the refuge and chose alternative 3 as the preferred alternative.

Proposed goals for the refuge include:

- Protecting, maintaining, and enhancing healthy and viable populations of indigenous migratory birds, wildlife, fish, and plants including Federal and State threatened and endangered species;
- Restoring, maintaining, and enhancing the health and biodiversity of forested wetland habitats to ensure improved ecological productivity;
- Providing the public with safe, quality wildlife-dependent recreational and educational opportunities that focus on the wildlife and habitats of the refuge and the National Wildlife Refuge System; Continuing to participate in local efforts to achieve a sustainable level of economic activity; including nature-based tourism;
- Protecting refuge resources by limiting the averse impacts of human activities and development; and
- Acquiring and managing adequate funding, human resources, facilities, equipment, and infrastructure to accomplish the other refuge goals.

Also available for review are draft compatibility determinations for recreational hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Alternatives

The proposed action is to adopt and implement a comprehensive conservation plan for the refuge that best achieves the refuge's purpose, vision, and goals; contributes to the National Wildlife Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. The Service analyzed three alternatives for future management and chose Alternative 3 as the one to best achieve all of these elements. It advances the refuge program considerably and outlines programs that would meet the biological needs of refuge resources and the needs of the public.

Alternative 1 was a proposal to maintain the status quo; *i.e.*, no change from current management of the refuge. The staff would not actively manage habitat or the refuge. The staff would survey populations of neotropical migratory songbirds and forest health and regeneration in bottomland hardwood forests. The refuge would allow the six priority public use activities: Hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. The staff would conduct environmental education and interpretation on a request basis only. The zone law enforcement officer would enforce regulations on the refuge and supervise the law enforcement officers on other nearby refuges.

Alternative 2 proposes moderate program increases. The refuge would develop a habitat management plan and manage all habitats on the refuge. The staff would survey a wide range of wildlife on the refuge. The six priority public use activities would continue to be allowed with the refuge having the capacity to increase the number of opportunities. The staff would conduct regularly scheduled environmental education and interpretation programs. The Service would build a shop and equipment storage facility.

Alternative 3 proposes substantial program increases. The refuge would develop a habitat management plan and manage all habitats on the refuge and selected easements large enough to warrant consideration. The staff would survey all wildlife on the refuge. The refuge would increase further the number of public use opportunities beyond the level proposed in Alternative 2. The Service would build a shop and equipment storage facility.

Actions Common to All Alternatives

All three alternatives share the following concepts and techniques for achieving the goals of the refuge:

- Cooperating with State and Federal agencies, non-government organizations, and Dominion Power Company to evaluate the effects of managed flows on the Roanoke River floodplain on the refuge's natural resources;
- Cooperating with the North Carolina Wildlife Resources Commission to administer a hunting program on the refuge;
- Cooperating with the Partnership for the Sounds and Roanoke River Partners to promote nature-based tourism;
- Monitoring populations of neotropical songbirds and the health of bottomland hardwood forest stands; and
- Encouraging scientific research on the refuge.

Roanoke River National Wildlife Refuge, in northeastern North Carolina, consists of 20,978 acres, of which 13,824 acres are baldcypress-water tupelo swamp and 7,154 acres are bottomland hardwood forests. These forests support a variety of wildlife species, including neotropical migratory songbirds, waterfowl, colonial nesting birds, deer, turkey, and squirrels.

The refuge hosts 20,000 visitors annually who participate in hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: January 19, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–6255 Filed 3–29–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from the public, and from local, State and Federal agencies on the following permit requests.

DATES: Comments on these permit applications must be received on or before April 29, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE., 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–101141

Applicant: Washington State University, Vancouver, Washington.

The applicant requests a permit to take (survey by pursuit, mark, and release) the Fender's blue butterfly (*Icaricia icarioides fenderi*) in conjunction with research in Polk and Lane Counties, Oregon, for the purpose of enhancing its survival.

Permit No. TE–101373

Applicant: Jeanie Taylor, Seattle, Washington.

The applicant requests a permit to reduce/remove to possession (collect seeds) *Hackelia venusta* (showy stickseed) in conjunction with research in Chelan County, Washington, for the purpose of enhancing its survival.

We solicit public review and comment on these recovery permit applications.

Dated: March 11, 2005.

Don Weathers,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 05–6246 Filed 3–29–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Applications for Incidental Take Permits for the Arnaudo Brothers, Wathen-Castanos, and River East Holding Sites in Merced County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) is reopening the public comment period on the Draft Arnaudo Brothers, Wathen-Castanos and River East Holding Habitat Conservation Plan (HCP) and Draft Environmental Assessment (EA) for an incidental take permit for the endangered San Joaquin kit fox (*Vulpes macrotis mutica,* "kit fox") in Merced County, California.

DATES: To ensure consideration of comments, they must be received on or before April 29, 2005.

ADDRESSES: Please address written comments to Ms. Lori Rinek, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. You also may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek, Chief, Conservation Planning and Recovery Division, at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office [see **FOR FURTHER INFORMATION CONTACT**]. Documents also will be available for public inspection, by appointment, during normal business hours at the above address [see **ADDRESSES**] and at the following website: *http://www.harveyecology.com/.*

Background

The Arnaudo Brothers, Wathen-Castanos, and River East Holding Sites (Applicants) have applied to the Service for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The Service is considering issuing 10-year permits to the Applicants that would authorize take of the endangered kit fox incidental to otherwise lawful activities associated with the residential and commercial development of four sites in Merced County, California. The projects would result in the incidental take of kit fox on the project sites

through permanent removal off 182 acres of habitat. Incidental take may also potentially occur during construction and ground disturbance activities, which may affect occupied dens and individuals foxes.

On February 7, 2005, we published a "Notice of Availability of an Environmental Assessment and Receipt for Applications for Incidental Take Permits for the Arnaudo Brothers, Wathen-Castanos, and River East Holding Sites in Merced County, California" (70 FR 6452). In that notice, we requested public comment on the Draft HCP and Draft EA. The Draft EA is the Federal document that analyzes the impacts of the HCP. The analyses provided in the Draft EA is intended to inform the public of the proposed action, alternatives, and associated impacts; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

The comment period for the February 7, 2005, notice closed on March 9, 2005. We are now reopening the comment period until April 29, 2005. Comments on the Draft HCP, and Draft EA need not be resubmitted, as they will be fully considered in the final decision documents.

This notice is provided pursuant to section 10(a) of the Act as amended (16 U.S.C. 1531 *et seq.*), and the Service regulations (40 CFR 1506.6) for implementing the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: March 24, 2005.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–6242 Filed 3–24–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held April 19, 2005, beginning at 9 a.m. and adjourning at 4 p.m. at the BLM Boise District Office, Snake River Conference Room, located at 3948 Development Ave., Boise, ID. Public comment periods will be held after topics on the agenda.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following actions will occur/topics will be discussed:

- Hot Topics;
- Presentation and discussion on Idaho's Comprehensive Wildlife Conservation Strategy;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their Field Offices and the District;
- Subcommittee Reports:

○ Rangeland Standards and Guidelines;
  ○ Briefing on current conditions and actions being taken and planned in response to the drought,
  ○ Briefing on the outlook for Grasshopper and Mormon Cricket infestations this spring and summer, and what actions are being taken and are planned to help minimize and mitigate their impact to public lands,
  ○ Update on the status of the new grazing regulations
○ Off-Highway Vehicles (OHV) and Transportation Management;
  ○ Briefing on what is being planned by Idaho BLM for OHV Public Outreach,
○ Sage Grouse Habitat Management;
  ○ Update on status of Idaho's Sage Grouse Habitat Conservation Strategy, and Map of Wind Energy Projects across Idaho, and;
○ Resource Management Plans;
  ○ Presentation of draft alternatives for the Snake River Birds of Prey National Conservation Area Resource Management Plan. RAC review and feedback.

Agenda items may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: March 24, 2005.

James H. Johansen,

Acting District Manager.

[FR Doc. 05–6256 Filed 3–29–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5870–EU]

Notice of Realty Actions: Competitive Sale of Public Lands in Clark County, NV; Termination of Segregation and Classification of Two Parcels Designated for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell 72 parcels of federally owned land in Laughlin, Nevada, aggregating approximately 2,058.19 acres. All sales will be conducted in Laughlin on June 15, 2005, in accordance with competitive bidding procedures. The BLM also is terminating the Recreation and Public Purposes classifications of two parcels of land in Clark County, Nevada, that will be offered for sale on June 15, 2005.

DATES: Comments regarding the proposed sale must be received by BLM on or before May 16, 2005.

Sealed bids must be received by the BLM not later than 4:30 p.m., PDT, June 10, 2005.

All parcels of land proposed for sale are to be put up for purchase and sale, at public auction, beginning at 10 a.m., PDT, June 15, 2005. Registration for oral bidding will begin at 8 a.m., PDT, June 15, 2005. The public auction will begin at 10 a.m., PDT, June 15, 2005.

Other deadline dates for the receipt of payments, and arranging for certain payments to be made by electronic transfer, are specified in the proposed terms and conditions of sale, as stated herein.

ADDRESSES: Comments regarding the proposed sale, as well as sealed bids to

be submitted to BLM, should be addressed to: Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

More detailed information regarding the proposed sale and the lands involved may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the Las Vegas Field Office (LVFO).

The address for oral bidding registration, and for where the public auction will be held is: Laughlin Junior/Senior High School, 1900 Cougar Drive, Laughlin, Nevada 89028.

The auction will take place in the Auditorium at the Laughlin Junior/Senior High School.

FOR FURTHER INFORMATION CONTACT: You may contact Judy Fry, Program Lead, SALES at (702) 515–5081 or by e-mail at *jfry@nv.blm.gov*. You may also call (702) 515–5000 and ask to have your call directed to a member of the Sales Team.

SUPPLEMENTARY INFORMATION: The following lands have been authorized and designated for disposal in the Las Vegas Field Office Resource Management Plan (RMP), dated October 5, 1998 and, therefore, meet the disposal qualification of section 205 of the Federal Land Transaction Facilitation Act of July 25, 2000 (43 U.S.C. 2304) (hereinafter FLTFA). These lands are proposed to be put up for purchase and sale by competitive auction on June 15, 2005, at an oral auction to be held in accordance with Section 205 of FLTFA, the applicable provisions of Sections 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), respectively, and the implementing FLPMA regulations, 43 CFR part 2710 and part 2720, at not less than the fair market value (FMV) of each parcel, as determined by the authorized officer after appraisal. The proceeds from the sale of the lands will be deposited into the Federal Land Disposal Account, pursuant to FLTFA.

Lands Proposed for Sale

Mount Diablo Meridian, Nevada,

Mount Diablo Meridian,

T. 32 S., R. 66 E.,
Sec. 08, Lots 2–5, 7–12, 14–18, 20–22, 24–29, 31–33.
Sec. 09, N½NE¼, SW¼NE¼, E½SE¼NE¼, N½NW¼SE¼NE¼, NE¼NW¼, S½NW¼, SW¼, NE¼NE¼SE¼, S½NE¼SE¼, W½NW¼SE¼, S½SE¼.
Sec. 15, N½NE¼NE¼NW¼, S½NE¼NE¼NW¼, NE¼NW¼NE¼NW¼, NW¼NW¼NE¼NW¼, SW¼NW¼NE¼NW¼, SE¼NW¼NE¼NW¼, SW¼NE¼NW¼, SE¼SW¼NE¼NW¼, N½SE¼NE¼NW¼, S½SE¼NE¼NW¼, E½NE¼NE¼NW¼NW¼, W½NE¼NE¼NW¼NW¼, E½NW¼NE¼NW¼NW¼, W½NW¼NE¼NW¼NW¼, W½SW¼NE¼NW¼NW¼, E½SW¼NE¼NW¼NW¼, W½SE¼NE¼NW¼NW¼, E½SE¼NE¼NW¼NW¼, E½NE¼NW¼NW¼NW¼, W½NE¼NW¼NW¼NW¼, E½NW¼NW¼NW¼NW¼, W½NW¼NW¼NW¼NW¼, W½SW¼NW¼NW¼NW¼, E½SW¼NW¼NW¼NW¼, W½SE¼NW¼NW¼NW¼, E½SE¼NW¼NW¼NW¼, E½NE¼SW¼NW¼NW¼, W½NE¼SW¼NW¼NW¼, E½NW¼SW¼NW¼NW¼, W½NW¼SW¼NW¼NW¼, W½SW¼SW¼NW¼NW¼, E½SW¼SW¼NW¼NW¼, W½SE¼SW¼NW¼NW¼, E½SE¼SW¼NW¼NW¼, E½NE¼SE¼NW¼NW¼, W½NE¼SE¼NW¼NW¼, E½NW¼SE¼NW¼NW¼, W½NW¼SE¼NW¼NW¼, W½SW¼SE¼NW¼NW¼, E½SW¼SE¼NW¼NW¼, W½SE¼SE¼NW¼NW¼, E½SE¼SE¼NW¼NW¼, N½SW¼, N½SW¼SW¼, W½SW¼SW¼SW¼, SE¼SW¼SW¼, W½SE¼SW¼, E½SE¼SW¼.
Sec. 16, NE¼, W½SW¼NW¼, SE¼SW¼NW¼, NE¼SE¼NW¼, S½SE¼NW¼, N½NE¼SW¼, N½SW¼NE¼SW¼, SE¼NE¼SW¼, N½NW¼SW¼, N½SW¼NW¼SW¼, N½SE¼NW¼SW¼, S½NE¼SW¼SW¼, SE¼SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, SW¼SE¼, W½SE¼SE¼, E½SE¼SE¼.
Sec. 17, Lots 1–4, 6–22, 25–30, 32, 34–36.

Consisting of 72 Parcels Containing 2,058.19 Acres, More or Less

If a parcel of land is sold, the locatable mineral interests therein will be sold simultaneously as part of the sale. The lands identified for sale have no known locatable mineral value. An offer to purchase any parcel at auction will constitute an application for conveyance of the locatable mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

Terms and Conditions of Sale

The terms and conditions applicable to this sale are as follows: All parcels are subject to the following:

1. All discretionary leaseable and saleable mineral deposits are reserved to the United States on the lands in Clark County; but, permittees, licensees, and lessees retain the right to prospect for, mine, and remove such minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All parcels are subject to valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the marketability of title, or the federally approved Fair Market Value (FMV), of a parcel. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during business hours, 7:30 a.m. PDT to 4:30 p.m. PDT, Monday through Friday, at the BLM LVFO.

4. All parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with laws and local governing entities' transportation plans.

5. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcels of land proposed for sale; and the conveyance of any such parcel will not be on a contingency basis. However, to the extent required by law, all such parcels are subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).

6. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the

patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with each of the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

7. Maps delineating the individual proposed sale parcels are available for public review at the BLM LVFO and at the office of the Laughlin Town Manager located at the Laughlin Regional Government Center, 101 Civic Way, Laughlin, Nevada 89029. Current appraisals for each parcel are expected to be available for public review at the LVFO on or about March 31, 2005.

8. (a) Sealed bids may be presented for all parcels. Sealed bids must be received at the BLM LVFO, no later than 12 p.m., PDT, Friday, June 10, 2005. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel and the sale date. Bids must be for not less than the federally approved FMV and a separate bid must be submitted for each parcel.

8. (b) Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount bid. The highest qualified sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the FMV, as determined by the authorized officer.

9. All parcels will be put up for competitive sale by oral auction beginning at 10 a.m., PDT, June 15, 2005, in the Auditorium of the Laughlin Junior/Senior High School located at 1900 Cougar Drive, Laughlin, Nevada. Interested parties who will not be bidding are not required to register and may proceed directly to the Auditorium.

10. All oral bidders are required to register. Registration for oral bidding will begin at 8 a.m. PDT on the day of the sale and will end at 10 a.m. PDT. You are encouraged to pre-register by mail or fax by completing the form located in the sale book. The form is also available at the Laughlin Regional Government Center, the BLM LVFO, and on the Internet at *http://www.nv.blm.gov/snplma*. Pre-registration will end at 12 p.m. PDT, on June 3, 2005.

11. (a) Prior to receiving a bidder number on the day of the sale, all registered bidders must submit a certified check, bank draft, or cashier's check in the amount of $10,000. The certified check bank draft, or cashier's check must be made payable in U.S. dollars to the Bureau of Land Management. On the day of the sale, pre-registered bidders may go to the Express Registration Desk, present their Photo Identification, the required $10,000 check, and receive a bidder number. All other bidders must go to the standard Registration Line where additional information will be requested along with your Photo Identification and the required $10,000 check. Upon completion of registration you will be given a bidder number. If you are a successful bidder, the $10,000 will be applied to your required 20% deposit. Following the auction, checks will be returned to the unsuccessful bidders upon presentation of Photo Identification and return of their bidder number at the designated location.

11. (b) If as a result of a sealed bid you presented to BLM prior to the auction, you were not declared a high-bidder, your check will be returned to you at the auction upon proof of identification. If you do not attend the auction, your check will be returned according to your instructions.

12. If you purchase one or more parcels and default on any single parcel, the default will be against all of your parcels. BLM will retain your $10,000 and the sale of all parcels to you will be cancelled.

13. The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the full deposit amount by 2 p.m. PDT on the day of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable in U.S. dollars to the Bureau of Land Management, for not less than 20 percent of the amount of the successful bid. Payment must be made at the auction site at the Laughlin Junior/Senior High School.

14. The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the competitive sale date in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Arrangements for Electronic Fund Transfer (EFT) to BLM for the balance which is due on or before December 12, 2005, must be made a minimum of two weeks prior to the date you wish to make payment. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

15. Oral bids will be considered only if received at the place of sale and made at least for the FMV as determined by the authorized officer.

16. The BLM may reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or are determined to be not in the public interest.

If not sold, any parcel described above in this Notice may be identified for sale at a later date without further legal notice. Parcels for which no bids are received, may be put up for sale in a future online auction on the Internet. Internet auction procedures will be available at *http://www.auctionrp.com*. If unsold on the Internet, parcels may be put up for sale at future auctions without additional legal notice. Land use applications may be considered after completion of the sale for parcels that are not sold through sealed, oral, or online Internet auction procedures provided the authorization will not adversely affect the marketability or value of the parcel.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State Instrumentality, or political subdivision authorized to acquire and own real property; or an entity including, but not limited to, associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada. Certification of bidder qualification must accompany the bid deposit.

In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable State and local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The Environmental Assessment, EA NUMBER 2004–475, Laughlin Land Sale, and Record of Decision, detailed information concerning the sale, including the encumbrances, reservations, sale procedures and conditions, and CERCLA is available for review at the BLM LVFO, or by calling (702) 515–5114. This information will also be available on the Internet at *http://propertydisposal.gsa.gov*. Click on NV for Nevada. It will also be available on the Internet at *http://www.nv.blm.gov/snplma*. Click on *Federal Land Transaction Facilitation Act*, then *Land Sales*, then *Upcoming Sales*. Scroll down the page and select Laughlin.

Termination of Classification and Segregations

Additionally, the following leases granted under the Recreation and Public Purposes (R&PP) Act, 43 U.S.C. 869 *et. seq.*) have been relinquished: N–50031 (54 FR 23712) and N–50912 (54 FR 23711). This Notice officially terminates the R&PP classifications and segregations. Exchange file N–74701, 48 U.S.C. 1716, was closed without action on 2/12/03 and this Notice officially terminates that Exchange Segregation. Lands described in this Notice were also previously segregated under Exchange file N–61698 and this Notice officially terminates that Exchange Segregation of the described lands. The above terminations, however, do not, operate, or serve as opening orders.

Segregation

The publication of this Notice in the **Federal Register** shall segregate the public lands covered by this Notice to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the Notice segregates the lands from the use applied for in the application. The segregative effect of this Notice shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

Public Comments

The general public and interested parties may submit, in letter format, comments regarding the proposed sale and purchase to the Field Manager, BLM LVFO, up to 45 days after publication of this Notice in the **Federal Register**. Facsimiles, e-mails and telephone calls are unacceptable means for the transmission of comments. Any adverse comments will be reviewed by the Nevada, BLM State Director, or other authorized official, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commentor to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Dated: March 11, 2005.

Juan Palma,

Field Manager.

[FR Doc. 05–6270 Filed 3–29–05; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–535]

Certain Network Communications Systems for Optical Networks and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 25, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ciena Corporation of Linthicum, Maryland. An amended complaint was filed on March 14, 2005. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network communications systems for optical networks and components thereof by reason of infringement of claims 5–11, 13 and 14 of U.S. Patent No. 5,978,115 and claims 1–25 and 27–37 of U.S. Patent No. 6,618,176. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov/*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair

Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on March 23, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain network communications systems for optical networks or components thereof by reason of infringement of one or more of claims 5–11, 13 and 14 of U.S. Patent No. 5,978,115 and claims 1–25 and 27–37 of U.S. Patent No. 6,618,176, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Ciena Corporation, 1201 Winterson Road, Linthicum, Maryland 21090.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Nortel Networks Corporation, 8200 Dixie Road, Brampton, Ontario, Canada L6T 5P6.

Nortel Networks Limited, 8200 Dixie Road, Brampton, Ontario, Canada L6T 5P6.

Nortel Networks, Inc., 2221 Lakeside Boulevard, Richardson, Texas 75082.

Flextronics International Ltd., One Marina Boulevard, #28–00, Singapore 018989.

Flextronics Telecom Systems Ltd., 802 St. James Court, St. Denis Street, Port Louis, Mauritius.

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: March 24, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–6299 Filed 3–29–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant To Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 22, 2005, a proposed Consent Decree in *United States* v. *Chemical Waste Management, et al.*, Civil Action No. 02–2007, was lodged with the United States District Court for the District of New Jersey.

The proposed Consent Decree resolves the United States' claims for reimbursement of response costs, pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), and for civil penalties, pursuant to section 106 of CERCLA, against Waste Management, Inc., Chemical Waste Management, Inc., SCA Services, Inc., SCA Services of Passaic, Inc., Wastequid, Inc., Waste Management Holdings, Inc., Earthline Company, Anthony Gaess, Transtech Industries, Inc., Filcrest Realty, Inc. Inmar Associates, Inc., and Kin-Buc, Inc. ("Settling Defendants"), in connection with the Kin-Buc Landfill Superfund Site, in Edison, New Jersey ("Site"). Under the proposed Decree, Settling Defendants will: (1) Pay $2,625,000 in reimbursement of the United States' Site-related response costs, plus interest; (2) pay $100,000 in civil penalties, plus interest; (3) perform a Supplemental Environmental Project ("SEP"), involving (a) The transfer of title to approximately 96 acres of land; (b) the recording of Conservation Easements prohibiting most use and development of the land in perpetuity; and (c) payment of $25,000 in SEP funding; and (4) provide Additional Relief, including the payment of at least $83,000 for the preparation and implementation of initial and final financing plans, an open space land management plan, and a wetland restoration plan covering at least the 96 acres. To become effective, the Consent Decree must be approved by the United States District Court for the District of New Jersey.

For a period of thirty (30) days after the date of this publication, the U.S. Department of Justice will accept comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, c/o David L. Weigert, Esq., Environmental Enforcement Section, PO Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Chemical Waste Management, et al.*, Civil Action No. 02–2077, DJ # 90–11–3–1563/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, Peter W. Rodino, Jr. Federal Building, 970 Broad Street, 7th Floor Newark, New Jersey and the office of the U.S. Environmental Protection Agency, Region II, New Jersey Superfund Branch, 290 Broadway, 19th Floor, New York, New York. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. Copies of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number

(202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Decree, including attachments, please enclose a check in the amount of $70.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Defense.

[FR Doc. 05–6304 Filed 3–29–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under the policy set out at 28 CFR 50.7, notice is hereby given that on March 18, 2005, the United States lodged with the United States District Court for the Southern District of Ohio a proposed consent decree ("Consent Decree") in the case of *United States, et al* v. *Ohio Edison Co., et al.*, Civ. A. No. 2:99–CV–1181. The Consent Decree settles claims under the Clean Air Act ("Act") by the United States and the States of New York, New Jersey and Connecticut against Ohio Edison Company ("Ohio Edison"), a subsidiary of FirstEnergyCorp. ("FirstEnergy"), regarding its W.H. Sammis Station coal-fired power plant ("Sammis plant") in Stratton, Ohio.

The settlement resolves a lawsuit filed in 1999 alleging that Ohio Edison undertook construction projects at the Sammis plant in violation of the Prevention of Significant Deterioration provisions of the Act, 42 U.S.C. 7470–7492, and the New Source Review provisions of the Act, 42 U.S.C. 7501–7515. In a 2003 trial on liability, the U.S. District Court for the Southern District of Ohio upheld the Clean Air Act violations. The Consent Decree settles the remedy phase of the litigation, averting a second trial.

Under the Consent Decree, Ohio Edison agrees to significantly reduce its annual emissions of sulfur dioxide ("SO_2") and nitrogen oxide ("NO_X") by installing state-of-the-art pollution controls on the two largest steam-generating units of the Sammis plant (Units 6 and 7); installing other pollution controls on the five smaller Sammis units (Units 1 to 5); and capping its annual SO_2 and NO_X emissions from the Sammis plant. In addition, Ohio Edison agrees to undertake pollution reduction measures at several other FirstEnergy coal-fired plants.

As part of the settlement, Ohio Edison agrees to pay a civil penalty of $8.5 million. Ohio Edison also agrees to undertake projects to mitigate past harm to the environment including renewable energy projects valued at approximately $14.4 million, involving electricity generated by wind power (or, with the governments' approval, landfill gas). In addition, Ohio Edison agrees to fund $10 million worth of environmentally beneficial projects in the States of New York, New Jersey and Connecticut. Finally, Ohio Edison agrees to fund a solar energy project in Allegheny County, Pennsylvania, and a project addressing air quality in the Shenandoah National Park.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States, et al.* v. *Ohio Edison Co., et al.*, DOJ Ref. No. 90–5–2–1–06894.

The Consent Decree may be examined at the offices of the United States Attorney, Southern District of Ohio, 280 North High Street, Fourth Floor, Columbus, Ohio 43215, and at the offices of U.S. EPA Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine R. McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–6303 Filed 3–29–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on February 28, 2005, pursuant to Section 6(a) of the National Cooperative Reserach and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, HarvestRoad, Ltd., Perth, Western Australia, Australia; Indiana University-Purdue University Indianapolis, Indianapolis, IN; and Pearson Education, Inc., Boston, MA 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 IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Seciton 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Seciton 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on December 8, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5485).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–6278 Filed 3–29–05; 8:45 am]

BILLING CODE 4410–11–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2005–2 CARP CRA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for notices of intention to participate, and announcement of negotiation period.

SUMMARY: The Copyright Office of the Library of Congress announces the deadline for filing Notices of Intent to Participate in a CARP proceeding to adjust the rates for the cable statutory license and announces the dates of the 30-day negotiation period.

DATES: Comments on the petition and Notices of Intent to Participate are due no later than April 29, 2005. The 30-day negotiation period begins May 4, 2005 and ends on June 3, 2005. Written notification of the status of settlement negotiations due no later than June 6, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of the comments on the petition, Notices of Intent to Participate, and/or written notification of status of settlement negotiations should be addressed to: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20059–6000; then delivered Monday through Friday, between 8:30 a.m. and 5 p.m., to the Public Information Office located at the same address. If hand delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar corporate courier services), an original and five copies of the comments on the petition, Notices of Intent to Participate, and/or written notification of status of settlement negotiations should be addressed to: Copyright Office General Counsel/CARP, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC.; then delivered by a courier showing proper identification, *e.g.*, a valid driver's license, Monday through Friday between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC. If sent through the U.S. Postal Service, an original and five copies of the comments on the petition, Notices of Intent to Participate, and/or written notification of status of settlement negotiations should be addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Services; etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Abioye E. Oyewole, CARP Specialist. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act, title 17 of the United States Code, grants a statutory copyright license to cable television systems for the retransmission of over-the-air broadcast stations to their subscribers. In exchange for the license, cable operators submit royalties, along with statements of account detailing their retransmissions, to the Copyright Office on a semi-annual basis. The Office then deposits the royalties with the United States Treasury for later distribution to copyright owners of the broadcast programming retransmitted by cable systems.

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d). Royalty fees are based upon the gross receipts received by a cable system from subscribers receiving retransmitted broadcast signals. Section 111(d) subdivides cable systems into three categories based on their gross receipts: small, medium, and large. Small systems pay a fixed amount without regard to the number of broadcast signals they retransmit, while medium-sized systems pay a royalty within a specified range, with a maximum amount, based on the number of signals they retransmit. Large cable systems calculate their royalties according to the number of distant broadcast signals which they retransmit to their subscribers.[1] Under this formula, a large cable system is required to pay a specified percentage of its gross receipts for each distant signal that it retransmits.

Congress established the gross receipts limitations that determine a cable system's size and provided the gross receipts percentages (*i.e.*, the royalty rates) for distant signals. 17 U.S.C. 111(d)(1). It also provided for adjustment of both the gross receipts limitations and the distant signal rates. 17 U.S.C. 801(b)(2). The limitations and rates can be adjusted to reflect national monetary inflation, changes in the average rates charged by cable systems for the retransmissions of broadcast signals, or changes in certain cable rules of the Federal Communications Commission in effect on April 15, 1976. 17 U.S.C. 801(b)(2)(A),(B),(C) and (D). Prior rate adjustments of the Copyright Royalty Tribunal made under section 801(b)(2)(B) and (C) may also be reconsidered at five-year intervals. 17 U.S.C. 803(b). The current gross receipts limitations and rates are set forth in 37 CFR 256.2. Rate adjustments are now made by a Copyright Arbitration Royalty Panel ("CARP"), subject to review by the Librarian of Congress.[2]

Section 803 of the Copyright Act provides that the gross receipts limitations and royalty rates may be adjusted every five years, making 2005 a royalty adjustment year, upon the filing of a petition from a party with a "significant interest" in the proceeding. If the Librarian determines that a petitioner has a "significant interest" in the royalty rate or rates in which adjustment is requested, the Librarian must convene a CARP to determine the adjustment. 17 U.S.C. 803(a)(1). Section 37 CFR 251.63 of the CARP rules provides that the Librarian shall designate a 30-day negotiation period to allow interested parties to settle differences regarding the adjustment of cable rates before commencement of a formal CARP proceeding.

II. Petitions

This is a window year for filing. On January 10, 2005, the Library received a petition to adjust the cable rates and gross receipts limitations from Joint Sports Claimants and Program Suppliers seeking commencement of the 30-day voluntary negotiation period under § 251.63. See *http://www.copyright.gov/carp/cable-rate-petition.pdf*. On January 26, 2005, the Office published a **Federal Register** notice requesting public comments as to whether or not it was appropriate and/or required that the 2005 cable rate adjustment be resolved through the CARP process set forward under chapter 8 of the Copyright Act prior to the passage of the Copyright Royalty Distribution and Reform Act ("CRDRA"), or whether the petition filed by the Joint Sports Claimants and the Program Suppliers should be terminated and transferred to the Copyright Royalty Judges under the CRDRA. 70 FR 3738 (January 26, 2005). In response, on February 16, 2005, the Library received one comment from the Copyright Owners requesting a CARP for the resolution of the 2005 cable rate adjustment. Having received no comments in opposition and persuaded that it is appropriate to conduct a CARP

[1] For large cable systems which retransmit only local broadcast stations, there is still a minimum royalty fee which must be paid. This minimum fee is not applied, however, once the cable system carries one or more distant signals.

[2] The Library is conducting this rate adjustment proceeding under the CARP system as opposed to the new Copyright Royalty Judges system adopted by Congress at the end of last year. *See, infra.*

Proceeding, the Library now seeks comment consistent with 17 U.S.C. 803(a)(1) as to whether Joint Sports Claimants and Program Suppliers have a significant interest in the adjustment of the cable rates. Comments are due no later than April 29, 2005.

III. Negotiation Period and Notices of Intent To Participate

As discussed above, the Library's rules require that a 30-day negotiation period be prescribed by the Librarian to enable the parties to a rate adjustment proceeding to settle their differences. 37 CFR 251.63(a). The rules also require interested parties to file Notices of Intent to Participate with the Library. 37 CFR 251.45(a). Consequently, in addition to requiring parties to file comments on the Joint Sports Claimants' and Program Suppliers' petition, the Library is directing parties to file their Notices of Intent to Participate on the same day, April 29, 2005. Failure to file a timely Notice of Intent to Participate will preclude a party from further participation in this proceeding.

The 30-day negotiation period shall begin on May 4, 2005, and conclude on June 3, 2005. Those parties that have filed Notices of Intent to Participate are directed to submit to the Library a written notification of the status of their settlement negotiations no later than June 6, 2005. If, after the submission of these notifications it is clear that no settlement has been reached, the Library will issue a scheduling order for a CARP proceeding to resolve this rate adjustment proceeding.

Dated: March 25, 2005.

David O. Carson,

General Counsel.

[FR Doc. 05–6311 Filed 3–29–05; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–065)]

National Environmental Policy Act; Development of Nuclear Reactors for Space Electric Power Applications

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement (PEIS) and to conduct scoping for the research and development activities associated with nuclear fission reactors to produce electrical power for potential use in space on future NASA exploration missions.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's policy and procedures (14 CFR subpart 1216.3), NASA, in cooperation with the U.S. Department of Energy (DOE), intends to prepare a PEIS for the research and development activities associated with space nuclear fission reactors for electric power production in potential future NASA missions. The design and development effort would take advantage of relevant knowledge gained from earlier space nuclear reactor development efforts. NASA will hold public scoping meetings as part of the scoping process associated with the PEIS. If the proposed technology proves to be feasible for space applications, the first mission could be launched from the Cape Canaveral, Florida area. A separate mission-specific EIS would be prepared prior to launch of a space nuclear reactor powered mission.

DATES: Interested parties are invited to submit comments on environmental issues and concerns in writing on or before May 31, 2005, to assure full consideration during the scoping process.

ADDRESSES: Hardcopy comments should be mailed to NASA Prometheus PEIS, NASA Headquarters, Exploration Systems Mission Directorate, Mail Suite 2V–39, 300 E Street, SW., Washington, DC 20546–0001. Comments may be submitted by e-mail to: *nasa-prometheus-peis@nasa.gov*, or via the Internet at: *http://exploration.nasa.gov/nasa-prometheus-peis.html*.

FOR FURTHER INFORMATION CONTACT: NASA Prometheus PEIS, NASA Headquarters, Exploration Systems Mission Directorate, Mail Suite 2V–39, Washington, DC 20546–0001, by telephone at 866–833–2061, by electronic mail at nasa-prometheus-PEIS@nasa.gov, or on the Internet at: *http://exploration.nasa.gov/nasa-prometheus-peis.html*.

SUPPLEMENTARY INFORMATION: NASA is entering the next phase in its scientific exploration of the solar system that will increase the quantity, quality, and types of information collected on scientific exploration missions throughout the solar system including missions to the Moon, Mars and beyond. However, this phase of exploration missions cannot be accomplished with the current propulsion, energy production and storage technologies presently available. Space nuclear fission reactor technology may offer the potential to provide sufficient energy to enable long-duration spacecraft propulsion capabilities as well as provide abundant, continuous electrical power for spacecraft operations, high capability science instruments, and high data-rate communication systems. While a space nuclear reactor would possess a larger amount of stored energy, providing greater exploration capability than was previously available to spacecraft, the physical size and power output would be relatively small; about the size of a kitchen refrigerator and able to power a 400-pupil elementary school. NASA's development initiative responds to concerns raised by the space science community regarding limitations of current and reasonably foreseeable technologies for Solar System exploration.

Space nuclear fission reactor systems could enable exploration missions requiring substantially greater amounts of electrical power (on the order of many kilowatts of electricity), where currently available and reasonably foreseeable energy systems are likely to be inadequate. The ability to generate high levels of sustained electrical power regardless of location in the solar system would permit a new class of missions designed for longevity, flexibility, and comprehensive scientific exploration. This new technology could enable multi-destination, multi-year exploration missions capable of entering into desired orbits around a body, conducting observations, and then departing to a new destination. Increased power and energy on-board the spacecraft would also permit: (1) Launching spacecraft with larger science payloads; (2) use of advanced high capability scientific instruments; and (3) transmission of large amounts of data back to Earth. The PEIS will articulate the purpose and need for space nuclear fission reactors for production of electric power and their relation to NASA's overall exploration strategy. The PEIS will also evaluate known and reasonably foreseeable power technologies to determine whether they are reasonable alternatives to meet NASA's purpose and need. NASA has commissioned early feasibility and conceptual studies for mission capabilities that could be enabled by space nuclear fission reactors for the production of electric power. The PEIS will include a high-level discussion of the projected reactor technology development activities at NASA and DOE through final design,

testing, and fabrication of a system for use in space. Some early feasibility and conceptual studies identified a potential need for new facilities such as a land-based prototype reactor to test the reactor design before actual use, and launch site support facilities for final assembly and testing of the spacecraft before launch. Substantial modifications to existing facilities or their operations, or building new facilities for reactor development or launch site support capabilities, would not be done before considering the environmental impacts including preparation of the appropriate site-specific NEPA documentation. Mission-specific uses of a fission reactor would also be subject to separate NEPA documentation. Alternatives to be considered in this PEIS may include but would not necessarily be limited to:

—Alternative power generation technologies, such as advanced batteries and solar power.

—The No Action Alternative, where NASA would not pursue development of a spacecraft nuclear fission reactor.

Written public input and comments on environmental impacts and concerns associated with the development of a spacecraft nuclear fission reactor are requested. NASA is interested in public input on which environmental issues should be focused upon in the PEIS and what alternative power generation technologies should be considered. NASA also plans on holding two public scoping meetings to provide information on the Prometheus PEIS and to solicit public comments. These meetings are:

—April 19, 2005, from 1 p.m.–4 p.m. and 6 p.m.–9 p.m. at the Florida Solar Energy Center; H. George Carrison Auditorium; 1679 Clearlake Road; Cocoa, Florida 32922;

—April 26, 2005, from 1 p.m.–4 p.m. at the Hyatt Regency Washington on Capitol Hill; 400 New Jersey Avenue, NW., Washington DC 20001.

Persons interested in attending these meetings may request meeting information via electronic mail at *nasa-prometheus-peis@nasa.gov*, by telephone at 866–833–2061, or by visiting the Prometheus PEIS Web site at: *http://exploration.nasa.gov/nasa-prometheus-peis.html*.

Jeffrey E. Sutton,

Assistant Administrator for Infrastructure and Administration.

[FR Doc. 05–6317 Filed 3–29–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–063)]

NASA Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee and Astronomical Search for Origins and Planetary Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming joint meeting of the NASA Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee and Astronomical Search for Origins and Planetary Systems Subcommittee.

DATES: Monday April 11, 2005, 8:30 a.m. to 5:30 p.m., Tuesday, April 12, 2005, 8:30 a.m. to 5:30 p.m., and Wednesday, April 13, 2005, 8:30 a.m. to noon.

ADDRESSES: Inn and Conference Center, University of Maryland, 3501 University Boulevard East, Adelphi, Maryland 20783.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Salamon, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0441, *Michael.h.salamon@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topic:

—Review of Universe Division Planning Document

Attendees will be requested to sign a visitor's register. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: March 24, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–6209 Filed 3–29–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

[Notice (05–064)]

NASA Sun Solar System Connection Strategic Roadmap Committee; Meeting by Telephone Conference

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting by teleconference of the NASA Sun Solar System Connection Strategic Roadmap Committee.

DATES: Wednesday, April 13, 2005, from 3:30 p.m., to 5 p.m., Eastern Standard Time.

Phone Number: Public Access Listen Only—1–800–857–0373, passcode: 4111801#.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Giles, 202–358–1762.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the line capacity of the conference telephone system.

The agenda for the meeting is as follows:

—Discussion of draft SSSC strategic roadmap

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–6208 Filed 3–29–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

DATE AND TIMES: May 9, 2005. 10 a.m.–1 p.m.

PLACE: Access Board, Conference Room, 1331 F Street, NW., Suite 1000, Washington, DC 20004.

STATUS: This meeting will be open to the public.

AGENDA: Discussion on Recommendations in NCD's Long-Term Services and Supports Report

FOR FURTHER INFORMATION CONTACT: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite

850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *mquigley@ncd.gov* (e-mail).

AGENCY MISSION: NCD is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week before this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week before this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: March 22, 2005.

Ethel D. Briggs,

Executive Director.

[FR Doc. 05–6353 Filed 3–28–05; 10:52 am]

BILLING CODE 6820–MA–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a Revised Information Collection; RI 25–37

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–37, Evidence to Prove Dependency of a Child, is designed to collect sufficient information for OPM to determine whether the surviving child of a deceased federal employee is eligible to receive benefits as a dependent child.

Approximately 250 forms are completed annually. We estimate it takes approximately 60 minutes to assemble the needed documentation. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and

Joseph Lackey, OPM Desk Office, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235. Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

[FR Doc. 05–6226 Filed 3–29–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF SCIENCE AND TRANSPORTATION

National Science and Technology Council's Committee on Environmental and Natural Resources (CENR) Interagency Working Group on Earth Observations (IWGEO)

ACTION: Notice of public meeting/ workshop and opportunity for public discussion.

SUMMARY: This notice announces an Integrated Earth Observation System Public Engagement Workshop by the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) Interagency Working Group on Earth Observations (IWGEO) to discuss the nine societal benefit areas and the six near term opportunities identified in the Stratetic Plan for the U.S. Integrated Earth Observation System. This plan was developed to address the effective use of Earth observation systems to enable a healthy public, economy and planet.

DATES: The Interagency Working Group on Earth Observations will hold a two-day workshop on Monday, May 9, 2005, 8:30 a.m. to 5:30 p.m. (e.d.t.); Tuesday, May 10, 2005, 8:30 a.m. to 4:30 p.m. to identify Earth observation system components and solutions to contribute to the implementation of the Integrated Earth Observation System. All sessions of the workshop will be held at the Ronald Reagan Builing and International Trade Center, Washington, DC.

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: The Strategic Plan for the U.S. Integrated Earth Observation System was developed by the Interagency Working Group on Earth Observations of the NSTC Committee on Environment and Natural Resources.

Purpose of the Workshop: The purpose of this workshop is to bring ideas and information from the broader community into the IWGEO planning process as it further develops the U.S. 10-Year Plan for Developing an Integrated Earth Observing System. The nine strategic social/economic benefit areas identified in the Strategic Plan 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 on Environmental Factors on Human Health and Well-Being;
7. Developing the Capacity To Make Ecological Forecasts;
8. Protecting and Monitoring Water Resources; and
9. Monitoring and Managing Energy Reserves.

The six near term opportunities identified in the Strategic Plan are:

1. Data Management
2. Improved Observations for Disaster Warnings
3. Global Land Observing System

4. Sea Level Observing System
5. National Integrated Drought Information System, and
6. Air Quality Assessment and Forecast System.

Public Participation: Due to space constraints, interested parties will need to pre-register for this meeting, Deadline for registration is April 29, 2005, or when capacity of facility is met. *See* IWEGEO Web page for registration materials and additional information: *http://iwgeo.ssc.nasa.gov*, or contact 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) 482–5181. E-mail: *carla.sullivan@noaa.gov*. Subject: IWGEO Integrated Earth Observation System Public Engagement Workshop.

Authority

The National Science and Technology Council (NSTC) was established under Executive Order 12881. The CENR is chartered under the NSTC. The purpose of the CENR is to advise and assist the NSTC, with emphasis on those federally supported efforts that develop new knowledge related to improving our understanding of the environment and natural resources.

M. David Hodge,

Acting Assistant Director for Budget and Administration.

[FR Doc. 05–6224 Filed 3–29–05; 8:45 am]

BILLING CODE 3170–WS–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 10f–3, SEC File No. 270–237, OMB Control No. 3235–0226.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information discussed below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 10(f) of the Investment Company Act of 1940 (the "Act") prohibits a registered investment company ("fund") from purchasing any security during an underwriting or selling syndicate if the fund has certain relationships with a principal underwriter for the security. Congress enacted this provision in 1940 to protect funds and their shareholders by preventing underwriters from "dumping" unmarketable securities on affiliated funds.

Rule 10f–3 permits a fund to engage in a securities transaction that otherwise would violate section 10(f) if, among other things, (i) each transaction effected under the rule is reported on Form N–SAR; (ii) the fund's directors have approved procedures for purchases made in reliance on the rule, regularly review fund purchases to determine whether they comply with these procedures, and approve necessary changes to the procedures; and (iii) a written record of each transaction effected under the rule is maintained for six years, the first two of which in an easily accessible place. The written record must state (i) from whom the securities were acquired, (ii) the identity of the underwriting syndicate's members, (iii) the terms of the transactions, and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board.

The rule also conditionally allows managed portions of fund portfolios to purchase securities offered in otherwise off-limits primary offerings. To qualify for this exemption, rule 10f–3 requires that the subadviser that is advising the purchaser be contractually prohibited from providing investment advice to any other portion of the fund's portfolio and consulting with any other of the fund's advisers that is a principal underwriter or affiliated person of a principal underwriter concerning the fund's securities transactions.

These requirements provide a mechanism for fund boards to oversee compliance with the rule. The required recordkeeping facilitates the Commission staff's review of rule 10f–3 transactions during routine fund inspections and, when necessary, in connection with enforcement actions.

The staff estimates that approximately 200 funds engage in a total of approximately 1,000 rule 10f–3 transactions each year.[1] Rule 10f–3 requires that the purchasing fund create a written record of each transaction that includes, among other things, from whom the securities were purchased and the terms of the transaction. The staff estimates[2] that it takes an average fund approximately 30 minutes per transaction and approximately 500 hours[3] in the aggregate to comply with this portion of the rule.

The funds also must maintain and preserve these transactional records in accordance with the rule's recordkeeping requirement, and the staff estimates that it takes a fund approximately 20 minutes per transaction and that annually, in the aggregate, funds spend approximately 333 hours[4] to comply with this portion of the rule.

In addition, fund boards must, no less than quarterly, examine each of these transactions to ensure that they comply with the fund's policies and procedures. The information or materials upon which the board relied to come to this determination also must be maintained and the staff estimates that it takes a fund 1 hour per quarter and, in the aggregate, approximately 800 hours[5] annually to comply with this rule requirement.

The staff estimates that approximately half of the boards of funds that engage in rule 10f–3 transactions that deem it necessary to revise the fund's written policies and procedures for rule 10f–3 and that complying with this requirement takes each of these funds on average, 25 hours of a compliance attorney's time and, in the aggregate, approximately 2,500 hours[6] annually.

The Commission staff estimates that 3,028 portfolios of approximately 2,126 investment companies use the services of one or more subadvisers. Based on discussions with industry representatives, the staff estimates that it will require approximately 6 hours to draft and execute revised subadvisory contracts (5 staff attorney hours, 1 supervisory attorney hour), in order for funds and subadvisers to be able to rely on the exemption in rule 10f–3. The staff assumes that all of these funds amended their advisory contracts when rule 10f–3 was amended in 2002 by

[1] These estimates are based on staff extrapolations from earlier data.

[2] Unless stated otherwise, the information collection burden estimates contained in this Supporting Statement are based on conversations between the staff and representatives of funds.

[3] This estimate is based on the following calculation: (30 minutes × 1,000 = 500 hours).

[4] This estimate is based on the following calculations: (20 minutes × 1,000 transactions = 20,000 minutes; 20,000 minutes / 60 = 333 hours).

[5] This estimate is based on the following calculation: (1 hour per quarter × 4 quarters × 200 funds = 800 hours).

[6] This estimate is based on the following calculation: (100 funds × 25 hours = 2,500 hours).

conditioning certain exemptions upon such contractual alterations.[7]

Based on an analysis of investment company filings, the staff estimates that approximately 200 new funds register annually. Assuming that the number of these funds that will use the services of subadvisers is proportionate to the number of funds that currently use the services of subadvisers, approximately 46 new funds will enter into subadvisory agreements each year.[8] The Commission staff estimates, based on an analysis of investment company filings, that an additional 10 funds, currently in existence, will employ the services of subadvisers for the first time each year. Thus, the staff estimates that a total of 56 funds, with a total of 78 portfolios,[9] will enter into subadvisory agreements each year. Assuming that each of these funds enters into a contract that permits it to rely on the exemption in rule 10f–3, we estimate that the rule's contract modification requirement will result in 117 burden hours annually.[10]

The staff estimates, therefore, that rule 10f–3 imposes an information collection burden of 4,250 hours.[11] This estimate does not include the time spent filing transaction reports on Form N-SAR, which is encompassed in the information collection burden estimate for that form.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 23, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1396 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

[7] Rules 12d3–1, 10f–3, 17a–10, and 17e–1 require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds would rely equally on the exemptions in these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules.

[8] Approximately 23 percent of funds are advised by subadvisers.

[9] Based on existing statistics, we assume that each fund has 1.4 portfolios advised by a subadviser.

[10] This estimate is based on the following calculations: (78 portfolios × 6 hours = 468 burden hours for rules 12d3–1, 10f–3, 17a–10, and 17e–1; 468 total burden hours for all of the rules / four rules = 117 annual burden hours per rule).

[11] This estimate is based on the following calculations: (500 hours + 333 hours + 800 hours + 2,500 hours + 117 hours = 4,250 total burden hours).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Dynamex Inc. To Withdraw Its Common Stock, $.01 par value, From Listing and Registration on the American Stock Exchange LLC File No. 1–15001

March 24, 2005.

On March 9, 2005, Dynamex Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On March 7, 2005, the Board of Directors ("Board") of the Issuer unanimously approved resolutions to withdraw the Security from listing and registration on Amex and to list the Security on the Nasdaq National Market ("Nasdaq"). The Board believed listing the Security on Nasdaq will provide shareholders enhanced liquidity as well as provide the Issuer with greater exposure to institutional investors. The Board stated that the Issuer listed its Security on Nasdaq effective March 14, 2005.

The Issuer stated that it has met the requirements of Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration by complying with all the applicable laws in effect in Delaware, in which it is incorporated.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before April 19, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–15001 or;

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 1–15001. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–1395 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

STB Chip Corporation; Order of Suspension of Trading

March 28, 2005.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of STB Chip Corporation ("STB Chip") because of concerns that STB Chip may have unjustifiably relied on Rule 504 of Regulation D of the Securities Act of 1933 in conducting an unlawful distribution of its securities that failed to comply with the resale restrictions of Regulation D. Questions also have been raised regarding potentially manipulative transactions in STB Chip's common stock by certain individuals associated with the company and the accuracy of statements made in STB Chip's publicly available Information Statement concerning the beneficial ownership of its securities by one of its directors and the disciplinary history of its counsel. STB Chip, a company that has made no public filings with the Commission or the NASD, is quoted on the Pink Sheets under the ticker symbol STBX.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, March 28, 2005 through 11:59 p.m. EDT, on April 8, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–6355 Filed 3–28–05; 1:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Urban Transfer Systems, Inc.; Order of Suspension of Trading

March 28, 2005.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Urban Transfer Systems, Inc. ("Urban Transfer") because of concerns that Urban Transfer may have unjustifiably relied on Rule 504 of Regulation D of the Securities Act of 1933 in conducting an unlawful distribution of its securities that failed to comply with the resale restrictions of Regulation D. Questions also have been raised regarding potentially manipulative transactions in Urban Transfer's common stock by certain individuals associated with the company and the accuracy of statements made in Urban Transfer's publicly available Information Statement concerning the disciplinary history of its counsel. Urban Transfer, a company that has made no public filings with the Commission or the NASD, is quoted on the Pink Sheets under the ticker symbol UBTF.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, March 28, 2005 through 11:59 p.m. EDT, on April 8, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–6356 Filed 3–28–05; 1:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Tempo Financial Corporation; Order of Suspension of Trading

March 28, 2005.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Tempo Financial Corporation ("Tempo") because of concerns that Tempo may have unjustifiably relied on Rule 504 of Regulation D of the Securities Act of 1933 in conducting an unlawful distribution of its securities that failed to comply with the resale restrictions of Regulation D. Questions also have been raised regarding potentially manipulative transactions in Tempo's common stock by certain individuals associated with the company. Tempo, a company that has made no public filings with the Commission or the NASD, is quoted on the Pink Sheets under the ticker symbol TPOF.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, March 28, 2005 through 11:59 p.m. EDT, on April 8, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–6357 Filed 3–28–05; 1:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Lonisson Communications Corporation; Order of Suspension of Trading

March 28, 2005.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Lonisson Communications Corporation ("Lonisson") because of concerns that Lonisson may have unjustifiably relied on Rule 504 of Regulation D of the Securities Act of 1933 in conducting an unlawful distribution of its securities that failed to comply with the resale restrictions of Regulation D. Questions also have been raised regarding potentially manipulative transactions in Lonisson's common stock by certain individuals associated with the company and the accuracy of statements made in Lonnison's publicly available Information Statement concerning the disciplinary history of its counsel. Lonisson, a company that has made no public filings with the Commission or the NASD, is quoted on the Pink Sheets under the ticker symbol LCCP.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, March 28, 2005 through 11:59 p.m. EDT, on April 8, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–6358 Filed 3–28–05; 1:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51423; File No. SR–Amex–2005–020]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Dissemination of Order Imbalances in Tape A and Tape B Securities Admitted to Unlisted Trading Privileges in the Same Manner as Order Imbalances in Tape C Securities Admitted to Unlisted Trading Privileges

March 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 18, 2005, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 131A to provide for the dissemination of order imbalances in Tape A and Tape B securities admitted to unlisted trading privileges ("UTP") in the same manner as order imbalances in Tape C (NASDAQ) securities admitted to UTP.

The text of the proposed rule change, as amended, is available on the Amex's Web site *http://www.amex.com*, at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

[3] Amendment No. 1 replaces and supersedes the Amex's original 19b–4 filing in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's rules provide for mandatory and discretionary publication of imbalances of market-on-close ("MOC") and limit-on-close ("LOC") orders for listed and unlisted stocks. Currently, Amex order imbalances in listed stocks[4] are published over the Tape B high speed line. Order imbalances in NASDAQ stocks admitted to UTP on the Amex are disseminated in a different manner since the NASDAQ Securities Information Processor ("SIP") does not support order imbalance dissemination by NASDAQ UTP Plan Participants. Amex specialists in NASDAQ stocks, as the result, currently enter their order imbalances into a PC at the post and this information is transferred to an Amex server that uploads the information at 3:40 and 3:50 p.m. by means of FTP file transfer protocol to market data vendors, firms that have requested the information, and the Amex Web site.[5]

The Exchange recently admitted to UTP the common stock of a particular security reported and quoted over Tape B. On the first day of trading this particular Tape B listed security, the Exchange attempted to disseminate an imbalance of on-close orders but was unable to do so because SIAC, the SIP for Tape A and B, would not permit it. The Amex represents that it currently accounts for more than 50 percent of trade market share in this Tape B listed security, but temporarily does not accept MOC and LOC orders because of its inability to publish order imbalances as required under Amex Rule 131A. The Amex believes that implementing this rule change would enable the Amex to accept MOC/LOC orders, and conduct robust closings.

The Amex represents that SIAC is of the view that its systems prohibit it from disseminating order imbalances for markets other than the listing market. Because SIAC believes that a Consolidated Tape Association ("CTA") Plan ("CTA Plan") amendment and technical systems changes are necessary for it to disseminate order imbalances in stocks where the Exchange is not the listing market, and because the Exchange believes that it would be time consuming and futile to seek a CTA Plan amendment due to the requirement of unanimous approval of such changes, the Exchange is instead proposing an amendment to Amex Rule 131A to permit the dissemination of order imbalances in Tape A and B securities admitted to UTP in the same manner as order imbalances in NASDAQ securities admitted to UTP. The proposed rule change, as amended, would exempt equity derivatives and options from the proposed change, because the Amex does not now disseminate order imbalances in these securities. The proposed rule also would exempt the handful of stocks traded on the Exchange that were admitted to UTP more than half a century ago because, according to the Amex, SIAC has no objection to disseminating order imbalances in these securities over Tape B.

2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] There are nine stocks that were admitted to unlisted trading privileges on the Exchange prior to February 28, 1950. These nine stocks are treated by the Securities Industry Automation Corporation ("SIAC") as if they were listed on the Amex for purposes of publishing order imbalances.

[5] *See* Amex Rule 118.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 by the Exchange on this proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–020 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–Amex–2005–020. 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. Copies of such filing also will be available for inspection and copying at the principal offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–020 and should be submitted on or before April 20, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules promote just and equitable principles of trade and facilitate transactions in securities, and, in general, protect investors and the public interest. The proposed rule change will enable the dissemination of order imbalances before the close in stocks for which Amex is not the listing market adding transparency to the closing process.

The Exchange has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis, stating that this may eliminate inconsistencies in the marketplace and avoid confusion among its members and member organizations regarding the dissemination of MOC/LOC orders. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposed rule change, as amended, would facilitate the dissemination of order imbalances for MOC/LOC orders, which, according to the Amex, SIAC cannot disseminate for secondary markets. The Commission further notes that order imbalance information for listed securities (Tape A and B) admitted to UTP would be disseminated in a manner similar to how the Amex currently disseminates order imbalance information for NASDAQ UTP securities (Tape C) pursuant to Amex Rule 118. The Commission believes that the dissemination of order imbalances for listed UTP securities could be beneficial to investors, contribute to the information flow necessary to make informed investment decisions, and should enable the Amex to conduct more efficient closings. The Commission believes that accelerating approval of this proposal would allow the Exchange to immediately begin dissemination of MOC/LOC order imbalance information for listed securities admitted to UTP on the Amex. Accordingly, the Commission finds that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[10] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change, as amended, (SR–Amex–2005–020) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1391 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51426; File No. SR–Amex–2005–022]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Notes Linked to the Performance of the CBOE S&P 500 BuyWrite Index℠

March 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2005, the American Stock Exchange LLC ("Amex" 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes, the performance of which is linked to the S&P 500 BuyWrite Index℠ ("BXM Index" or "Index"). The text of the proposed rule change is available on the Amex's Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[*http://www.amex.com*], at the principal offices of the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change 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 III below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the BXM Index (the "Notes"). The BXM Index is determined, calculated, and maintained solely by the Chicago Board of Options Exchange ("CBOE").[4]

Morgan Stanley will issue the Notes under the name "8% Targeted Income Strategic Total Return Securities."[5]

The Notes will conform to the initial listing guidelines under Section 107A[6] and continued listing guidelines under Sections 1001–1003[7] of the Company Guide. The Notes are a series of medium-term debt securities of Morgan Stanley that provide for a cash payment at maturity, or upon earlier exchange at the holder's option or the earlier redemption of the issue,[8] based on the performance of the BXM Index adjusted by the Adjustment Amount.[9] The principal amount of each Note is expected to be $10. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the BXM Index must increase for the investor to receive at least the $10 principal amount per security at maturity or upon exchange or redemption. If the value of the BXM Index decreases or does not increase sufficiently, the investor will receive less, and possibly significantly less, than the $10 principal amount per security.[10] The Notes will have a term of at least one (1) but no more than ten (10) years.[11]

Commencing on March 30, 2005, holders of the notes will receive interim payments on a monthly basis at the rate of $0.0667 per note (8% on the principal amount per year or $0.80 per Note per year). In addition, beginning in June 2005 and ending in December 2009, on a quarterly basis during the first ten (10) calendar days of March, June, September, and December, holders of the Notes will have the right to exchange the Notes for a cash amount equal to the Net Entitlement Value on the valuation date for such exchange date and any accrued interim payments from and including the last payment date to and including the applicable valuation date for such exchange date. The minimum exchange amount is 10,000 Notes.[12] Commencing in September 2007, or earlier if the Net Entitlement Value is below $2.00, Morgan Stanley will have the right to redeem the Notes for the Net Entitlement Value, upon at least ten (10) calendar days' but no more than thirty (30) calendar days' notice to holders, on any quarterly exchange date. The Notes will mature on March 30, 2010.[13]

The "Net Entitlement Value" on any trading day (other than the day the

[3] *See* Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990) (order approving File No. SR–Amex–89–29).

[4] If the BXM Index is discontinued or suspended, the calculation agent, in its sole discretion, may substitute the BXM Index with an index substantially similar to the discontinued or suspended BXM Index (the "Successor Index"). The Successor Index may be calculated and/or published by the CBOE or any other third party. If the calculation agent is unable to identify a Successor Index, then the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the expiration of the call option positions of the BXM Index (the "Roll Date"). The calculation agent will accordingly determine the Entitlement Value on such date. Under certain circumstances, the calculation agent or an affiliate will calculate the Index value until a Successor Index is substituted. This may occur if adequate notice of the Index's discontinuance or suspension is not provided to the calculation agent. The calculation agent will then undertake to identify and designate, in its sole discretion, a Successor Index prior to the Roll Date that falls at least one (1) month following the discontinuance or suspension of the BXM Index. If the calculation agent is unable to identify a Successor Index five (5) days prior to the Roll Date that falls at least one (1) month following such discontinuance or suspension, the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the Roll Date following such discontinuance or suspension. In calculating the Index value, the calculation agent or affiliate will use the current method employed prior to the discontinuance or suspension. The Exchange agrees to delist the Notes (or seek Commission approval pursuant to Rule 19b–4 to list and trade a Note that reflects the Successor Index) in the event that CBOE stops calculating and disseminating the value of the BXM Index. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Richard Holley III, Attorney, Division of Market Regulation ("Division"), Commission, on February 18, 2005.

[5] Morgan Stanley and Standard & Poor's ("S&P"), a division of the McGraw-Hill Companies, Inc., have entered into a non-exclusive license agreement providing for the use of the BXM Index by Morgan Stanley in connection with certain securities, including the Notes. S&P is responsible for and will not participate in the issuance and creation of the Notes.

[6] The initial listing standards for the Notes require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[8] Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Richard Holley III, Attorney, Division, Commission, on February 18, 2005.

[9] The Adjustment Amount on any trading day will equal $0.00274 each day multiplied by the number of calendar days since the immediately preceding trading day, and this will reduce the Net Entitlement Amount by $1.00 each year per Note. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 23, 2005.

[10] Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Richard Holley III, Attorney, Division, Commission, on February 18, 2005.

[11] The term of the Notes is expected to be five years and will be disclosed in the pricing supplement.

[12] There will be no minimum exchange amount during a "credit exchange event," which is defined in the prospectus as the period during which Morgan Stanley's senior debt is downgraded below A-by Standard & Poor's Rating Services or below A3 by Moody's Investors Service, Inc. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Richard Holley III, Attorney, Division, Commission, on February 18, 2005.

[13] Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 23, 2005.

Notes are initially sold to the public) equals (i) the "Net Entitlement Value" on the previous trading day multiplied by the "BXM Index Performance" on that trading day, minus (ii) the "Adjustment Amount" as of that trading day. The Initial Net Entitlement Value is equal to $9.88 (*i.e.*, 1.20 percent less than the original issue price of the Notes). The BXM Index Performance on any trading day is equal to the "Index Value" on that trading day divided by the "Index Value" on the previous trading day (the "Previous Index Value"). The "Index Value" on any trading day is the closing value of the BXM Index on that trading day. The Initial Index Value is the closing value of the BXM Index on the date Morgan Stanley prices the Notes for initial sale to the public. The Adjustment Amount, by which the investor's return is also reduced, will be equal to approximately $1.00 or 10 percent per Note per year.[14] For purposes of determining the amount payable in respect of any exchange by the investor or upon early redemption of the Notes by Morgan Stanley,[15] the Net Entitlement Value will be determined on the last trading day immediately prior to the exchange date or early redemption date, as applicable. For the purposes of calculating the Net Entitlement Value payable on the maturity date, however, the "Maturity Valuation Date" will be the third scheduled trading day immediately prior to the maturity date, unless there is a market disruption event on that date.

The Net Entitlement Value that a holder of a Note will receive upon exchange, early redemption, or at maturity will depend on the relation of the current Index Value to the previous trading day's Index Value of the BXM Index and will always be 1.20 percent less than the original issue price and include the Adjustment Amount.[16] If there is a "market disruption event"[17] when determining the Index Value, the Index Value will be determined on the next available trading day during which no "market disruption event" occurs. Thus, the Net Entitlement Value (on any trading day other than the day the Notes are initially priced for sale to the public) per Note will equal:

$$\text{Net Entitlement Value}_{t-1}\left(\frac{\text{Index Value}}{\text{Previous Index Value}}\right) - \text{Adjustment Amount, where the Net Entitlement Value}_{t-1} \text{ is the Net Entitlement Value on the previous trading day.}$$

The Notes are cash-settled in U.S dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the BXM Index. The Notes are designed for investors who want to participate in the exposure to the S&P 500 Index (the "S&P 500") that the BXM Index provides while limiting downside risk, and who are willing to forego principal protection on the Notes during their term.

The Commission has previously approved the listing on the Amex of securities with structures similar to that of the proposed Notes.[18]

Description of the Index

The BXM Index is a benchmark index designed to measure the performance of a hypothetical "buy-write"[19] strategy on the S&P 500. Developed by the CBOE in cooperation with S&P, the Index was initially announced in April 2002.[20] The

[14] Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 23, 2005. *See also supra* note 9 (discussing the Adjustment Amount).

[15] Beginning in September 2007, Morgan Stanley may redeem the Notes for mandatory exchange on the fifth trading day after any exchange date. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 23, 2005.

[16] Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 23, 2005.

[17] A "market disruption event" is defined as (i) the occurrence of or existence of a suspension, absence or material limitation of trading of stocks then constituting 20% or more of the value of the S&P 500 Index on the Relevant Exchanges for such securities for the same period of trading longer than two hours or during the one-half hour period preceding the close of the principal trading session on such Relevant Exchange; (ii) a breakdown or failure in the price and trade reporting systems of any Relevant Exchange as a result of which the reported trading prices for stocks then constituting 20% or more of the value of the S&P 500 Index during the last one-half hour preceding the close of the principal trading session on such Relevant Exchange are materially inaccurate; (iii) the suspension, material limitation, or absence of trading on any major U.S. securities market for trading in futures or options contracts or exchange traded funds related to the BXM Index or the S&P 500 Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market; and (iv) a determination by the calculation agent that any event described in clauses (i)–(iii) above materially interfered with the ability of Morgan Stanley or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

[18] *See* Securities Exchange Act Release Nos. 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of non-principal protected notes linked to the BXM Index) (File No. SR–Amex–2004–55); 49548 (Apr. 9, 2004), 69 FR 20089 (Apr. 15, 2004) (approving the listing and trading of non-principal protected notes linked to the Select Utility Index) (File No. SR–Amex–2004–02); 45639 (Mar. 25, 2002), 67 FR 15258 (Mar. 29, 2002) (approving the listing and trading of non-principal protected notes linked to the Oil and Natural Gas Index) (File No. SR–Amex–2002–18); 45305 (Jan. 17, 2002), 67 FR 3753 (Jan. 25, 2002) (approving the listing and trading of non-principal protected notes linked to the Biotech-Pharmaceutical Index) (File No. SR–Amex–2001–108); 45160 (Dec. 17, 2001), 66 FR 66485 (Dec. 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected notes linked to the Select Ten Index) (File No. SR–Amex–2001–28).

[19] A "buy-write" is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a "covered call" strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

[20] The BXM Index consists of a long position in the component securities of the S&P 500 and options on the S&P 500 (*e.g.*, "writing" the near-term S&P 500 Index covered call option, generally on the third Friday of each month). The Commission has approved the listing of numerous securities linked to the performance of the S&P 500 as well as options on the S&P 500. *See, e.g.*, Securities Exchange Act Release Nos. 48486 (Sept. 11, 2003), 68 FR 54758 (Sept. 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500) (File No. SR–Amex–2003–74); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Principal Protected Notes linked to the S&P 500) (File No. SR–Amex–2003–62); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of CSFB Accelerated Return Notes linked to the S&P 500) (File No. SR–Amex–2003–45); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500) (File No. SR–Amex–2003–46); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500) (File No. SR–CBOE–83–8). In addition, the Commission previously approved the listing and trading of a packaged buy-write option strategy

Continued

CBOE developed the BXM Index in response to several factors, including the repeated requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. Further, the CBOE developed the BXM Index to provide investors with a relatively straightforward indicator of the risk-reducing character of options that otherwise may seem complicated and inordinately risky.

The BXM Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) "writing" (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a "long" position indexed to the S&P 500 on which are deemed sold a succession of one-month, at-the-money call options on the S&P 500 (SPX) listed on the CBOE. Dividends paid on the component stocks underlying the S&P 500 and the dollar value of option premium deemed received from the sold call options are functionally "re-invested" in the covered S&P 500 portfolio.

The value of the BXM Index on any given date will equal: the value of the BXM Index on the previous day, multiplied by the daily rate of return [21] on the covered S&P 500 portfolio on that date. Thus, the daily change in the BXM Index reflects the daily changes in value of the covered S&P 500 portfolio, which consists of the S&P 500 (including dividends) and the component S&P 500 option (SPX). The daily closing price of the BXM Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via the Options Pricing and Reporting Authority ("OPRA") at the end of each trading day.[22] The value of the S&P 500 Index is widely disseminated at least once every fifteen (15) seconds throughout the trading day. The Exchange believes that the intraday dissemination of the S&P 500, along with the ability of investors to obtain real time, intraday S&P 500 call option pricing, provides sufficient transparency regarding the BXM Index.[23] In addition, as indicated above, the value of the BXM Index is calculated once every trading day, thereby providing investors with a daily value of such "hypothetical" buy-write options strategy on the S&P 500.

The CBOE has represented that the BXM Index value will be calculated and disseminated by the CBOE once every trading day after the close. The daily change in the BXM Index reflects the daily changes in the S&P 500 and related options positions. The Exchange states that Morgan Stanley has represented that it will seek to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index.[24] If, however, Morgan Stanley is unable to arrange the calculation and dissemination of the BXM Index as indicated above, the Exchange will delist the Notes.[25]

In order to provide an updated value of the Net Entitlement Value for use by investors, the Exchange will disseminate over the Consolidated Tape Association's Network B, a daily indicative Net Entitlement Value equal to the Net Entitlement Value on the previous trading day multiplied by the percentage change in the BXM Index, adjusted on a monthly basis on each Roll Date by the Adjustment Amount (the "Indicative Value"). The Indicative Value will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day. It is designed to provide investors with a daily reference value of the adjusted Index. The Indicative Value may not reflect the precise value of the current Net Entitlement Value or amount payable upon repurchase or maturity. Therefore, the Indicative Value disseminated by the Amex during trading hours should not be viewed as a real-time update of the BXM Index, which is calculated only once a day. While the Indicative Value that will be disseminated by the Amex is expected to be close to the current BXM Index value, the values of the Indicative Value and the BXM Index will diverge due to the application of the Adjustment Amount.[26]

From June 30, 1988 through January 31, 2005, the annualized returns for the BXM Index and the S&P 500 were 11.94 percent and 11.71 percent, respectively, with a total deviation of the returns during the same time period of 21.33 percent. As the chart in Exhibit A to the Exchange's Form 19b-4 indicates, the BXM Index will closely track the S&P 500 except in those cases where the market is significantly rising or decreasing. In the case of a fast rising market, the BXM Index will trail the S&P 500 due to the limited upside potential of the Index because of the "buy-write" strategy. Due to the cushioning effect of the "buy-write" strategy, the BXM Index has in the past exhibited negative returns that are less than the S&P 500 during a down market. The Exchange expects the BXM Index to continue to display these characteristics.

The call options included in the value of the BXM Index have successive terms

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known as "BOUNDS." *See* Securities Exchange Act Release No. 36710 (Jan. 11, 1996), 61 FR 1791 (Jan. 23, 1996) (File No. SR–Amex–94–56).

[21] The daily rate of return on the covered S&P 500 portfolio is based on (a) the change in the closing value of the stocks in the S&P 500 portfolio, (b) the value of ordinary cash dividends on the stocks underlying the S&P 500, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the S&P 500 that are trading "ex-dividend" on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

[22] The Commission, in connection with the Strategic Total Return Securities, the Bond Index Term Notes, and the Merrill Lynch EuroFund Market Index Target Term Securities, has previously approved the listing and trading of products where the dissemination of the value of the underlying index occurred once per trading day. *See* Securities Exchange Act Release Nos. 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of non-principal protected notes linked to the BXM Index) (File No. SR–Amex–2004–55); 41334 (Apr. 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading or Bond Indexed Term Notes) (File No. SR–Amex–99–03); and 40367 (Aug. 26, 1998), 63 FR 47052 (Sept. 3, 1998) (approving the listing and trading of Merrill Lynch EuroFund Market Index Target Term Securities) (File No. SR–Amex–98–24).

[23] Call options on the S&P 500 (SPX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real time through OPRA. The value of the BXM can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the S&P 500 index and specific nearest-to-expiration call and put options on that index. These components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and CBOE. The "Indicative Value" (as discussed below) may be a more accurate indicator of the valuation of the Notes because it reflects the fees associated with the Notes (*e.g.*, on the initial principal amount and the Adjustment Amount); however, the "Indicative Value" is also not adjusted intraday. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Richard Holley III, Attorney, Division, Commission, on February 18, 2005.

[24] Prior to such change in the manner in which the BXM Index is calculated, the Exchange will file a proposed rule change pursuant to Rule 19b–4, which must be approved by the Commission prior to continued listing and trading in the Notes. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Richard Holley III, Attorney, Division, Commission, on February 18, 2005.

[25] *See supra* note 4 (regarding discontinuation of the calculation and dissemination of the Notes).

[26] The Indicative Value will not reflect the interest payments on the Notes. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 23, 2005.

of approximately one month. Each day that an option expires, which day is referred to as a "roll" date, that option's value at expiration is taken into account in the value of the BXM Index. At expiration, the call option is settled against the "Special Opening Quotation," a special calculation of the S&P 500. The final settlement price of the call option at expiration is equal to the difference between the Special Opening Quotation and the strike price of the expired call option, or zero, whichever is greater, and is removed from the value of the BXM Index. Subsequent to the settlement of the expired call option, a new "short" or sold at-the-money call option is included in the value of the BXM Index.[27] The initial value of the new call option is calculated by the CBOE and is based on the volume-weighted average of all the transaction prices of the new call option during a designated time period on the day the strike price is determined.[28]

As of February 9, 2005, the market capitalization of the securities included in the S&P 500 Index ranged from a high of $382 billion to a low of $566 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 16.9 million shares to a low of 350,830 shares.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[29]

Because the Notes are expected to be issued in $10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[30] Second, the Notes will be subject to the equity margin rules of the Exchange.[31] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.[32] In addition, Morgan Stanley will deliver a prospectus in connection with its sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities and options that include additional monitoring on key pricing dates,[33] which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[34] in general and furthers the objectives of Section 6(b)(5)[35] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at *http://www.sec.gov/rules/sro.shtml;* or
- Send an E-mail to *rule-comments@sec.gov.* Please include SR–Amex–2005–022 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 No. SR–Amex–2005–022. 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 at *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available on the Exchange's Web site at *http://www.amex.com* and for inspection and copying at the principal office 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 No. SR–Amex–2005–022 and should be submitted on or before April 20, 2005.

[27] Like the expired call option, the new call option will expire approximately one month after the date of sale.

[28] For this purpose, the CBOE excludes from the calculation those call options identified as having been executed as part of a spread (*i.e.*, a position taken in two or more options in order to profit through changes in the relative prices of those options).

[29] 17 CFR 240.10A–3.

[30] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[31] *See* Amex Rule 462 and Section 107B of the Company Guide.

[32] *See* Amex Rule 411.

[33] Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on March 23, 2005.

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[36] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[37] Accordingly, the Commission finds that the listing and trading of the Notes based on the BXM Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities consistent with, Section 6(b)(5) of the Act.[38]

The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, like the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[39] In any event, financial information regarding Morgan Stanley, in addition to the information on the component stocks, which are reporting companies under the Act, and the Notes, which will be registered under Section 12 of the Act, will be available.

In approving the product, the Commission recognizes that the Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) "writing" (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500 Index, the Commission believes that the listing and trading of the Notes that are linked to the BXM Index should not unduly impact the market for the underlying securities compromising the S&P 500 Index or raise manipulative concerns.[40] Moreover, the issuers of the underlying securities comprising the S&P 500 Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as Morgan Stanley, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Morgan Stanley.[41]

Finally, the Commission notes that the value of the Index will be calculated and disseminated by CBOE once every trading day after the close of trading. However, the Commission notes that the value of the S&P 500 Index will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the S&P 500 Index during the trading day. Further, the Indicative Value, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. The Commission notes that Morgan Stanley has agreed to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b–4, prior to the substitution of CBOE. Further, the Commission notes that the Exchange has agreed to undertake to delist the Notes in the event that CBOE ceases to calculate and disseminate the Index, and Morgan Stanley is unable to arrange to have the BXM Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register.** The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[42] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[43] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–Amex–2005–

[36] 15 U.S.C. 78f(b)(5).

[37] *See, e.g.*, Securities Exchange Act Release Nos. 48486 (Sept. 11, 2003), 68 FR 54758 (Sept. 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Principal Protected Notes linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of CSFB Accelerated Return Notes linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 45160 (Dec. 17, 2001), 66 FR 66485 (Dec. 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected notes linked to the Select Ten Index); and 36710 (Jan. 11, 1996), 61 FR 1791 (Jan. 23, 1996) (approving the listing and trading of BOUNDS).

[38] 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] *See* Company Guide Section 107A(c).

[40] The issuer, Morgan Stanley, disclosed in the prospectus that the original issue price of the Notes includes commissions (and the secondary market prices are likely to exclude commissions) and Morgan Stanley's costs of hedging its obligations under the Notes. These costs could increase the initial value of the Notes, thus affecting the payment investors receive at maturity. Additionally, the issuer discloses in the prospectus that the hedging activities of its affiliates, including selling call options on the S&P 500, could affect the value of these call option during the half hour period in which their value is determined for purposes of inclusion in the BXM Index. Such hedging activity must, of course, be conducted in accordance with applicable regulatory requirements.

[41] *See* Securities Exchange Act Release Nos. 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 3774 (Sept. 27, 1996), 61 FR 52480 (Oct. 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[42] *See supra* notes 13 (citing previous approvals of securities with structures similar to that of the proposed Notes); and 15 (citing previous approvals of securities linked to the performance of the S&P 500 as well as options on the S&P 500).

[43] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[44] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

022) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[45]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1392 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51424; File No. SR–ISE–2005–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Elimination of the Restriction on Electronically Generated Orders

March 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2005, the International Securities Exchange, Inc. ("ISE" 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 ISE. The ISE has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to eliminate ISE Rule 717(f) and all references thereto in the Exchange's Rules. ISE Rule 717(f) currently prohibits the electronic generation and communication of certain orders. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 717. Limitations on Orders

(a)–(e) no change.

(f) *Reserved.* [Electronic Orders.

Members may not enter, nor permit the entry of, orders created and communicated electronically without manual input (*i.e.*, order entry by Public Customers or associated persons of Members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent), unless such orders are (1) non-marketable limit orders to buy (sell) that are priced higher (lower) than the best bid (offer) on the Exchange (*i.e.*, limit orders that improve the best price available on the Exchange), (2) limit orders that are designated as fill-or-kill or immediate-or-cancel, or (3) market orders. Nothing in this paragraph, however, prohibits Electronic Access Members from electronically communicating to the Exchange orders manually entered by customers into front-end communications systems (*e.g.*, Internet gateways, online networks, etc.).]

(g) no change.

* * * * *

Rule 723. Price Improvement Mechanism for Crossing Transactions

(a)–(d) no change.

Supplemental Material to Rule 717

.01–.04 no change.

[.05 Rule 717(f) does not apply to transactions executed pursuant to this Rule 723.]

[.06] *.05* Paragraphs (c)(5) and (d)(6) will be effective for a Pilot Period expiring on July 18, 2005. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

* * * * *

Rule 805. Market Maker Orders

(a) no change.

(b) Options Classes Other Than Those to Which Appointed.

(1) A market maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, provided that:

[(i) market maker orders are subject to the limitations contained in Rule 717(f) as that paragraph applies to principal orders entered by Electronic Access Members;]

[(ii)] *(i)* the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Rule 803(b)(4); and

[(iii)] *(ii)* the market maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

(2) Competitive Market Makers. The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Competitive Market Maker Membership.

(3) Primary Market Makers. The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed ten percent (10%) of the total number of contracts traded per each Primary Market Maker Membership.

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 included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete ISE Rule 717(f) and all other references to Rule 717(f). ISE Rule 717(f) prohibits the electronic generation and communication of certain orders. In August 2004, the Exchange amended the rule to allow market orders and certain marketable limit orders to be electronically generated and communicated.[5] The Exchange now believes the remaining restriction on electronically generated orders is unnecessary. In this regard, the Exchange notes that the Chicago Board Options Exchange, Incorporated ("CBOE") and Philadelphia Stock Exchange, Inc. ("Phlx") have both

[45] 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).

[4] 17 CFR 240.19b–4.

[5] Securities Exchange Act Release No. 50208 (August 17, 2004), 69 FR 52054 (August 24, 2004).

entirely eliminated their limitations on electronic generation of orders.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes allowing members to electronically generate and communicate orders will enhances access to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

The ISE has requested that the Commission waive the 30-day pre-operative period, which would make the rule change operative immediately, because the proposed rule change is based on rule changes filed by CBOE and the Phlx and approved by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case. Allowing the proposed rule change to become operative immediately should enhance access to the Exchange and the proposed rule change does not raise any new issues of regulatory concern as the proposal is based on a rule change previously filed by CBOE with the Commission pursuant to Section 19(b)(3)(A) of the Act,[11] as well as, a rule change previously filed by the Phlx and approved by the Commission pursuant to Section 19(b)(2) of the Act.[12]

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–ISE–2005–15 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–ISE–2005–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE.

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–ISE–2005–15 and should be submitted on or before April 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1390 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

[6] Securities Exchange Act Release Nos. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR–CBOE–2004–91); and 48648 (October 16, 2003), 68 FR 60762 (October 23, 2003) (SR–Phlx–2003–37).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 15 U.S.C. 78s(b)(2). For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51425; File No. SR–NASD–2004–139]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Leveraged Index Return Notes Linked to the Dow Jones Industrial Average

March 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2004, the National Association of Securities Dealers, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("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. On March 21, 2005, the Exchange amended its proposal.[3] 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 the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Leveraged Index Return Notes Linked to the Dow Jones Industrial Average ("Notes") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch").

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

Nasdaq proposes to list and trade the Notes. The Notes provide for a return based upon the Dow Jones Industrial Average ("Index").

The Index

The Index is a price-weighted index published by Dow Jones & Company, Inc. A component stock's weight in the Index is based on its price per share, rather than the total market capitalization of the issuer of that component stock. The Index is designed to provide an indication of the composite price performance of 30 common stocks of corporations representing a broad cross-section of U.S. industry. The corporations represented in the Index tend to be market leaders in their respective industries, and their stocks are typically widely held by individuals and institutional investors. The corporations currently represented in the Index are incorporated in the U.S. and its territories, and their stocks are traded on the New York Stock Exchange and The Nasdaq National Market. The component stocks in the Index are selected (and any changes are made) by the editors of the *Wall Street Journal* ("WSJ"). Changes to the stocks included in the Index tend to be made infrequently. Historically, most substitutions have been the result of mergers, but from time to time, changes may be made to achieve what the editors of the WSJ deem to be a more accurate representation of the broad market of the U.S. industry. The value of the Index is the sum of the primary market prices of each of the 30 common stocks included in the Index, divided by a divisor that is designed to provide a meaningful continuity in the value of the Index. In order to prevent certain distortions related to extrinsic factors, the divisor may be adjusted appropriately. The current divisor of the Index is published daily in the WSJ and other publications. Other statistics based on the Index may be found in a variety of publicly available sources.

As of August 27, 2004, the market capitalization of the securities included in the Index ranged from a high of approximately $346 billion to a low of approximately $24 billion. The average daily trading volume for Index components (calculated over the previous thirty trading days) ranged from a high of approximately 24 million shares to a low of approximately 1.7 million shares.

The value of the Index is widely disseminated at least every 15 seconds by providers that are independent from Merrill Lynch. In the event the calculation or dissemination of the Index is discontinued, Nasdaq will delist the Notes.

Other Information

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list the Notes for trading under NASD Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[5] In the case of an issuer which is unable to satisfy the income criteria set forth in NASD Rule 4420(a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[6] Lastly, pursuant to Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, in accordance with NASD Rule 2310(a), Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, pursuant to Rule 2310(b), prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes will be subject to Nasdaq's continued listing criterion for other

[3] *See* Amendment No. 1, dated March 21, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange provided additional details regarding the proposed index linked notes and underlying index.

[4] *See* Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

[5] Merrill Lynch satisfies this listing criterion.

[6] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange ("NYSE") or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will be issued in denominations of whole units ("Unit"), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity. The Notes' term to maturity is 5 years.

At maturity, if the value of the Index has increased, a beneficial owner of a Note will be entitled to receive the original offering price ($10), plus an amount calculated by multiplying the original offering price ($10) by an amount expected to be between 105 percent and 115 percent ("Participation Rate") of the percentage increase in the Index. If, at maturity, the value of the Index has not changed or has decreased by up to 20 percent, then a beneficial owner of a Note will be entitled to receive the full original offering price.

However, unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity by more than 20 percent, a beneficial owner will receive less, and possibly significantly less, than the original offering price: for each 1 percent decline in the Index below 20 percent, the redemption amount of the Note will be reduced by 1.25 percent of the original offering price.

The change in the value of the Index will normally (subject to certain modifications explained in the prospectus supplement) be determined by comparing (a) the average of the values of the Index at the close of the market on five business days shortly before the maturity of the Notes to (b) the closing value of the Index on the date the Notes are priced for initial sale to the public. The value of the Participation Rate will be determined by Merrill Lynch on the date the Notes are priced for initial sale based on the market conditions at that time. Both the value of the Index on the date the Notes are priced and the Participation Rate will be disclosed in Merrill Lynch's final prospectus supplement, which Merrill Lynch will deliver in connection with the initial sale of the Notes.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, and who are willing to forego market interest payments on the Notes during the term of the Notes.

Since the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, as stated, pursuant to NASD Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[7] Members are also reminded that the Notes are considered non-conventional investments for purposes of NASD's Notice to Members 03–71.[8] In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Pursuant to Securities Exchange Act Rule 10A–3 and Section 3 of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745 (2002), Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Nasdaq represents that the NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

In connection with initial distributions of its Nasdaq-listed notes, Merrill Lynch is required to deliver the appropriate prospectus.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(6) of the Act,[10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Index.

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

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[7] NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[8] *See* NASD, NTM 03–71 (November 2003), note 1.

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

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–2004–139 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–2004–139. 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–2004–139 and should be submitted on or before April 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1393 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51428; File No. SR–Phlx–2005–12]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Fees Applicable to Remote Streaming Quote Traders

March 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 Phlx. On March 15, 2005, Phlx filed Amendment No. 1 to the proposed rule change.[3] On March 22, 2005, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[5] which renders it 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

Phlx proposes to amend its schedule of fees to adopt fees applicable to Remote Streaming Quote Traders ("RSQTs").[6] The complete text of the proposed rule change is available on Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified the proposed RSQT fees in response to comments received from Commission staff.

[4] Amendment No. 2 made further clarifications to the proposed RSQT fees in response to comments received from Commission staff.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] A RSQT is an Exchange Registered Options Trader ("ROT") that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through the Exchange's Automated Options Market in eligible options in which such RSQT has been assigned. A RSQT may only submit such quotations electronically from off the floor of the Exchange. A RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Phlx Rule 1014(b)(ii)(B).

Fees and credits under the proposal would apply as follows:

Category I: $1700.00 per Calendar Month

RSQT is eligible to trade:
• 1 issue selected from the top 5 national volume leaders.
• 1 issue selected from the 6th to 10th national volume leaders.
• 3 issues selected from the 11th to 25th national volume leaders.
• 4 issues selected from the 26th to 50th national volume leaders.
• 1 index issue.
• 190 other issues.

Maximum permit credit is $1200 per calendar month.

Category II: $3200.00 per Calendar Month

RSQT is eligible to trade:
• 2 issues selected from the top 5 national volume leaders.
• 2 issues selected from the 6th to 10th national volume leaders.
• 6 issues selected from the 11th to 25th national volume leaders.
• 8 issues selected from the 26th to 50th national volume leaders.
• 2 index issues.
• 380 other issues.

Maximum permit credit is $2200.00 per calendar month.

Category III: $4700.00 per Calendar Month

RSQT is eligible to trade:
• 3 issues selected from the top 5 national volume leaders.
• 3 issues selected from the 6th to 10th national volume leaders.
• 9 issues selected from the 11th to 25th national volume leaders.
• 12 issues selected from the 26th to 50th national volume leaders.
• 3 index issues.
• 570 other issues.

Maximum permit credit is $3200.00 per calendar month.

Category IV: $6200.00 per Calendar Month

RSQT is eligible to trade:
• 4 issues selected from the top 5 national volume leaders.
• 4 issues selected from the 6th to 10th national volume leaders.
• 12 issues selected from the 11th to 25th national volume leaders.
• 16 issues selected from the 26th to 50th national volume leaders.
• 5 index issues.
• 759 other issues.

Maximum permit credit is $4200.00 per calendar month.

Category V: $7700.00 per Calendar Month

RSQT is eligible to trade:

• 5 issues selected from the top 5 national volume leaders.
• 5 issues selected from the 6th to 10th national volume leaders.
• 15 issues selected from the 11th to 25th national volume leaders.
• 20 issues selected from the 26th to 50th national volume leaders.
• 7 index issues.
• 948 other issues.

Maximum permit credit is $5200.00 per calendar month.

Category VI: $9200.00 per Calendar Month

RSQT is eligible to trade:
• 5 issues selected from the top 5 national volume leaders.
• 5 issues selected from the 6th to 10th national volume leaders.
• 15 issues selected from the 11th to 25th national volume leaders.
• 25 issues selected from the 26th to 50th national volume leaders.
• 9 index issues.
• 1141 other issues.

Maximum permit credit is $6200.00 per calendar month.

Category VII: $10,700.00 per Calendar Month

RSQT is eligible to trade all equity option and index option issues.

Maximum permit credit is $7200.00 per calendar month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a fee schedule for RSQTs. Each RSQT will be assessed an RSQT fee based on the number and type of option issues (as described below) in which an RSQT is assigned. Credit will be given to RSQTs based on the total number of permits [7] held by the RSQT in a particular calendar month. Thus, the proposed fees and credits would be assessed on a monthly basis. If a member or member organization functions as an RSQT at any time during a particular calendar month, the fees and credits would be applied to such member or member organization for that entire calendar month.

RSQT Fees

The proposal would establish seven categories that, based on the number and type of options in which an RSQT is assigned, result in concomitant, progressively higher fees and possible credits as the number of options in which such RSQT is assigned increases. For example, a fee of $1,700 per calendar month will apply to an RSQT assigned in a maximum of one issue selected from the top five national volume leaders (as calculated by the Exchange); [8] one issue selected from the 6th through 10th national volume leaders, three issues selected from the 11th through 25th national volume leaders; four issues selected from the 26th through 50th national volume leaders; one index option; and 190 other equity option issues ranked lower than the 50th most actively traded option. This is known as a Category I RSQT. Each additional category would establish a higher fee for an RSQT to submit quotations from off the floor of the Exchange in a progressively greater number of options in each aforementioned national volume grouping and in a greater number of index options. Accordingly, in order to submit electronic quotations from off the floor of the Exchange in all options traded on the Exchange, an RSQT would be required to pay fees applicable to a Category VII RSQT. The full schedule of fees applicable to the seven categories of RSQTs is described in the proposed rule text. [9]

The RSQT fee will be assessed on a monthly basis. The highest applicable RSQT fee will be assessed based on the highest RSQT category level in which the RSQT was qualified to trade at any time during a particular calendar month. For example, if an RSQT is eligible to trade at any time in a given calendar month as a Category I RSQT, and sometime during that calendar month becomes qualified and eligible to trade as a Category II RSQT, the RSQT will be assessed the fee applicable to a Category II RSQT, regardless of when such RSQT became eligible to trade at the Category II level, and regardless of whether or not, during that calendar month, the RSQT resumed eligibility as a Category I RSQT.

RSQTs are assigned to trade options by the Exchange's Option Allocation, Evaluation, and Securities Committee ("OAESC"). [10] Once an RSQT is assigned in an option by the OAESC, the Exchange's Financial Automation Department [11] activates the connections

[7] Appendix A of the Exchange's fee schedule establishes the following permit fees, which may be credited against the RSQT fee:

Order Flow Provider Permit Fee.

a. Permits used only to submit orders to the equity, foreign currency options, or options trading floor (one floor only): $200.00 per month.

b. Permits used only to submit orders to more than one trading floor: $300.00 per month.

Floor Broker, Specialist, or ROT (on any trading floor) or Off-Floor Trader Permit Fee.

a. First Permit: $1,200.00 per month.

b. Additional permits for members in the same organization: $1,000.00 per month.

Excess Permit Holders: $200.00 per month.

Other Permit Holders: $200.00 per month.

In applying the permit credit against a member organization's RSQT fee, a member organization may only apply the credit for a ROT permit (together with other applicable permit credits) when such ROT is acting as an RSQT or as a Non-SQT ROT (as defined in Rule 1014(b)(ii)(C)).

[8] For purposes of this fee, the Exchange will calculate the national volume for equity options and options overlying Exchange-Traded Fund Shares every six months, effective from January 1 through June 30, and again from July 1 through December 31. The January–June national volume rankings will be based on the total national volume for a particular option traded during the previous month of October, as determined by the Options Clearing Corporation ("OCC"); the July–December national volume rankings will be based on the total national volume for a particular option traded during the previous month of May, as determined by the OCC.

[9] The Exchange notes that it has filed separately with the Commission to adopt a fee schedule applicable to on-floor Streaming Quote Traders ("SQTs"). *See* SR–Phlx–2005–16. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with the Exchange's automated options market ("AUTOM") via an Exchange approved proprietary electronic quoting device in eligible options to which the SQT is assigned. The proposed SQT fees are lower than the proposed RSQT fees because SQTs have more out-of-pocket costs associated with their streaming quote systems. For example, among other things, SQTs generally have to purchase additional software programs and hardware from outside vendors to support their streaming quote systems, in addition to incurring additional costs associated with market data (known as Hyperfeed) to enable them to price options within their particular options pricing model. The amendments to the fee schedule proposed in this filing does not reflect the SQT fees included in SR–Phlx–2005–16 or other fees that have been filed with the Commission subsequent to the original filing of the instant fee change.

[10] *See* Exchange Rule 507. The Options Allocation, Evaluation, and Securities Committee has jurisdiction over the allocation, retention, and transfer of the privileges to deal in all options to, by, and among members on the options and foreign currency options trading floors. *See also* Exchange By-Law Article X, Section 10–7.

[11] The Exchange's Financial Automation Department is responsible for the design, development, implementation, testing, and maintenance of the Exchange's automated trading systems, surveillance systems, and back office systems, and for monitoring the quality of

necessary for access to the Exchange's systems with respect to the option symbol(s) assigned to the RSQT. Thus, an RSQT could not trade options in which it is not assigned, and could not thereby function as an RSQT in a higher category level without having paid the appropriate RSQT fee.

Credits

The RSQT's fees would be subject to credits, based on the amount of permit fees [12] applicable to the RSQT, subject to maximum allowable credit applicable to each RSQT category. Thus, for example, a Category III RSQT would be assessed a monthly RSQT fee of $4,700, and would be eligible to receive a permit credit against the $4,700 RSQT fee, depending on the number and type of permits held by the member RSQT. For example, if there is one ROT trading permit held within a member organization, the member organization would receive a permit credit of $1,200 (the cost of the first ROT permit purchased) against the $4,700 RSQT fee. If there are two ROT trading permits held within the member organization, the member organization would receive a permit credit of $2,200 ($1,200 for the first permit + $1,000 for the second permit) against the $4,700 RSQT fee. If the member organization holds two ROT trading permits and one Order Flow Provider permit (allowing the member organization to submit orders to the option trading floor), the member organization would receive a permit credit of $2,400 ($1,200 for the first permit + $1,000 for the second permit + $200 for the Order Flow Provider permit), etc.[13] The maximum allowable permit credit for a Category III RSQT would be $3,200, regardless of the number and type of permits held within the member organization.

The maximum allowable credit for each category of RSQT is progressively larger, similar to the progressively higher RSQT fees included in the fee schedule. The highest RSQT fee category, therefore, would receive the highest maximum allowable permit credit.

In addition to the above fees, RSQTs would be subject to the current transaction and other fees applicable to ROTs, as set forth in the Exchange's schedule of fees and charges.

performance and operational readiness of such systems, in addition to user training and validation of user technology as it pertains to such users' interfacing with the Exchange's systems.

[12] *See supra* note 6.

[13] *See supra* note 7.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and subparagraph (f)(2) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–12 on the subject line.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on March 22, 2005, the date the Phlx filed Amendment No. 2.

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–Phlx–2005–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–12 and should be submitted on or before April 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1394 Filed 3–29–05; 8:45 am]

BILLING CODE 8010–01–P

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the Grand Canyon Working Group of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCIES: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS) are establishing a

Grand Canyon Working Group within the National Parks Overflights Advisory Group (NPOAG) to provide advice and recommendations regarding the implementation of the National Parks Overflights Act of 1987 with respect to the Grand Canyon. To the extent that recommendations involve aviation rulemaking, the Working Group will also participate in the development of the rule(s). This notice informs the public of the establishment of the Grand Canyon Working Group, describes its structure and qualifications for membership, and provides for nominations for membership in the Working Group.

FOR FURTHER INFORMATION CONTACT: Lynne Pickard, Federal Aviation Administration, Senior Advisor for Environmental Policy, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–8767, E-mail: *lynne.pickard@faa.gov* or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO, 80525, telephone (970) 225–3563, E-mail: *Karen_Trevino@nps.gov*.

DATES: Those interested in serving on the Grand Canyon Working Group should submit nominations to Ms. Pickard or Ms. Trevino on or before April 20, 2005. Electronic (E-mail) submissions are preferred.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Overflights Act of 1987 (Pub. L. 100–91) requires actions by the Department of the Interior/National Park Service (DOI/NPS) and the Federal Aviation Administration (FAA) to provide for substantial restoration of the natural quiet and experience of the Grand Canyon National Park and for protection of public health and safety from adverse effects associated with aircraft overflights. The achievement of this mandate has been a challenge technically, as well as practically in terms of generating broad support for the means of accomplishing substantial restoration of natural quiet.

The NPS and the FAA are committed to providing the joint Federal leadership necessary to complete this task with the active participation of engaged stakeholders, including sovereign tribal governments. FAA and NPS envision a collaborative approach to the remaining work using the collective professional knowledge and judgment of interested stakeholders. The NPS and the FAA have engaged the services of the U.S. Institute for Environmental Conflict Resolution and Lucy Moore Associates to assist the agencies and stakeholders in the development of a final overflights plan for Grand Canyon National Park that will meet the goals of the National Parks Overflights Act of 1987 and be broadly supported by all parties. The National Parks Overflights Advisory Group (NPOAG) is an appropriate forum for bringing agencies, tribal governments, aviation, environmental and other interests together to address this issue. The NPOAG agreed with the establishment of a Grand Canyon Working Group at its meeting on February 23–24, 2005.

The NPS and the FAA, as required by the National Parks Air Tour Management Act of 2000, established the NPOAG in March 2001. By FAA Order No. 1110–138, signed by the FAA Administrator on October 10, 2003, the NPOAG became an Aviation Rulemaking Committee (ARC). The NPOAG was formed to provide continuing advice and counsel to the FAA Administrator and NPS Director with respect to commercial air tour operations over and near national parks and abutting tribal lands. The Administrator and Director may also request the NPOAG's advice and recommendations on safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.

The NPOAG is comprised of a balanced group of representatives of general aviation, commercial air tour operators, environmental concerns, and Indian tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director chair the NPOAG in alternating 1-year terms.

Structure of the Grand Canyon Working Group

The Grand Canyon Working Group will be comprised of 11 to 20 members to assure a representative and balanced group of agency, tribal, environmental, aviation and other interests. The Working Group will be co-chaired by a representative of the NPS and a representative of the FAA, and will be facilitated by a third-party neutral contracted through the U.S. Institute for Environmental Conflict Resolution. The Working Group will address issues related to the federal agencies legal mandate to achieve substantial restoration of natural quiet in the Grand Canyon from overflight noise; seek meaningful, realistic and implementable solutions; and achieve as much consensus as possible on an overflights plan among the multiple interests that have a stake in this issue.

The Working Group will be a self-contained group within the NPOAG with specific responsibility for Grand Canyon overflight matters, including but not limited to:

- Review of the overflights noise analysis in order to have confidence in the approach and results.
- Recommendations for a final overflights plan that provides for the substantial restoration of natural quiet and experience of the Grand Canyon National Park, including routes or corridors for commercial air tour operations that employ quiet aircraft technology, and for protection of public health and safety from adverse effects associated with aircraft overflights.
- Participation in the development of aviation regulations necessary to implement the recommendations.

The Working Group will report simultaneously to the NPOAG, the NPS, and the FAA. The products of the Working Group will be available for review by the full NPOAG, but will not be subject to NPOAG revision. The NPOAG as a whole may decide to add support to or express reservations on particular work products or recommendations. Current NPOAG members will not automatically be assigned to the Working Group; rather, they must be nominated. The intent of the NPOAG is to nominate at least two current members to the Working Group to enhance NPOAG support and connectivity.

The Working Group is anticipated to meet quarterly for 1 to 2 days and to review and exchange information and views between meetings via mail, telephone, and Email. Meetings will be held within reasonable geographic proximity to the Grand Canyon to minimize travel time and expenses of most participants. The first meeting is expected to occur in June 2005. The Working Group may be convened for approximately 3 years, assuming the need for aviation rulemaking activity and accompanying National Environmental Policy Act review following the Working Group's recommendations. The final overflights plan shall ensure that the restoration of natural quiet required by the National Parks Overflights Act is completed no later than April 22, 2008, in accordance with the Presidential memorandum of April 22, 1996.

Qualifications for Membership in the Grand Canyon Working Group

The NPS and the FAA seek nominees to the Working Group that have the following qualifications:

- Ability and authority to represent a key constituency

- Ability to participate effectively in the Working Group's responsibilities described in this notice
- Ability to attend meetings and commit time to the working effort
- Ability to generate ideas and options, and to appreciate the needs of others
- Ability to participate with respect for all points of view
- Ability to speak and act with authority when decisions are required
- Willingness to engage in good-faith efforts to seek solutions consistent with the mandate that can gain the broadest consensus

Based on a review of nominations in comparison to these qualifications, the NPS and the FAA will select a balanced group of agency, tribal, aviation, and environmental members.

Nominations for Working Group Membership

Nominations to serve on the Grand Canyon Working Group should be submitted in writing, either by Email (which is preferred) or regular mail to Ms. Pickard at the FAA or Ms. Trevino at the NPS [*see* addresses above under **FOR FURTHER INFORMATION CONTACT**], and must be electronically dated or postmarked on or before April 20, 2005. Self-nominations are allowed. Nominations should address the nominee's abilities and experience with respect to the above qualifications and should include the following:

- Current job/position of nominee
- Group/Tribe/interest/constituency the nominee represents and their involvement with Grand Canyon overflights
- Nominee's background and/or expertise related to overflight noise at Grand Canyon
- Confirmation that nominee is prepared to dedicate the necessary time and resources
- Nominee's experience with negotiation and other collaborative processes

Dated: March 23, 2005.

William C. Withycombe,

FAA Western-Pacific Regional Administrator.

[FR Doc. 05–6201 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2005–20763]

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved annual information collection and approve the addition of the collection of some monthly data requested by Congress: 49 U.S.C. § 5335(a) and (b) National Transit Database.

DATES: Comments must be submitted before May 31, 2005.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Gary Delorme, National Transit Database Manager, Office of Program Management, (202) 366–1652.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5335(a) and (b) (*OMB Number:* 2132–0008).

Background: 49 U.S.C. § 5335(a) and (b) require the Secretary of Transportation to maintain a reporting system by uniform categories to accumulate mass transportation financial and operating information and a uniform system of accounts and records. Twenty years ago, the National Transit Database (NTD) was created by Congress to be the repository of transit data for the nation. For FTA, the NTD is an agency mission critical Information Technology (IT) system. Congress created the NTD to provide validated data to determine the allocations for FTA's major formula grant programs. Each year transit authorities that receive FTA funding submit performance data, via the Internet, to the NTD. For the formula funding, they submit data on vehicle miles, fixed-guideway miles, ridership, and operating costs. These performance data are used in statutory formulae to apportion over $4 billion in federal funds back to those agencies across the nation.

In addition, Congress provides much of the investment in the capital infrastructure of transit. The NTD reports to Congress on the level of that investment and the condition and performance of the capital assets funded by Congress. It reports each bus and railcar, the average age of the vehicle fleets, as well as the costs, condition and performance of bus and rail systems. All transit safety and security data is reported to the NTD. Since the 9/11 tragedy, the Department of Homeland Defense receives security incident data from the NTD. The National Transportation Safety Board (NTSB), the Department of Transportation (DOT), and the Government Accounting Office (GAO) use NTD safety data. The Department of Justice and DOT use NTD data for compliance with bus and paratransit provisions of the Americans with Disabilities Act of 1990. The Department of Labor uses NTD employment, hours and wage data. In addition, NTD fuel and engine data is used by the Environmental Protection Agency and the Department of Energy. The Federal Highway Administration incorporates transit financial and highway fixed-guideway (HOV) data in their annual reports. In fact, FTA could not fulfill its annual reporting requirements to Congress under the Government Performance and Results Act (GPRA) without NTD data. In addition, federal, state, and local governments, transit agencies/boards, labor unions, manufacturers, researchers, consultants and universities use the NTD for making transit related decisions. State governments also use the NTD in allocating funds under 49 U.S.C. Section 5307 and use NTD data

to prepare annual state transit summaries. The NTD requires that transit costs be reported by mode, such as commuter rail, ferryboat, bus, subway, or light rail. Thus, the NTD is the only accurate national source of data on operating costs by mode. For example, without the NTD, it would be difficult to compare the average operating costs of bus versus light rail. NTD information is essential for understanding cost, ridership and other national performance trends, including transit's share of urban travel. It would be difficult to determine the future structure of FTA programs, to set policy, and to make funding and other decisions relating to the efficiency and effectiveness of the nation's transit operations without the NTD. For many years, OMB has approved the annual information collection under the NTD, as required by statute. Prior to 2002, the NTD received annual summary reports for safety, security and ridership data. In 2002, FTA added the monthly reporting of safety and security data and ridership data to the NTD at the direction of Congress.

New NTD. In the 2000 DOT Appropriations Act, Congress directed FTA to develop a new NTD. In January 2002, a completely new NTD was launched on the Internet. It was completed on time and within budget. The new NTD includes an updated and streamlined version of the annual NTD that OMB has reviewed in the past, but it adds some monthly reporting that OMB has not reviewed. Congress, the DOT and the NTSB wanted monthly reporting of safety and security data. Also, to meet annual GPRA reporting requirements, Congress wanted transit ridership to be reported monthly. Congress provided FTA with the funds to design and program the new NTD. During the two-year development period for this system, Congress required that a panel of experts under the Transportation Research Board (TRB) of the National Academy of Sciences review all NTD data elements. The FTA conducted outreach sessions on revisions to the NTD, prepared reports to Congress, and worked with the TRB panel to reduce unnecessary reporting and reporting burden. As a result, some forms and many data series were eliminated from the annual report.

The new Internet-based system replaced the older diskette system and greatly reduced reporting burden. The new Internet system has pre-submission validation, like Turbo-Tax. Many errors were caught prior to submission. The Internet system eliminated the time consuming mailing back and forth of submission errors to reporters, and re-mailing submission corrections back to FTA. The new annual NTD yielded significant timesavings and reduced reporting burden. In recent surveys, over 75 percent of reporters like the new annual system and find it to be a great improvement and timesavings.

Much of the reduction in burden hours for the annual NTD reports were offset by the increase in time for filing monthly reports in the new NTD. Safety, security and ridership data has always been part of the purview of the NTD. Congress, the NTSB and DOT wanted FTA to generate more detailed, monthly safety data to develop causal factors. The Federal Railroad Administration, the National Highway Traffic Safety Administration and the Federal Aviation Administration report safety and security data monthly. Congress, DOT and the NTSB wanted FTA to harmonize with her sister agencies and provide monthly reports. Monthly reporting has increased reporting time. The net effect of monthly safety, security and ridership data reporting is to offset much of timesavings that the new NTD was able to produce for the annual reports. Total NTD reporting time has dropped only a little.

Respondents: 647 total potential respondents, of which 70 very small systems seek exemptions from filing. Annually, about 577 entities file detailed reports. The respondents are primarily public transit authorities that are agencies of state and local governments. Reporters also include entities under contract to public transit agencies, such as, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 402 hours for each of the 577 respondents.

Estimated Total Annual Burden: 231,954 hours.

Frequency: Primarily annual, with monthly safety, security and ridership reports.

Issued: March 24, 2005.

Ann M. Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 05–6202 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 23, 2005.

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, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

DATES: Written comments should be received on or before April 29, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0731.

Regulation Number: PS–262–82.

Type of Review: Extension.

Title: PS–262–82 (Final) Definition of an S Corporation.

Description: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be used to verify that taxpayers are complying with the requirements imposed by Congress under subchapter S.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 1,005.

Estimated Burden Hours Respondent: 1 Hour.

Frequency of response: Other (Non-recurring).

Estimated Total Reporting Burden: 1,005 Hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, 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.

Christopher Davis,

Treasury PRA Assistant.

[FR Doc. 05–6266 Filed 3–29–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities; Proposed Renewal of Information Collection; Comment Request Concerning the Interagency Bank Merger Act Application

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

ACTION: Joint notice and request for comment.

SUMMARY: The OCC, Board, FDIC, and OTS (Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on a proposed renewal of a continuing information collection, as required by the Paperwork Reduction Act of 1995. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies are reviewing the general instructions for the information collection. The Agencies are soliciting comments on how the instructions might be clarified. There would be no new or changed information requirements associated with the editorial changes to the instructions.

DATES: You should submit written comments by May 31, 2005.

ADDRESSES: Interested parties are invited to submit comments to any or all of the Agencies. All comments, which should refer to the OMB control number, will be shared among the Agencies:

OCC: Comments should be sent to Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0014, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, identified by FR 2070; OMB No. 7100–0171, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Interested parties are invited to submit written comments to Gary A. Kuiper, Counsel, (202) 942–3824, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW PA1730–3000, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

OTS: You may submit comments to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, ATTN: 1550–0016, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You may request additional information from:

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–4824, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. For subject matter information, you may contact Cheryl Martin at (202) 874–4614, Licensing Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle Long, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Gary A. Kuiper, Counsel, (202) 942–3824, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW PA1730–3000, Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, (202) 906–6467; Frances C. Augello, Senior Counsel, Business Transactions Division, (202) 906–6151; or Patricia D. Goings, Regulatory Analyst, Examination Policy, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Proposal to extend for three years, with clarifications, the following currently approved collection of information:

FRB, FDIC, and OTS Report Title: Interagency Bank Merger Act Application.

OCC Title; Comptroller's Licensing Manual (Manual). The specific portions of the Manual covered by this notice are those that pertain to clarifying changes to the instructions.

OMB Numbers:

OCC: 1557–0014.
Board: 7100–0171.
FDIC: 3064–0015.
OTS: 1550–0016.

Form Numbers:

OCC: None.
Board: FR 2070.
FDIC: 6220/01 and 6220/07.
OTS: 1639.

Affected Public: Individuals or households; businesses or other for-profit.

Type of Review: Review of a currently approved collection.

Estimated Number of Respondents:

OCC: Nonaffiliate—90; Affiliate—106.
Board: Nonaffiliate—62; Affiliate—18.
FDIC: Nonaffiliate—190; Affiliate—172.
OTS: Nonaffiliate—16; Affiliate—0.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response:

OCC: Nonaffiliate—30; Affiliate—18.
Board: Nonaffiliate—30; Affiliate—18.
FDIC: Nonaffiliate—30; Affiliate—18.
OTS: Nonaffiliate—30; Affiliate—18.

Estimated Total Annual Burden Hours:

OCC: Nonaffiliate—2,700; Affiliate—1,908. Total: 4,608 burden hours.
Board: Nonaffiliate—1,860; Affiliate—324. Total: 2,184 burden hours.
FDIC: Nonaffiliate—5,700; Affiliate—3,096. Total: 8,796 burden hours.
OTS: Nonaffiliate—480; Affiliate—0. Total: 480 burden hours.

General Description of Report: This information collection is mandatory. 12 U.S.C. 1828(c) (OCC, FDIC, and OTS), and 12 U.S.C. 321, 1828(c), and 4804 (Board). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses, that is, small institutions, are affected.

Abstract: This submission covers a renewal of the Agencies' merger application form, which may include clarified instructions for both affiliated and nonaffiliated institutions. The Agencies need the information to ensure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Agencies are required, under the Bank Merger Act, to consider financial and managerial resources, future prospects, convenience and needs of the community, community reinvestment, and competition.

Some agencies collect limited supplemental information in certain cases. For example, the OCC and OTS collect information regarding CRA commitments; the Federal Reserve collects information on debt servicing from certain institutions; and the FDIC requires additional information on the competitive impact of proposed mergers.

Current Actions: The Agencies are seeking to renew this collection and propose to clarify the instructions. The General Information and Instructions section of the merger application form would be modified to clarify the first subsection (Preparation and Use), which explains more clearly the range of merger transactions that may require use of the application. The remaining clarifications include a new paragraph in the Preparation and Use subsection noting that applications must be submitted to the appropriate regulatory agency. Also, a new Compliance subsection would inform applicants of compliance expectations and of the potential that some very large transactions may be subject to the Hart-Scott-Rodino Antitrust Improvement Act. These additional paragraphs, which would provide further practical advice that is generally included in the other recently approved interagency forms, are intended to highlight certain elements of the applications process to prevent confusion or delay, and add no additional burden.

The Federal Reserve proposes to extend for three years, with minor revisions, its current supplemental form. The two proposed revisions are intended to facilitate the applications review process and provide further practical guidance to the applicant. The first proposed revision recognizes the possible need of biographical or financial information from any individual that, as a consequence of the proposed transaction, becomes a new principal, shareholder, director, or senior executive officer of a state member bank. While all of the Agencies agree that a significant change in management or ownership must be evaluated under the statutory factors of the Bank Merger Act, they have elected to deal with this information need on a case-by-case basis. The second proposed revision would eliminate the need for any formal certification from a target institution. This certification is unique to the bank merger application, and is not specifically required by the Bank Merger Act. As the FRB generally waives this requirement if objected to by the target institution and as the applicant is the party to which bank merger authority is granted, the FRB believes that only the applicant need provide the requested certification. The other agencies believe that the target institution should certify to the accuracy of the information and that the institutions will notify the agency if any material changes occur prior to a decision. Also, the target institution certifies that any communications with the agency do not constitute a contract.

Comments: Comments submitted in response to this notice will be summarized in each Agency's request for OMB approval, and analyzed to determine the extent to which the instructions for the collection should be modified. All comments will become a matter of public record.

Written comments are invited on:

a. Whether the information collection is necessary for the proper performance of the Agencies' functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the Agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 17, 2005.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 17, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 18th day of March, 2005.

Robert E. Feldman,

Executive Secretary.

Dated: March 23, 2005.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 05–6227 Filed 3–29–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12114

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12114, Continuation Sheet for Item #16 (Additional Information) OF–306, Declaration for Federal Employment.

DATES: Written comments should be received on or before May 31, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Continuation Sheet for Item #16 (Additional Information) OF–306, Declaration for Federal Employment.

OMB Number: 1545–1921.

Form Number: 12114.

Abstract: Form 12114 is used as a continuation to the OF–306 to provide additional space for capturing additional information.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 24,813.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 6,203.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 24, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–1404 Filed 3–29–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Committee will be discussing issues pertaining to the IRS administration of the Earned Income Tax Credit.

DATES: The meeting will be held Thursday, April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be held Thursday, April 21, 2005 from 2 pm to 3:30 pm ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance by contacting Audrey Y. Jenkins. To confirm attendance or for more information, Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085. If you would like a written statement to be considered, send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 25, 2005.

Martha Curry,

Director, Taxpayer Advocacy Panel.

[FR Doc. E5–1405 Filed 3–29–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
March 30, 2005

Part II

Nuclear Regulatory Commission

10 CFR Part 35
Medical Use of Byproduct Material—Recognition of Specialty Boards; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AH19

Medical Use of Byproduct Material—Recognition of Specialty Boards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certifications may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, or authorized users. The final rule also revises the requirements for demonstrating the adequacy of training and experience for pathways other than the board certification pathway. This final rule grants, in part, a petition for rulemaking submitted by the Organization of Agreement States (PRM–35–17) and completes action on the petition.

DATES: *Effective Date:* This final rule is effective on April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–7608, e-mail *rwb@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Petition for Rulemaking
III. Discussion
IV. Summary of Public Comments and Responses to Comments
V. Summary of Final Revisions
VI. Agreement State Compatibility
VII. Implementation
VIII. Voluntary Consensus Standards
IX. Finding of No Significant Environmental Impact: Environmental Assessment
X. Paperwork Reduction Act Statement
XI. Regulatory Analysis
XII. Regulatory Flexibility Certification
XIII. Backfit Analysis
XIV. Small Business Regulatory Enforcement Fairness Act

I. Background

During development of revised 10 CFR Part 35, published as a proposed rule on August 13, 1998 (63 FR 43516) and as a final rule on April 24, 2002 (67 FR 20249), there was a general belief that the boards, whose certifications were recognized by the NRC, would meet, or could make adjustments to meet, the new requirements established by that rulemaking governing recognition of specialty boards by the NRC and that the certifications of these boards would continue to be recognized by NRC. However, when applications for recognition were received, the NRC staff determined that, except for one board, the boards did not meet all the requirements specified in the final rule. Specifically, the boards' certification programs failed to meet the requirements in the final rule regarding preceptor (*i.e.*, an individual who provides, directs, or verifies training and experience) attestation and work experience. The only board that currently meets the revised requirements is the Certification Board of Nuclear Cardiology (CBNC) because it developed its certification program based on the final rule (published on April 24, 2002 (67 FR 20249)).

The current regulations in 10 CFR Part 35 offer three pathways for individuals to satisfy training and experience (T&E) requirements to be approved as a radiation safety officer (RSO), authorized medical physicist (AMP), authorized nuclear pharmacist (ANP), or authorized user (AU). These pathways are: (1) Approval of an individual who is certified by a specialty board whose certification has been recognized by the NRC or an Agreement State as meeting the NRC's requirements for training and experience (a "recognized board"); (2) Approval based on an evaluation of an individual's training and experience; or (3) Identification of an individual's approval on an existing NRC or Agreement State license. For this discussion, pathway (1) will be referred to as the certification pathway, and pathway (2) as the alternate pathway.

On February 19, 2002, in a briefing of the Commission, the Advisory Committee on Medical Uses of Isotopes (ACMUI [1]) expressed concern about requirements for T&E in the revised 10 CFR Part 35, approved by the Commission on October 23, 2000 (SRM–SECY–00–0118). The ACMUI was concerned that if the requirements for recognition of specialty board certifications were to become effective as drafted, there could be potential shortages of individuals qualified to serve as RSOs, AMPs, ANPs, and AUs because they would no longer meet the requirements for T&E under the certification pathway. The ACMUI indicated that, without changes to the requirements for T&E in the final rule approved by the Commission in October 2000, the boards would no longer be qualified for recognition by NRC and, therefore, a board's future diplomates could no longer be approved as RSOs, AMPs, ANPs, or AUs.

The ACMUI also expressed the concern that the boards might be "marginalized." Specifically, under the draft final rule, to gain approval via the certification pathway, a candidate for certification would have been required to meet all of the requirements in the alternate pathway, thereby imposing more requirements beyond those already required by boards, on candidates using the certification pathway for approval. The extra requirements of concern to the ACMUI, incorporated from the alternate pathway by reference, include a specification for length-of-training as well as obtaining a written attestation signed by a preceptor. Taken together with other requirements of boards, such as requiring candidates for certification to take written and/or oral examinations, the concern was that candidates seeking approval might bypass the board certification pathway and select the alternate pathway.

Based on these concerns, the ACMUI urged the Commission to implement measures to address the training and experience issues associated with recognition of specialty boards by the NRC in the draft final rule and to find a permanent solution after publication of the final rule. Subsequently, the NRC modified the final rule by reinserting Subpart J (as contained in the proposed rule before publication of revised Part 35 in April 2002) for a 2-year transition period. Subpart J provides for continuing recognition of the specialty boards listed therein during the transition period. The final rule was published in the **Federal Register** on April 24, 2002 (67 FR 20249), and became effective on October 24, 2002. As specified in § 35.10(c), the 2-year transition period ended on October 24, 2004. In a Staff Requirements Memorandum (SRM–COMSECY–02–0014) dated April 16, 2002, the Commission directed the NRC staff to develop options for addressing the training and experience issue. The intent was to have this final rule in place before the end of the 2-year transition period. Public comment on

[1] The Advisory Committee on the Medical Uses of Isotopes (ACMUI) advises NRC on policy and technical issues that arise in the regulation of the medical uses of radioactive material. the ACMUI membership includes a representative of Agreements States and health care professionals from various disciplines who comment on changes to NRC regulations and guidance; eyaluate certain non-routine uses of radioactive material; provide technical assistance in licensing, inspection, and enforcement cases; and bring key issues to the attention of the Commission for appropriate action.

the proposed rule led the NRC to conclude that the transition period should be extended for 1 year to October 24, 2005, to allow time for implementation of amendments to requirements for recognition of specialty board certifications. This extension was effected through a separate rulemaking (69 FR 55736; September 16, 2004).

The issue in question concerns the requirements in the rule governing the recognition of specialty boards by the NRC. These requirements are located in the current regulations at §§ 35.50, 35.51, 35.55, 35.190, 35.290, 35.390, 35.392, 35.394, 35.490, 35.590, and 35.690.

The ACMUI submitted a report to the NRC on August 1, 2002 related to the T&E requirements. The NRC staff presented three options to the Commission in a Commission paper, SECY–02–0194, dated October 30, 2002, which included the recommendations of the ACMUI in an attachment. The three options were: (1) Retain the existing requirements in the current regulations; (2) Prepare a proposed rule to modify training and experience requirements based on the recommendations submitted by the ACMUI; and, (3) The same as Option 2 with a minor modification (*i.e.*, listing all specialty boards' certifications recognized by NRC on the NRC's Web site rather than, as recommended by the ACMUI, listing some boards in the regulation and others on the Web site). In SRM–02–0194, dated February 12, 2003, the Commission approved Option 3, directing the NRC staff to prepare a proposed rule based on the ACMUI's recommendations with certain exceptions. The Commission directed that a list of recognized board certifications be posted on the NRC's Web site, that the preceptor statement remain as written in the current regulations (published April 24, 2002; 67 FR 20249), and that the staff should clarify that the preceptor language does not require an attestation of general clinical competency, but does require sufficient attestation to demonstrate that the candidate has the knowledge to fulfill the duties of the position for which certification is sought. This form of attestation should be preserved both for the certification pathway and the alternate pathway.

During a teleconference with the ACMUI, conducted on July 17, 2003, the ACMUI members continued to voice concern about having recognition of board certifications conditioned on requiring candidates for certification to obtain written attestation of competency signed by a preceptor. The ACMUI recommended that if the Commission still maintained that it was necessary to include a preceptor statement for all authorized positions named in 10 CFR Part 35, this requirement should be separated from the criteria for recognition of board certifications, as well as for the alternative pathway. Agreement State representatives participated in the teleconference and agreed with this recommendation. In a letter, dated July 23, 2003, the ACMUI recommended that the requirements for a preceptor statement be removed from the certification pathway; however, if the Commission still believed it necessary to include a preceptor statement for all "authorized positions" named in 10 CFR Part 35, the ACMUI recommended that this requirement be separated from the board certification pathway and that it be specified separately as a new paragraph in each training section.

The NRC staff submitted a proposed rule to the Commission on August 21, 2003 (SECY–03–0145). The Commission approved the NRC staff's recommendation to publish the proposed rule, with certain changes directed by the Commission, in SRM–03–0145, dated October 9, 2003. The Commission approved the recommendation of the ACMUI that the requirement for a preceptor statement be removed from the requirements for recognition of specialty board certifications. The Commission also indicated it should be made clear in the proposed rule language that a preceptor statement is required regardless of which training pathway is chosen. The proposed rule was published for a 75-day comment period on December 9, 2003 (68 FR 68549). The NRC staff posted a comparison document, with differences between the current and proposed rule highlighted, on the NRC's rulemaking forum on December 19, 2003, to facilitate public understanding and stakeholder review of proposed changes to 10 CFR Part 35.

The ACMUI provided comments on the proposed rule at its meeting on March 1–2, 2004. The ACMUI also conducted a public meeting via teleconference on March 22, 2004, to discuss, in part, additional recommendations related to the proposed rule. Following receipt of public comments, the NRC staff distributed a draft final rule to ACMUI and Agreement States for their 30-day review and comment. The NRC considered the additional comments received in developing the final rule. These comments are discussed in Section IV, "Summary of Public Comments and Responses to Comments."

II. Petition for Rulemaking

The Organization of Agreement States (OAS) (petitioner) filed a Petition for Rulemaking (petition) dated September 3, 2004 (PRM–35–17) requesting that the NRC amend §§ 35.55, 35.190, 35.290 and 35.390 to define and specify the minimum number of "didactic" training hours for Authorized Nuclear Pharmacists and Authorized Users identified in these sections. Notice of receipt of the petition was published in the **Federal Register** on October 28, 2004 (69 FR 62831). The terms "didactic training" and "classroom and laboratory training" were used interchangeably by the Agreement States in their comments and both terms are used in the current regulations in Part 35. The term "classroom and laboratory" will be used hereinafter to refer to this type of training.

The petitioner states that, in the current regulations in these sections, the minimum numbers of hours of classroom and laboratory training in radiation safety are not specified or separated from the total training hours. The petitioner notes that Subpart J does include a requirement for a minimum number of classroom and laboratory training hours as well as supervised work experience.

The petitioner asserts that the T&E requirements have been designated as "Category B" for Agreement State compatibility to provide nationwide consistency and uniformity of authorized user credentialing, and that the lack of clearly defined classroom and laboratory training hours for these authorized users weakens the consistency and uniformity of the rule. The petitioner also believes that the need for specified classroom and laboratory training hours is a radiation safety issue rather than a "practice of medicine" issue in that radiation safety for the patient and the occupational radiation workers may be compromised, and that a majority of radiation safety principles and procedures are learned during classroom and laboratory training.

As discussed further in subsequent sections of the **SUPPLEMENTARY INFORMATION,** during the 75-day public comment period for the proposed rule, ending on February 23, 2004, the NRC received comments which raised the same issues as those raised by the petitioner. Because of the similarity in issues raised, the NRC has determined to consider the OAS petition as part of this rulemaking.

During resolution of the comments, the NRC staff consulted with the ACMUI and Agreement States on how to

ensure adequacy of T&E in radiation safety and consistency of requirements for T&E between Agreement States and between Agreement States and the NRC. Agreement State representatives served as members on an NRC working group to develop this rule. A steering group was formed to provide recommendations to resolve the issue raised by the Agreement States, during comments on the proposed rule, on requirements for classroom and laboratory training. The working group addressed issues raised in the petition related to specifying hours of classroom and laboratory training in 10 CFR Part 35. The NRC staff consulted with and received comments from the ACMUI via a public teleconference on the issue on October 5, 2004, with participation of Agreement States, and during its meeting on October 13–14, 2004. After consideration of the input from these sources, as well as review and analysis of the issue by the working and steering groups, the NRC has determined to grant the petition in part, and is revising §§ 35.55, 35.190, 35.290, and 35.390, in the final rule, to establish a requirement for minimum number of hours of classroom and laboratory training for the alternate pathway. The petition is denied, in part, in so far as the NRC is not requiring a minimum number of hours of classroom and laboratory training for the certification pathway. The NRC staff believes that such a requirement would unnecessarily limit the flexibility of boards to determine their certification requirements. The rationale for this change to requirements for T&E is explained in the NRC's response to comments on the proposed rule in Section IV. Summary of Public Comments and Responses to Comments, under Part II—General Issues (Issue 1), and Part IV—Implementation by Agreement States—Timing and Compatibility (Issue 2).

This completes action on PRM–35–17.

III. Discussion

The principal changes in the final rule involve revising the criteria for recognizing the certifications of specialty boards. These changes relate to the requirements for T&E that boards would place on candidates seeking board certification. The NRC staff reviewed board certification procedures and made a determination that, with one exception, the boards' certification programs failed to meet the requirements in the current regulations regarding preceptor certification (attestation) and work experience. This assessment [2] resulted from a detailed comparison, performed by the NRC staff, between requirements in the regulations (in Subparts B and D through H) and specialty board requirements for certification. The changes resulting from adoption of the final rule will resolve the issues related to recognition of board certifications by instituting requirements that are less prescriptive, while maintaining public health and safety. These changes will ensure that a clear regulatory determination can be made that specialty boards, both new and existing, meet the relevant criteria for recognition by the NRC or an Agreement State. Changes have also been made to the T&E requirements for the alternate pathway. The final rule provides a more flexible and performance-based approach to specifying requirements for training and experience, using a graded approach to ensure that training in radiation protection is consistent with the need for adequate understanding and skills.

The changes to T&E requirements are intended to address issues raised by the ACMUI. However, the NRC disagrees with the ACMUI's belief that the T&E criteria in the current rule would result in candidates bypassing board certification. The NRC believes that board certification has been, and will continue to be, essential for physicians, including AUs, to practice medicine. While health physicists, medical physicists, nuclear pharmacists, and physicians can serve in the respective categories of RSO, AMP, ANP, and AU by satisfying T&E requirements under the alternate pathway, the NRC believes that individuals who would have sought certification are likely to continue to do so because certifications are useful to individuals for reasons other than satisfying requirements in 10 CFR Part 35, *e.g.*, measuring areas of competence that go beyond regulatory requirements established under the Atomic Energy Act. Furthermore, some State agencies now require that individuals be certified by specialty boards before they can practice in some specialties, *e.g.*, as medical physicists and nuclear pharmacists.

Changes to the Certification Pathway

For the certification pathway, the current regulations incorporate the more prescriptive requirements from the alternate pathway. This final rule establishes less prescriptive criteria for board certifications to be recognized by the NRC or an Agreement State.

For the RSO, AMP, and ANP, the revised criteria include a degree from an accredited college or university, professional experience, passing an examination administered by the board, and in some cases, additional training related to the type of use for which an individual would be responsible. The requirement for passing an examination reflects the current practice of certification boards.

The addition of a requirement in § 35.50(a) for candidates for RSO to have a degree is consistent with current standards of certification boards to require a minimum of a baccalaureate degree. The NRC believes that this requirement helps ensure that a candidate for RSO has the level of knowledge necessary to fulfill the duties of an RSO. However, this final rule retains current regulatory provisions that allow candidates who do not hold a degree required under revisions to § 35.50(a) to qualify for positions as RSO under provisions in § 35.50(b). Requirements for T&E of candidates to serve as AMPs have been revised for the board certification pathway, in § 35.51(a)(2), to require 2 years of full-time practical training and/or supervised experience under the supervision of a medical physicist certified by a specialty board, whose certification is recognized by the NRC or an Agreement State, or in clinical radiation facilities providing high-energy, external beam therapy and brachytherapy services under the direct supervision of physicians who meet the requirements for AUs in §§ 35.490 or 35.690 or under supervision of a certified medical physicist in clinical radiation facilities. This T&E will help ensure that candidates have the level of knowledge necessary to fulfill the duties of an AMP.

The current regulations in 10 CFR Part 35 provide for a preceptor, defined in § 35.2, to certify that individuals have satisfactorily completed requirements for T&E and have achieved a level of radiation safety knowledge sufficient to function independently as RSOs, AMPs, ANPs, and AUs. In response to public comments, as discussed under the heading "IV. Summary of Public Comments and Responses to Comments," the NRC is now using "attestation" and "attest" in place of "certification" and "certify" in 10 CFR Part 35. A preceptor attestation is commonly referred to as a "preceptor statement," and this term is used

[2] "Comparison between NRC requirements and boards' certification programs," attachment 2 to SECY–02–0194, "options for addressing Part 35 Training and Experience Issues Associated With Recognition of Speciality Boards by NRC." SECY–02–0194 is available on the NRC's Web site, *http://www.nrc.gov*, in the "Electronic Reading Room."

interchangeably with the term "preceptor attestation" in the **SUPPLEMENTARY INFORMATION,** particularly in the summary of public comments, to reflect this usage by commenters.

The requirement that boards must have candidates for certification obtain a preceptor attestation as a condition for NRC recognition of certifications has been removed in the final rule; however, individuals are still required to obtain preceptor attestations, and licensees are required to submit them to the NRC (except as provided in § 35.15(d)). This is an addition to the current requirement in § 35.14(a) to provide a copy of board certifications to the NRC. Further discussion of the requirement for a preceptor attestation appears under the heading "Preceptor Attestation." The certification pathway also includes a specification for the number of hours of training and experience for ANPs and AUs for certain uses of byproduct material under §§ 35.100, 35.200, 35.300 (in §§ 35.390, 35.392, 35.394, and 35.396 for uses under § 35.300), and 35.500. The ACMUI recommended, for the proposed rule, that the requirement for 200 hours of classroom and laboratory training, now required in §§ 35.490 and 35.690, be removed because it believes that the combination of degree, practical experience, and examination in the criteria for recognizing certifying boards is equivalent to the number of hours of classroom and laboratory training specified for the alternative pathway. A detailed analysis of T&E requirements was performed by NRC staff and appears as Attachment 1 to SECY–02–0194, "OPTIONS FOR ADDRESSING PART 35 TRAINING AND EXPERIENCE ISSUES ASSOCIATED WITH RECOGNITION OF SPECIALTY BOARDS BY NRC." The NRC believes that, although the requirements are not identical, the T&E standard for recognizing certifying boards will be equivalent to the standard for the alternate pathway. The board certification process requires a candidate to have an academic degree, complete practical experience or a residency program, and pass an examination. Examinations test the knowledge and skills required to perform the applicable activities, including those in §§ 35.490(a)(2) and 35.690(a)(2), to ensure radiation safety. The NRC believes that the combination of a degree, practical experience, and an examination, in the criteria for recognizing certifying boards, will be equivalent to the number of hours of classroom and laboratory training specified for the alternate pathway. Further, the requirement in the certification pathway for §§ 35.490 and 35.690 for completion of an approved residency program, provides added assurance that T&E is sufficient. Therefore, the requirement for 200 hours of classroom and laboratory training does not apply to the criteria for recognition of board certification processes in §§ 35.490, and 35.690 of the final rule.

The ACMUI's recommendations included the addition of the Royal College of Physicians and Surgeons of Canada (RCPSC) in listings of entities which approve residency training to satisfy requirements for the board certification pathway for uses under §§ 35.300, 35.400, and 35.600. While the RCPSC was named in Subpart J of the current rule, it is not named in other subparts. There are reciprocal arrangements between U.S. entities and the RCPSC regarding approval of residency programs. Thus, the NRC finds these reciprocal agreements to be a sufficient basis to provide that RCPSC be included in various sections of 10 CFR Part 35.

The final rule provides the boards more latitude in making the determination that individuals are fully trained and capable of performing their duties involving radiation safety. These changes to the certification pathway continue to ensure the safe use of byproduct material by medical licensees by establishing criteria for specialty boards to use in granting certifications. The NRC made a determination that, with the exception of one specialty board, the boards do not meet the requirement in the current rule regarding preceptor certification and work experience. With more latitude under the certification pathway in the final rule, the NRC believes that boards will be able to meet the revised requirements for recognition of board certification processes.

Changes to the Alternate Pathway

The final rule also contains revised requirements for some of the alternate pathways. Some of these changes are minor and clarify the requirements for T&E.

The ACMUI's recommendations for approval as an AU in the alternate pathway in §§ 35.490(b) and 35.690(b) include the addition of the RCPSC to the listings of organizations that approve residency programs. The NRC finds that RCPSC should be included in the listing for the reasons previously discussed under the heading, "Changes to the Certification Pathway."

In comments on the proposed rule, Agreement States recommended that a minimum number of hours of "didactic" training in basic radionuclide handling techniques should be specified for individuals to qualify as ANPs under § 35.51 and as AUs under §§ 35.190, 35.290, and 35.390. The NRC understands that references by Agreement States to "didactic training" refers both to the "didactic training," currently required to qualify as an authorized nuclear pharmacist under current regulations in § 35.55(b)(1)(i), as well as the "classroom and laboratory training" required to qualify as an authorized user in §§ 35.190(c)(1)(i), 35.290(c)(1)(i) and 35.390(b)(1)(i). The term "classroom and laboratory training" will be used hereinafter to refer to this type of training. As discussed in Part II, Issue 1, and Part IV, Issue 2, of the Summary of Public Comments, the final rule specifies minimum number of hours of classroom and laboratory training for the alternate pathway.

Training Specific to Type of Use

The ACMUI recommended that, in addition to meeting minimum T&E requirements, authorized individuals should have training or experience in the use of byproduct material or specific modalities (types of use), as appropriate, for which a licensee is authorized. The ACMUI also recommended that the requirement apply to newly hired, authorized individuals and when a new type of use is added to the licensee's program. The NRC supports these changes, believing that they will ensure that a licensee's staff has adequate knowledge and experience to fulfill the duties for which they are responsible. The final rule includes new paragraphs that add this requirement in § 35.50(e) for RSOs, § 35.51(c) for AMPs, and for AUs in § 35.690(c) for remote afterloader, teletherapy and gamma stereotactic radiosurgery units. For uses under § 35.300, requirements in §§ 35.390(b)(1) and 35.396(d) provide for training specific to type of use which applies to both the board certification and alternate pathways.

Other Changes

In the current regulations, § 35.390(b)(1)(ii)(G) specifies that work experience for uses of byproduct material in unsealed form, for which a written directive (WD) is required, must include administering dosages of radioactive drugs involving a minimum of three cases in each of the categories for which the individual is requesting authorized user status. Sections 35.390, paragraphs (b)(1)(ii)(G)(*1*), (*3*) and (*4*) refer to oral and parenteral administration of certain radionuclides.

The final rule clarifies that this training must be with quantities of radionuclides for which a WD is required. The NRC believes these changes are necessary because, without them, an individual might cite experience with low-level dosages to satisfy requirements for work experience; the changes place emphasis on the need for AUs to have work experience with higher level dosages, for which a WD is required. Similar requirements have also been incorporated into new § 35.396(d).

The ACMUI and public commenters on the proposed rule stated that the physicians, who have sufficient T&E to serve as AUs for the medical use of unsealed byproduct material for which a WD is required, are unable to meet the requirements for use in Subpart E. As discussed in response to public comments on § 35.390, this issue was resolved by the inclusion of a new § 35.396, entitled, "Training for the parenteral administration of unsealed byproduct material requiring a written directive." A conforming change was also made to § 35.8, "Information collection requirements: OMB approval," to indicate that an information collection requirement applies to § 35.396.

The ACMUI recommended that the requirements for work experience for authorized users in §§ 35.190, 35.290, and 35.390 be changed to require experience with performing quality control check of instruments rather than with calibrating instruments. In addition to instrument calibration, quality control procedures commonly include checks of parameters such as linearity, constancy, and functionality (including battery checks). The NRC agrees with the ACMUI's recommendation because ensuring proper function of these instruments involves more than periodic calibration. The final rule effects these recommendations with changes to §§ 35.190(c)(1)(ii)(B), 35.290(c)(1)(ii)(B), 35.390(b)(1)(ii)(B), 35.392(c)(2)(ii), and 35.394(c)(2)(ii). Similar requirements have also been incorporated into new § 35.396(d)(2).

Training requirements for authorization as a medical physicist have been changed in § 35.51(b)(1) to remove specific requirements for a degree in biophysics, radiological physics, and health physics, and add the more general, other physical sciences, as well as engineering and applied mathematics. The requirement for 1 year of full-time training in therapeutic radiological physics has been changed to a more general requirement for 1 year of full-time training in medical physics. In § 35.690(b)(2), the requirement for candidates to be approved as AUs has been changed to broaden the requirement that supervised clinical experience be received in "radiation therapy" rather than in "radiation oncology." These changes are needed to allow for the therapeutic use of byproduct material in applications other than cancer therapy.

Current regulations in § 35.50(c) provide that an AMP identified on a licensee's license can serve as an RSO, provided that the individual has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has responsibilities as an RSO. However, current regulations only require services of an AMP for uses under §§ 35.433 and 35.600; a few AMPs are also named on licenses for uses under § 35.1000. Therefore, individuals who may have adequate T&E to serve as AMPs for types of use licensed under §§ 35.100, 35.200, 35.300, 35.400 and 35.500, are not listed on an NRC or Agreement State license under current rules. Medical physicists who are certified by a specialty board whose certification is recognized by the Commission or an Agreement State have training and experience in radiation safety aspects of the use of byproduct material for medical purposes. The regulations in § 35.50 have been changed to allow medical physicists, who are certified by a specialty board whose certification is recognized by the NRC or an Agreement State, to serve as RSOs, while retaining the requirement that these individuals have experience specific to the types of use for which they would be responsible. This change removes an impediment for individuals who have adequate T&E to become approved as RSOs. It also avoids placing a burden on licensees to apply for an exemption to regulations and on NRC and Agreement State staff who would be required to process an application for an exemption to regulations to approve a licensee's request to have a medical physicist, certified by a specialty board whose certifications are recognized by the NRC, serve as an RSO. Comments on the proposed rule indicated that medical physicists generally have adequate T&E to serve as RSOs. As discussed in response to comments on § 35.50, this section has also been amended to provide criteria for medical physicists, other than those who are AMPs, to serve as RSOs.

The term "high-energy" is used in the rule text in §§ 35.51(a)(2)(ii) and 35.51(b)(1) to specify the type of training to be included in T&E for AMPs. High-energy radiation is specified, in §§ 35.51(a)(2)(ii) and 35.51(b)(1) of the final rule, as photons and electrons with energies greater than or equal to 1 million electron volts, which is consistent with the definition of high-energy used by the International Commission on Radiation Units and Measurements in Report 42, *Use of Computers in External Beam Radiotherapy Procedures with High-Energy Photons and Electrons.*

In § 35.75(a), reference is made to "draft" licensing guidance in NUREG–1556, Vol. 9. This guidance was published in final version in October 2002. Therefore, the "draft" designation is being removed.

Preceptor Attestation

Part 35 currently requires a written certification, termed attestation in this final rule (and referred to as attestation in this discussion, when appropriate), that the individual has satisfactorily completed the required training, has achieved a level of knowledge or competency sufficient to function independently, and requires that the written certification be signed by a preceptor who is a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist or authorized user. This requirement applies to both the board certification and alternate pathways.

The ACMUI recommended that, instead of certifying "competency," the preceptor should attest that the individual has satisfactorily completed the required training and experience. It further recommended that a training program director be allowed to sign the written attestation.

As explained previously, the Commission considered recommendations of the ACMUI and determined in SRM–02–0194, "OPTIONS FOR ADDRESSING PART 35 TRAINING AND EXPERIENCE ISSUES ASSOCIATED WITH RECOGNITION OF SPECIALTY BOARDS BY NRC," that the preceptor statement should remain as written in the current regulations. However, the Commission emphasized that the preceptor language does not require an attestation of general clinical competency, but requires sufficient attestation to demonstrate that the candidate has the knowledge to fulfill the duties of the position for which certification is sought.

The ACMUI also recommended that the Commission separate the requirement to obtain a preceptor statement from the certification and alternate pathways, and to specify this requirement as a new paragraph in the sections dealing with T&E for RSOs, AMPs, ANPs, and AUs. The

Commission approved this recommendation of the ACMUI, placing the requirement on licensees to submit the preceptor statements to the NRC. This requirement appeared in the proposed rule. The regulations retain the requirements that individuals obtain preceptor attestations for both the certification and alternate pathways.

The requirement for licensees to submit a preceptor attestation to the NRC appears in revised § 35.14(a).

Listing of Recognized Board Certifications

The NRC will list on its Web site (*http://www.nrc.gov/materials/miau/med-use-toolkit.html*), instead of in its regulations, the names of board certifications for those boards whose certification processes meet the NRC's requirements. This approach has the advantage of eliminating the need to amend 10 CFR Part 35 to effect recognition each time a new board needs to be added to the listing. The ACMUI and specialty board representatives who participated in a public meeting on May 20, 2003, were in agreement with this approach.

Because of the importance of board certification in establishing the adequacy of T&E for individuals to serve as RSO, AMPs, ANPs, and AUs, a clear regulatory determination must be made that all boards, both new and existing, meet the relevant regulatory criteria. Evaluation of board requirements against revised criteria in the final rule is necessary to make this determination. Boards that are currently listed in Subpart J of Part 35 and other boards are required to apply for recognition under this rule. When necessary, the NRC staff will review a board's submittal with the ACMUI before a decision on recognition of a board is made.

The NRC will place the procedures for listing and delisting of specialty boards on its Web site at the time of publication of the final rule. Because of the important role of board certification, the procedures will provide for making a clear regulatory determination that boards, both new and existing, meet the relevant criteria in the revised regulations. The procedures provide for both adding new specialty boards to the listing of recognized certifications and for removal from the list.

The NRC staff does not intend to conduct inspections of the specialty boards whose certification processes it recognizes but will monitor trends in medical events. If the NRC staff determines that a series of medical events is associated with a particular specialty, and the trend can be attributed to inadequate radiation safety training, the staff will determine whether the inadequate training is related to a deficiency in a board's evaluation of the radiation safety competency of the board's diplomates. The NRC conducts a comprehensive regulatory program to ensure safety. This regulatory program is also important to the identification of issues related to T&E that may, in turn, point to issues associated with the certification process of a specialty board. If these activities result in identification of a deficiency in a board's evaluation of the radiation safety competency of the board's diplomates, the NRC staff will review the specialty board's certification program. The assessment will include a determination of whether the board's examination adequately assesses the requisite knowledge and skills in radiation safety. If the staff determines that changes in the board's evaluation of competency in radiation safety are necessary, and the board either cannot or will not make adequate changes to its program to address these needs, then the NRC will withdraw recognition of that specialty board's certification processes and delist that board. The NRC staff will inform the Commission and the ACMUI of an NRC staff decision to withdraw recognition. The NRC has reviewed existing procedures for the conduct of inspections and has determined that they provide for collection of the information necessary to evaluate trends in medical events possibly related to requirements for T&E of specialty boards. The NRC staff provided a copy of draft plans for implementation of the procedures for listing and delisting of board certifications to Agreement States and the ACMUI during the development of the proposed rule. The comments provided by these groups were considered by the NRC staff in developing final procedures for implementation.

Stakeholder Interactions

On May 20, 2003, a public meeting was held to solicit early input on the proposed rule from representatives of professional specialty boards and other interested stakeholders. The NRC staff also made a presentation to the ACMUI on May 20, 2003, regarding the staff's approach to the proposed rule. The ACMUI provided input and a comment was received via e-mail from a participant in the meeting with the boards.

The proposed rule was published in the **Federal Register** on December 9, 2003 (68 FR 68549). The NRC staff briefed the ACMUI on the proposed rule during its meeting on March 2, 2004, and received comments from the ACMUI on the proposed rule during this meeting and a public teleconference conducted on March 22, 2004. Comments of the ACMUI, Agreement States, board members, and members of the public provided useful information to the NRC in preparing the proposed and final rule. A person from the State of Alabama, nominated by the Organization of Agreement States, participated as a member of the working group with the NRC staff in the development of the proposed and final rule. A person from the State of New York, nominated by the CRCPD, was added to the working group and participated in the resolution of comments on the proposed and draft final rule. The NRC staff distributed a draft final rule to the Agreement States and the ACMUI for 30-day review, ending on October 18, 2004. During this time, the ACMUI held a publicly announced meeting, via teleconference, on October 5, 2004, with Agreement State participation, to discuss requirements for a minimum number of hours of classroom and laboratory training in §§ 35.55, 35.190, 35.290, and 35.390. The meeting was announced in the **Federal Register** on September 28, 2004 (69 FR 57977). Approximately 37 representatives of 22 Agreement States participated in the meeting. The ACMUI also discussed the draft final rule, and made recommendations to the NRC, during its meeting on October 13–14, 2004. These comments are discussed in Section IV. Summary of Public Comments and Responses to Comments.

Additional Recommendations of the ACMUI

At the teleconference held on July 17, 2003, the ACMUI discussed the draft proposed rule; Agreement State representatives also participated in the teleconference. During the teleconference, the ACMUI agreed with the NRC staff recommendation to broaden the requirement that supervised clinical experience be received in a "radiation facility" rather than in a "radiation oncology facility" for individuals to qualify as AMPs, in § 35.51(b)(1) of the proposed rule, and to change the requirement for experience in "radiation oncology" in § 35.690(b)(2) to allow for experience in "radiation therapy." Parallel changes were made to the certification pathway for AMPs in the proposed rule in § 35.51(a)(2)(ii) and in § 35.690(a)(1) for uses under § 35.600. These changes were retained in the final rule.

The ACMUI recommended that the requirements for experience, described

in the current rule in § 35.390(b)(1)(ii)(G), not be included in criteria for recognition of specialty board certifications, but that they continue to be required for AUs meeting T&E requirements for both the certification and alternate pathways. This recommendation was not incorporated into the proposed rule, because the NRC staff believed that the requirements for work experience in § 35.390(b)(1)(ii)(G) are essential for an individual to be able to function independently as an AU for administration of byproduct material for which a WD is required. As discussed in the response to public comments on the proposed rule, the ACMUI raised this recommendation again, indicating that many individuals obtain the experience required in § 35.390(b)(1)(ii)(G) after they have obtained their board certification. After further consideration, the requirement for this experience was removed from requirements for recognition of board certifications in the final rule but retained as a requirement for individuals to be AUs.

At the teleconference held on March 22, 2004, the ACMUI recommended removal of requirements, in § 35.390(b)(1)(ii)(F), for experience with elution of generators and measuring, testing, and preparation of radiolabeled drugs. As indicated in the discussion of public comments on § 35.390, this requirement has been removed from this section in the final rule but retained in other sections when individuals qualify as AUs by virtue of being approved as an AU under § 35.390. Additional recommendations, made by the ACMUI during the meeting on October 13–14, 2004, are discussed in Section IV. Summary of Public Comments and Responses to Comments.

Timing of Agreement State Implementation

Normally, Agreement States have 3 years in which to adopt a compatible rule. Agreement States have until October 24, 2005, to adopt the revised 10 CFR Part 35 published on April 24, 2002. It was noted in the **SUPPLEMENTARY INFORMATION** for the proposed rule that, for Agreement States to adopt the proposed training and experience requirements and have them in place by October 24, 2005, the Agreement States would have a shortened time frame for developing compatible requirements. Because Agreement States had voiced concern regarding this shortened time frame, the NRC invited public comment on this issue. As indicated in "IV. Summary of Public Comments and Responses to Public Comments," the NRC is allowing 3 years for adoption of this final rule.

Revision of Guidance for Licensing of Medical Use of Byproduct Material

Licensing guidance for medical uses of byproduct material is available in NUREG–1556, Vol 9, "Consolidated Guidance About Materials Licenses. Program-Specific Guidance About Medical Use Licenses." The NRC has revised this guidance to conform to the revisions in this final rule and is making it available to the public coincident with publication of the final rule.

Extension of Subpart J to October 24, 2005

The NRC has extended the expiration date for Subpart J to October 24, 2005, through a separate rulemaking (69 FR 55736, September 16, 2004).

IV. Summary of Public Comments and Responses to Comments

The NRC received 27 comments on the proposed rule. The commenters included members of the general public and the ACMUI as well as representatives of Agreement States, professional societies, and certification boards. Additional comments from Agreement States were received on a draft of the final rule distributed made available to Agreement States for a 30 day comment period, ending on October 18, 2004. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

This section summarizes the written and oral comments received and provides responses to these comments. Part I contains a list of the acronyms used in this section. Part II contains a discussion of general issues that were considered during the rulemaking. Part III contains a discussion of comments on specific sections in the proposed rule. Comments on timing of adoption of the rule by Agreement States and compatibility are discussed in Part IV.

The NRC posed three questions in the "Invitation for Public Comment on Specific Issues" section of the proposed rule. These questions were:

1. Do the proposed revisions to requirements for training and experience provide reasonable assurance that RSOs, AMPs, ANPs, and AUs will have adequate training in radiation safety? (This question is discussed in Part II—General Issues, Issue 1.)

2. Should Agreement States establish the requirements to conform with this proposed rule by October 24, 2005, or should they follow the normal process and be given a full 3 years to develop a compatible rule? (This question is discussed in Part IV—Implementation by Agreement States—Timing and Compatibility.)

3. Should the word "attestation" be used in place of the word "certification" in preceptor statements? (This question is discussed in Part II—General Issues, Issue 2.)

Part I—Acronyms

The following acronyms are used in the discussion of both the general and specific comments.

ACGME—Accreditation Council for Graduate Medical Education
ACMUI—Advisory Committee on the Medical Uses of Isotopes
ACPE—American Council on Pharmaceutical Education
ABMS—American Board of Medical Specialties
AMP—Authorized medical physicist
ANP—Authorized nuclear pharmacist
AU—Authorized user
FPGEC—Foreign Pharmacy Graduate Examination Committee
NMED—Nuclear Materials Events Database
OAS—Organization of Agreement States
RSO—Radiation safety officer
T&E—Training and experience
WD—Written directive

Part II—General Issues

Several commenters expressed general support for the proposed rule as well as offering comments on specific aspects of the proposed rule, which are discussed further in succeeding sections. Support was also voiced for the listing of recognized board certifications on the NRC's Web site rather than in regulations.

Issue 1: Do the proposed revisions to requirements for training and experience (T&E) provide reasonable assurance that RSOs, AMPs, ANPs, and AUs will have adequate training in radiation safety?

Comment: One commenter suggested that the NRC should go back to its original preceptor concept, under which no board certifications were required, but the preceptor (mentor) had the responsibility to ensure that training was adequate to ensure health and safety and medical efficacy. The commenter expressed concern that applicants could receive certification without complete knowledge and skills in a particular discipline, *i.e.*, board certification may omit or excuse lack of knowledge and skill (if the applicant passes the requisite examination with a score of less than 100 percent) where the alternate pathway would require demonstration of 100 percent in a given discipline.

Response: The NRC believes that RSOs, AMPs, ANPs, and AUs should have T&E sufficient to ensure radiation safety in the medical use of byproduct material. The NRC believes that it is necessary to specify requirements for T&E to accomplish this objective, either by requiring that candidates for approval as RSOs, AMPs, ANPs, or AUs are certified by a board which has a certification process that has been recognized by the NRC, or by meeting the requirements for T&E for the alternate pathway, combined with attestation by a preceptor that the individual has satisfactorily completed these requirements and has achieved a level of competency sufficient to function independently in the position for which approval is sought. The NRC believes that requirements for both pathways are similarly and sufficiently rigorous, and, that by passing a board examination, together with meeting the other requirements in the board certification pathway, a candidate will have demonstrated the knowledge and skill necessary to safely handle byproduct material. The NRC believes that this combination of requirements will ensure the safe medical use of byproduct material and has retained the option for AUs to meet requirements for T&E via the certification pathway.

Comment: One commenter indicated, given that new problems consistently arise, specialty board training should only be accepted if it can be shown that there is a recertification/required continuing education every 10 years or less and that the recertification/continuing education process can be shown to encompass the radiation protection aspects of newer technologies.

Response: The NRC plans to periodically review the requirements of boards for certification to accommodate changing needs for T&E. However, the NRC does not depend solely on board certification to ensure adequacy of T&E. The regulations also provide, in § 35.59, that T&E must have been obtained within 7 years preceding the date of an application to the NRC or that the individual had related continuing T&E. They also provide, in § 35.57, for accommodating experienced AUs (*e.g.*, individuals identified on a license), allowing those who serve as AUs under existing licenses and permits to continue medical uses for which they have been authorized. NRC regulations also provide requirements for licensing of new medical uses of byproduct material, including assessment of the adequacy of T&E of AUs for proposals for new uses in requests for amendments to licenses.

Comment: One Agreement State commenter on the draft final rule stated that the NRC appears to want only limited submittal of the training programs for review and approval from medical boards and does not plan to conduct inspections of specialty boards to insure that they meet the latest certification requirements. Rather, the intent is to wait and see if specific medical events related to training occur in the field before investigating. The commenter does not believe this is acceptable, especially when considering the number of hospital staff and patients that may be at risk before this type of link to training can or will be made once an incident occurs.

Response: In order to have their certification processes recognized, specialty boards must demonstrate that their certification processes meet the specific criteria established in the regulations. The NRC will carefully review the documentation submitted before recognizing a board's certification program. The NRC believes that this process for board recognition, taken together with the NRC's coordination with ACMUI, its inspection of licensed facilities, and its continued monitoring of medical events, will be sufficient to ensure public health and safety.

Comment: Commenters from Agreement States expressed concern that the regulations no longer specify the number of classroom and laboratory or supervised clinical and work hours necessary for the various types of use. One commenter indicated that this could jeopardize radiation safety, and recommended that the NRC include a minimum acceptable number of hours of classroom and laboratory training in the **SUPPLEMENTARY INFORMATION** for the final rule (*i.e.*, a minimum of 200 hours of classroom and laboratory training out of the total of 700 hours for those types of use for which a WD is required (§ 35.390); 80 hours of classroom and laboratory training for those uses for which a WD is not required but for which 700 hours is still required (§ 35.290); and a minimum of 8 hours of classroom and laboratory training for types of use for which 60 hours of training is required (§ 35.190)), based on the risk to patients, occupational workers, and the public, for each type of use, and assuming class days are 8 hours. Three other commenters from Agreement States recommended that regulatory agencies should specify a minimum number of hours of classroom and laboratory training under §§ 35.190, 35.290, and 35.390. One commenter suggested that individuals qualifying as ANPs under § 35.55 and as AUs under § 35.390 should be required to have 200 hours of classroom and laboratory training. Also, the Organization of Agreement States (OAS) (petitioner) filed a Petition for Rulemaking (petition) dated September 3, 2004 (PRM–35–17) requesting that the NRC amend §§ 35.55, 35.190, 35.290 and 35.390 to define and specify the minimum number of didactic training hours for Authorized Nuclear Pharmacists and Authorized Users identified in these sections.

Response: The NRC agrees with the Agreement States' assertion that the inclusion of a requirement for minimum number of hours of classroom and laboratory training (in §§ 35.55, 35.190, 35.290, and 35.390) for the alternate pathway only, will ensure safety and consistency of regulation on a national basis. Therefore, requirements for a minimum number of hours of classroom and laboratory training have been included in §§ 35.55(b)(1)(i), 35.190(c)(1), 35.290(c)(1), and 35.390(b)(1) of the final rule. However, the added requirements, specifying a minimum number of hours of classroom and laboratory training, were not added to the requirements for recognition of specialty board certifications because the NRC believes that it is important to provide flexible options for boards to evaluate the adequacy of T&E related to radiation safety. This flexibility is provided by a combination of evaluation through examinations, and academic and practical T&E. The NRC believes that the requirements of certifying boards, including requirements for examinations, whose certification processes have been recognized by the Commission or an Agreement State, will ensure the adequacy of radiation safety training. As part of their application for recognition of certifications, boards will be asked to provide information on how their examination process assesses the candidates' knowledge related to radiation safety as it pertains to the subject areas enumerated in the regulations. The NRC believes that specifying a minimum for the number of hours of classroom and laboratory training, in the alternate pathway, will help to ensure that training programs are of adequate length to properly cover the topics important to safe medical use of byproduct material, supplementing the T&E gained during supervised clinical training. Doing so will increase the rigor of the alternate pathway and provide useful and consistent standards for developing training programs. Specifying a minimum number of hours of classroom and laboratory training will also be useful to States in reviewing the adequacy of training programs and assist Agreement States in developing

their T&E regulations to be consistent with the compatibility category B designation for T&E regulations.

The draft final rule, circulated to Agreement States for a 30-day comment period, ending on October 18, 2004, included requirements for a minimum number of hours of classroom and laboratory training (applicable to the alternate pathway only) as follows: § 35.55—200 hours, § 35.190—8 hours, § 35.290—80 hours, and § 35.390—200 hours. Twelve Agreement States provided comments on this issue, with nine of them being in favor of a minimum of 200 hours of classroom and laboratory training for § 35.390. Two Agreement States recommended minimums of 120 and 160 hours of classroom and laboratory training, respectively, for § 35.390. Eight Agreement States supported the proposed number of hours for §§ 35.55, 35.190 and 35.290, and two States suggested requirements ranging from 120 to 200 hours for these four sections. One commenter from an Agreement State stated that the risks associated with uses under § 35.200 is similar to those for uses under § 35.300 because the higher frequency of uses under § 35.200 results in more risk and that, therefore, the number of hours of classroom and laboratory training should be the same (200 hours) in §§ 35.290 and 35.390. This commenter suggested that, for clarity, the term "classroom and laboratory training" be used in place of the term "didactic training" in sections where the latter term appears. The commenter also stated that the way the draft revisions to the regulations are now written, the preceptor statement seems to apply only to the alternate pathway, and that they should be restructured to ensure that information is provided in preceptor statements about hours of training and experience, including classroom and laboratory training. The commenter suggested restructuring the regulations and re-designating paragraphs so that paragraph "(d)" always included the requirements for preceptor statements.

During the ACMUI meeting on October 14, 2004, the ACMUI passed a motion recommending that the requirement for classroom and laboratory training, in § 35.390, be 80 rather than 200 hours. The ACMUI believes that the requirements for training in radiation safety and safe handling for medical uses under §§ 35.200 (no written directive required) and § 35.300 (written directive required), including the use of beta emitters, are similar. The total hours of training (classroom and laboratory, combined with work experience) is the same (700 hours) in §§ 35.290 and 35.390. Therefore, the ACMUI recommended that the number of hours required for classroom and laboratory training be the same as that required for § 35.290, *i.e.*, 80 hours, because the knowledge required for radiation safety is similar for uses under both §§ 35.290 and 35.390. The ACMUI was also concerned that time taken for classroom and laboratory training required under § 35.390(b)(1)(i) would detract from time needed for training in other areas required of clinicians.

After consideration of both the ACMUI's and Agreement States' recommendations, the NRC staff analyzed the issue to determine the appropriate amount of classroom and laboratory training for approval of AUs under § 35.390. The NRC is adopting a requirement for 200 hours of classroom and laboratory training for the alternate pathway in § 35.390 because more knowledge is necessary in the topic areas listed in § 35.390(b)(1)(i)(A) through (E), as enumerated below, to ensure the safe use of byproduct material for which a written directive is required.

1. Radiation physics and instrumentation—a wider variety of radionuclides, having a wider range of energies, both for beta and gamma emitters, is used. This affects understanding of how radiation interacts with matter, which impacts understanding of shielding as well as the effects of radiation, and choice and use of instrumentation to detect and measure radiation and to measure quantities of radionuclides.

2. Radiation protection—more knowledge of principles and practices of radiation protection is needed because of the wider variety of radionuclides and associated types and energies of radiations used under § 35.300. Because greater quantities of byproduct material are commonly used for therapeutic purposes, risks are greater for patients and patient care personnel as well as for the public after the release of patients. Evaluation of these risks and associated protective measures and practices necessitates more knowledge for uses under § 35.300 than for uses under § 35.200. More knowledge of principles and practices in radiation protection is needed because of a wider variety of modes of administration and physical forms of byproduct material, *e.g.*, intravenous, intra-peritoneal, oral and liquids in catheters. Each of these factors necessitates different radiation safety considerations for patients, occupationally exposed personnel and members of the public. Radiation safety considerations relate both to the preparation and use of byproduct material for medical purposes, and may extend to the treatment of patients in the operating room and to the pathology staff.

3. Mathematics pertaining to the use and measurement of radioactivity—Mathematics related to dosimetry is more complex for the wider variety of radionuclides, greater quantities, different types of radiation, and the broader purposes of use. Whereas byproduct material is used for diagnostic purposes under § 35.290, uses under § 35.390 are common for various therapeutic purposes.

4. Chemistry of byproduct material for medical use—a wide variety of chemical forms of byproduct material is used under § 35.300. These forms include ionic, bound-to-antibodies, and simpler chemical species, resulting in differences in uptake in the body and various organs and tissues (biodistribution), and elimination. Agents are used both for diagnostic and therapeutic purposes.

5. Radiation biology—more knowledge of radiation biology is needed because byproduct material are administered in greater quantities, both for diagnostic and therapeutic purposes, resulting in the potential for a greater variety of radiation effects and greater potential for harm. Risk assessments sometimes involve consideration of immediate biological effects whereas this is not usually a consideration in diagnostic applications under § 35.200.

In addition to these considerations, the NRC notes that new medical applications of byproduct material are evolving under § 35.300. Examples include more common use of byproduct material for alleviation of bone pain and for treatment of metastatic disease. This results in a need for additional knowledge of a wider variety of applications of physical and chemical forms of byproduct material.

The NRC determined that the minimum amount of classroom and laboratory training should be 200 hours by reviewing the content of training courses that an individual might attend to satisfy the requirements in § 35.390(b)(1)(i). This training involved 200 hours of classroom and laboratory training.

The requirement for 200 hours of classroom and laboratory training is also incorporated into the final rule for individuals to qualify as ANPs because nuclear pharmacists may be involved in the preparation of dosages of byproduct material for uses under § 35.300 as well as under §§ 35.100, 35.200 and other uses specified in 10 CFR Part 35. Therefore, these individuals will be

involved in high-risk activities related to use of byproduct material, including wet chemistry. Their work may also involve greater quantities of byproduct material because they may dispense dosages from stock-quantities. Greater quantities are also used for short half-life radionuclides which decay between preparation and administration to patients.

The minimum number of hours of classroom and laboratory training for uses under § 35.200 is 80 hours because the complexity and level of knowledge required is less than for uses under § 35.300. The NRC believes that the frequency of use of byproduct material should not be considered in evaluating the risk to individuals from uses of byproduct material under § 35.200, for the purpose of determining the requirement for hours of classroom and laboratory training to be required for such uses. Rather, the NRC believes that other factors should be considered in this regard, *e.g.*, adequacy of size and scope of a radiation safety program to ensure safe uses of byproduct material. However, because procedures such as elution of radionuclide generators and preparation of drugs labeled with byproduct material are conducted under § 35.200, the minimum was set at a greater level than for uses under § 35.100, for which risks are significantly less and for which the minimum requirement was set at 8 hours of classroom and laboratory training, in § 35.190.

The NRC recognizes that the minimum number of hours of classroom and laboratory training for uses of licensed byproduct material specified in these sections differs to some extent from the minimum number of hours of classroom and laboratory training specified for similar uses of such material in Subpart J. However, in determining the minimum number of hours of classroom and laboratory training to be required for each use, the NRC also recognized that the uses specified in sections of Subpart J are different from those covered in Subparts D through H and that the medical use of byproduct material has evolved and changes have taken place in the available technology for use in each of these areas since the promulgation of Subpart J. The NRC has considered these factors in determining the minimum number of hours of classroom and laboratory training to be required for uses in Subparts B and D through H.

The NRC also agrees with the comment that the term "classroom and laboratory training" should be used in place of the term "didactic training." The regulations in §§ 35.50(b)(1)(i) and 35.55(b)(1)(i) have been revised to use the term "classroom and laboratory" in place of "didactic training."

The NRC has revised the language in the final rule so that the requirement for a preceptor attestation, for individuals to be approved as RSOs, AMPs, ANPs and AUs, now appears in §§ 35.50(a), 35.51(a), 35.55(a), 35.190(a), 35.290(a), 35.390 (a), 35.392(a), 35.394(a), 35.396(a), 35.490(a), and 35.590(a). This approach helps make it clear that a preceptor statement is required for both the certification and alternate pathways. The NRC did not re-designate paragraphs to have the requirement for preceptor statements appear in paragraphs "(d)" in order to avoid extensive renumbering that would be necessary for other paragraphs.

Comment: One Agreement State commenter stated that there is too great of a reliance on a preceptor's attestation/certification for physicians who qualify as AUs under the alternate pathway to provide adequate assurance that the individual will have obtained adequate radiation safety training. The criteria used by preceptors must be specifically and clearly defined and the qualifications for preceptors should be defined as well. Otherwise, AUs may give undue weight to the clinical aspects of training rather than to safety, and a clinically competent AU who has a poor radiation safety compliance history may provide a strong statement for an individual for whom radiation safety training was minimal.

Response: The criteria to be used by preceptors are stated in the regulations, including the qualifications required for an individual to serve as an AU. The NRC believes that competency of candidates to function independently as AUs is best assessed by AUs who have experience performing the duties of an AU. The definition of "preceptor" appears in § 35.2. The qualifications for an individual to serve as a preceptor are specified in the requirements for preceptor statements in Subparts B and D through H. In general, they require that the preceptor be an individual who serves in the same capacity as the candidate for approval as RSO, AMP, ANP, or AU. The criteria for evaluation of T&E by preceptors are specified in each section of Subparts B and D through H. These criteria were chosen to ensure that they are risk-informed and performance-based and not unduly prescriptive in relation to the degree of risk associated with various types of use. Moreover, reflecting a performance-based approach, an AU is considered qualified to serve as a preceptor as long as his or her authorized status remains current. However, if an individual's status as an RSO, AMP, ANP, or AU, is revoked for non-compliance with the NRC's regulations, that person could no longer serve as a preceptor.

Issue 2: Should the word "attestation" be used in place of the word "certification" in preceptor statements? Should other changes to the wording or preceptor statements be made?

Comment: One commenter observed that "attest" and "certify" mean the same thing, and, because preceptors have been "attesting" for years, questioned changing terminology. Other commenters expressed support for making the change, with two commenters noting that the word "certification" should only be used in connection with the board process. Another commenter believes that the use of the word "attest" in place of "certify" would alleviate certain obstacles to individuals willing to serve as proctors.

Response: The NRC agrees that the use of the word "attest" and its various other forms (attestation, attesting) is more appropriate than the use of the word "certify" and would lead to more clarity in the regulations. Therefore, appropriate changes were made in the definition of "preceptor" and in the requirements for preceptor attestations in the regulations. This change was also made, as a conforming change, in § 35.980(b)(2) of Subpart J to maintain consistency with other Subparts of 10 CFR Part 35.

Comment: The preceptor statement should be reworded to indicate that a preceptor "attest[s] to the candidate's knowledge and ability to handle radioisotopes in preserving the health and safety of the patient and the provider." The preceptor should not be required to attest to the general clinical competency of the candidate.

Response: The NRC agrees with the suggestion that the word "attest" should be used in place of "certify" in preceptor statements and has made these changes in the final rule. However, the other changes to the preceptor statements suggested by the commenter would result in the elimination of essential elements of a preceptor statement that the NRC continues to rely on to determine if an individual has satisfactorily completed requirements for T&E and has a level of competency sufficient to function independently as an RSO, AMP, ANP, or AU. The NRC clarified the meaning of the word "competency" in the section of the **SUPPLEMENTARY INFORMATION** entitled "Preceptor Attestation," by indicating that preceptors are not attesting to the general clinical competency of the

candidate; this interpretation represents a restatement of the NRC's intent stated in the SUPPLEMENTARY INFORMATION for the current regulations, published on April 24, 2002 (67 FR 20249). Therefore, the other changes suggested by the commenter were not adopted in the final rule.

Comment: One Agreement State commenter believes that preceptors are not certifying "individuals," but they certify that the training received by an individual meets regulatory requirements. Otherwise, there may be an implication that organizations which provide training are relieved of any responsibility.

Response: The NRC agrees with the commenter's statement that preceptors do not "certify individuals." The purpose of preceptor attestations is stated in the regulations (*e.g.*, in the case of RSOs), to attest to the satisfactory completion of requirements for T&E to serve as an RSO and to an individual's having achieved a level of radiation safety knowledge sufficient to function independently as an RSO for a medical use licensee.

Comment: An Agreement State commenter on the draft final rule stated that the definition for preceptor should confirm that the individual verifying training for another authorized user, medical physicist, nuclear pharmacist or RSO is also a licensed user/RSO on a specific medical license. The commenter indicated that it is also important for the preceptor to know that his or her own authorization on a medical license is at risk when signing a preceptor attestation.

Response: As stated above, the qualifications required for an individual to serve as preceptor are specified in the requirements for preceptor statements in Subparts B and D through H, and require that the preceptor be an individual who serves in the same capacity as the candidate for approval as RSO, AMP, ANP, or AU. Therefore, the NRC does not believe that the definition for preceptor should be revised. The NRC notes that a preceptor's authorization on a medical license is not, per se, "at risk" for signing a preceptor attestation. However, under Section 186 of the Atomic Energy Act, as well as the Commission's regulations in 10 CFR 30.10, a licensee, or applicant for a license, who deliberately submits to the NRC information that a person submitting the information knows to be inaccurate in some respect material to the NRC, may be subject to enforcement action. Under 18 U.S.C. § 1001, any person who makes a willful false statement to the NRC may be subject to criminal sanctions.

Issue 3: Comments on other requirements related to preceptor statements.

Comment: Some commenters stated that the wording of the requirements for preceptor statements in the proposed rule implies that the preceptor has knowledge that an individual meets all of the requirements for board certification, including passing of a certification examination, thereby establishing an unintended link between preceptor statements and examinations administered by boards. This may or may not be true, since, in some cases, a preceptor statement may be signed before the individual sitting for the board examination.

Response: The NRC agrees that preceptors should not be required to certify that individuals have completed all of the requirements that candidates for certification by a specialty board would be required to meet to obtain certification. The requirements for preceptor statements have been reworded in Subparts B and D through H of the final rule to remove requirements to attest to candidates having passed board administered examinations.

Comment: While agreeing that the change from certification to attest should be made, other commenters recommended that the following be inserted in place of the first sentence of all preceptor paragraphs in the December 9, 2003, draft: "Has obtained written attestation that the individual has satisfactorily completed the required training in paragraph (a)(1) or (b)(1) of this section and has achieved a level of knowledge and demonstrated the ability to safely handle radioisotopes to ensure adequate protection of public health and safety. The written attestation must be signed by a preceptor. * * *"

One commenter indicated that the word "competency" should be dropped from the suggested preceptor statement because the phrase "has achieved a level of knowledge and demonstrated ability" is a demonstration of competency.

Response: As noted in the Discussion section of the SUPPLEMENTARY INFORMATION, the Commission directed the NRC staff, in SRM–02–0194 (dated February 12, 2003), that the preceptor statement remain as written in the current regulations (published April 24, 2002), and that the staff should clarify that the preceptor language does not require an attestation of general clinical competency but does require sufficient attestation to demonstrate that the candidate has the knowledge to fulfill the duties of the position for which certification is sought. Further, this form of attestation should be preserved both for the certification pathway and the alternate pathway. Therefore, the suggestion related to the use of the word "competency" was not adopted in the final rule.

Comment: One Agreement State commenter stated that the proposed language regarding the requirement for obtaining preceptor statements is not the same in different sections. For example, § 35.290(a) reads, "meets the requirements in paragraph (c)(2) [has obtained a preceptor statement] and is certified." But § 35.390(a) reads, "is certified by a medical speciality board * * *" and "(c) has obtained written certification (from a preceptor)." While this accomplishes the same purpose, at first glance it appears that some boards do not require preceptor statements while others do. The language should be made more uniform for each discipline.

Response: The NRC agrees that parallel construction should be used in the language for requirements for preceptor statements for individuals who are board certified, and this approach was taken in the final rule. The requirement for a preceptor attestation for individuals to be approved as RSOs, AMPs, ANPs, and AUs now appears in §§ 35.50(a), 35.51(a), 35.55(a), 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.396(a), 35.490(a), and 35.690(a). This approach also helps make it clear that a preceptor statement is required regardless of which training pathway is chosen.

Comment: One Agreement State commenter agreed that a preceptor statement should continue to be required for board certified individuals, stating that it is important for a person who knows a candidate to attest to the individual's competence in radiation safety.

Response: The NRC agrees with this comment. The NRC continues to rely on preceptor statements to determine if an individual has satisfactorily completed requirements for T&E and has a level of knowledge sufficient to serve as an RSO, AMP, ANP, or AU.

Comment: Several commenters expressed the opinion that the change in the requirements that de-couples requirements for a preceptor statement from requirements for recognition of board certifications will result in a shift of burden for obtaining the statement from boards to individuals. One Agreement State commenter supported placing the responsibility for obtaining preceptor statements on individuals rather than on certification boards as a prerequisite to the certification process.

Other commenters recommended that the NRC retain the preceptor letter requirement as a prerequisite to recognition of board certifications. They questioned what is gained by dropping requirements for preceptor statements from requirements for recognition of board certifications. An Agreement State commenter opposed separating requirements for preceptor statements from requirements for recognizing board certifications on the grounds that it integrates less uniformity and reliability into the training process. According to the commenter, a large number of physicians are currently denied authorizations because of inadequate preceptor statements, and this will only increase if these statements are not reviewed and issued by a valid source such as approved certification boards, thereby increasing the shortage of approved AUs.

Response: The NRC believes that individuals will continue to be involved in the process of documenting T&E and that the shift in responsibility is primarily from the involvement of boards in the process to licensees, which will be subject to the new requirement for submitting the preceptor statement to the NRC under § 35.14(a). The NRC removed the requirement for boards to obtain preceptor attestations, as a condition of recognition of board certifications, upon the recommendation of the ACMUI, which indicated that the requirement should be de-coupled from requirements for recognition of board certifications because individuals may obtain the preceptor statement required by the NRC after they have obtained their board certifications. This approach will enable a more flexible approach to satisfying the requirement for preceptor statements. The NRC believes removal of the requirement for a preceptor statement from requirements for recognition of specialty board certifications will not result in less uniformity in the process of training or decrease the number of individuals who are approved as AUs because the responsibility for obtaining preceptor statements will still rest with individual candidates for approval as AUs, and the statements now must be submitted to the NRC or an Agreement State, rather than to a certification board. The NRC also notes that the final rule does not prevent specialty boards from requiring preceptor statements.

Comment: One commenter stated that the NRC should not require written preceptor certifications for the certification pathway because certification boards already require letters of endorsement to verify candidates' work experience and qualifications, and candidates must also pass a multi-part examination to assess knowledge and fitness to practice in a particular medical specialty. Therefore, it is redundant for the NRC to require preceptor statements. Furthermore, preceptors who are not involved in a specialty board's certification practice can only verify that an individual possesses a valid certificate. In addition, the commenter questions the justification for this new requirement.

Some commenters stated that the requirement for preceptor statements should be eliminated for board certified AUs, AMPs, and ANPs; they should only be required for those requesting authorization via the alternate pathway and for RSOs. Board certification and continued experience are satisfactory demonstration for meeting the radiation safety requirements to perform those authorized activities as AU, AMP, or ANP. The commenters believe that there is no evidence to support that any added benefit would be provided by requiring a preceptor statement for these individuals. Removing requirements for obtaining preceptor statements would also minimize the delay in approval of these individuals by the appropriate regulatory agency or the Radiation Safety Committee.

Response: The NRC continues to rely on preceptor statements to determine if an individual has satisfactorily completed requirements for T&E and has a level of knowledge sufficient to serve as an RSO, AMP, ANP, or AU. The NRC believes that it is essential to have individuals who are familiar with the duties of RSOs, AMPs, ANPs, and AUs, through personal experience, to serve as preceptors. Individuals who serve in these positions are best qualified to attest that an individual has achieved a level of competency sufficient to function independently as an AMP, ANP, AU, or RSO. The concern expressed about the unavailability, or inability, of an authorized individual to complete a preceptor statement for an individual seeking authorized status was addressed in the final rule by modifying the definition of a preceptor, in § 35.2, to permit verification by the preceptor of required training and/or experience obtained previously or elsewhere. As indicated under the discussion of comments on the definition of "preceptor," the word "the" was removed from the phrase "the training and experience" in the definition of preceptor to help clarify that more than one individual may serve as a preceptor. The NRC does not agree that removing the requirement to obtain a preceptor statement would minimize the delay in approvals of individuals to serve as RSOs, AMPs, ANPs and AUs because other means would have to be used to evaluate the competency of these individuals, which would increase the amount of time needed for these approvals.

Comment: Some commenters stated that clarification that individuals may submit more than one preceptor statement, as applicable, for all categories of AU, AMP, or RSO, should be provided in the **SUPPLEMENTARY INFORMATION** for the final rule. Proposed §§ 35.490(c) and 35.690(c) indicate that the preceptor must be an AU of each type of medical unit for which the individual is requesting AU status. The language must be clarified to allow for different preceptors for multiple devices for which AU status is sought.

Response: The NRC recognizes that separate preceptor statements may be needed to document the T&E of individuals, *e.g.*, in the case of an individual who receives training at different times in his or her career or in other circumstances when it may not be possible for only one preceptor to attest to some of the T&E that an individual has received. The NRC accepts multiple preceptor statements from licensees in these circumstances. As indicated under the discussion of comments on the definition of "preceptor" in Part III, the word "the" was removed from the phrase "the training and experience" in the definition of preceptor to help clarify that more than one individual may serve as a preceptor.

Other Issues

Issue 4: Should the NRC continue to recognize the certifications of boards that have been recognized under the current regulations?

Comment: Two commenters believe that the CBNC (Certification Board of Nuclear Cardiology) should not be required to reapply for recognition of its certification because it was the only board that complied with the NRC requirements in 10 CFR Part 35 as promulgated on April 24, 2002 (67 FR 20249).

Response: The NRC believes that, because of the importance of board certification to establishing the adequacy of T&E for individuals to serve as RSO, AMPs, ANPs, and AUs, it is necessary to make a clear regulatory determination that all boards, both new and existing, meet the relevant regulatory criteria. Evaluation of board requirements against revised criteria in the final rule is necessary to make this determination. The NRC notes that, via a separate rulemaking, the expiration of Subpart J was extended for 1 year to

October 24, 2005 (69 FR 55736, September 16, 2004); this will provide time for boards to apply for recognition under the revised regulation in the final rule. During this period, the NRC will continue to recognize the certifications of boards, including the CBNC's, which are recognized under current regulations.

Issue 5: How will the NRC implement procedures for recognition of specialty board certifications? How will the NRC monitor trends in medical events to evaluate whether they are associated with a certification board's requirements for certification?

Comment: In the **SUPPLEMENTARY INFORMATION** for the proposed rule, the NRC briefly discussed plans for implementation of changes to requirements for recognition of specialty board certifications. One commenter questioned these plans, asking how the NRC will monitor trends in medical events to see if they can be associated with inadequate training in radiation safety and if these trends can be related to a specialty board's requirements for training. The commenter agreed that the NRC should not conduct routine inspections of boards. The commenter indicated that the number of medical events reported by a certain board's diplomates is small, making it difficult to develop associations between trends and a board's requirements. The commenter also asked what statistical methods the NRC would use to make these determinations. One Agreement State commenter stated that the process by which a board would be delisted appears to be ineffective. For example, it is unclear how the NRC will track trends in diagnostic medical events and relate those trends to the adequacy of the radiation safety training component of a specific board certification, considering the fact that most diagnostic medical events are not reportable. The commenter stated that an analysis of current data should have been performed to determine if this approach would be effective.

Response: The NRC conducts a regulatory program to ensure safety. This regulatory program is also important to the identification of issues related to T&E that may, in turn, point to issues associated with the certification process of a specialty board. The NRC also requires that medical events be reported to the NRC and Agreement States. Bi-monthly reviews of events in the Nuclear Materials Events Database (NMED) provide a means for identifying trends in medical events in Agreements States and among NRC licensees that may lead to follow-up and review of adequacy of specialty board certification requirements. The NRC reviewed recent data and determined that radiation safety training related to board certification programs is adequate. The NRC staff has initiated consultations with the ACMUI to review medical events to determine if action is needed when problems arise including trends in medical events reflected in NMED data. The NRC has a broad regulatory framework associated with medical T&E, involving review of specialty board certification processes, licensing and inspections of licensees, and medical event follow up and analysis. The NRC believes that these measures are sufficient to determine the adequacy of training related to a board's certification process.

Comment: One commenter believes that the NRC's plan to review a specialty board's certification program is particularly troubling. The NRC should not expect a certification board to jeopardize the security of its examination by allowing the NRC to review the examination and should not influence the content of a board's examination. The commenter believes that, because of the NRC's lack of expertise concerning the practice of medicine, the NRC is not in a position to determine the content of an examination. Rather, only a specialty board can make this judgement.

Response: The NRC will only review board examinations if it determines that a series of medical events is associated with a particular type of use and if the trend can be attributed to inadequate training in radiation safety. In addition, the NRC has methods to protect proprietary information in examinations; 10 CFR 2.390, "Public inspections, exemptions, requests for withholding," provides procedures for protection and nondisclosure of information that contains trade secrets, commercial or financial information obtained from a person, and privileged or confidential information. The NRC will consult with the ACMUI to seek advice, as necessary. Further, if safety problems are found that relate to the requirements of specialty boards for certifications, the NRC will work with boards to resolve these problems, including inadequacies in examinations if that is identified as a source of the problem.

Comment: One commenter stated that, while it is acceptable that the NRC does not plan to implement the rule by inspecting boards, the entire program for recognition of board certifications is in question unless the NRC reviews copies of training programs used by the boards and has some kind of regulatory basis to implement enforcement of these commitments, if necessary.

Response: While the NRC does not plan to inspect training programs, it believes that specialty boards have a strong incentive to ensure that their certification procedures will ensure the safe use of byproduct material in medicine to protect the integrity of their certifications as well as to gain recognition from the NRC or an Agreement State. The NRC also believes that if a board's certification requirements are deficient, the possibility of delisting and loss of recognition is also a strong incentive for a specialty board to correct deficiencies. Further, as stated in the **SUPPLEMENTARY INFORMATION** for the current regulations, the NRC will investigate any allegations regarding inadequate training programs on a case-by-case basis.

Comment: One Agreement State commenter stated that, while it appears that posting approved boards on the NRC Web site is appropriate, it is not clear that Agreement States will have input into the review/approval process.

Response: The NRC's current regulations for recognition of specialty board certification processes provide for recognition by either the NRC or Agreement States but do not require consultation between States or between States and the NRC. The regulations provide clear criteria for recognition of board certification processes.

Issue 6: How will revised requirements for T&E affect individuals who are now in training?

Comment: One commenter stated that there has been no requirement for fellows or residents currently in training to document T&E on a case-by-case basis. Therefore, physicians would be adversely affected by this new requirement, which would require a retrospective analysis of data that may not have been kept. Accordingly, the proposed T&E requirements must be applicable only to those who begin training after the date of implementation of the final rule.

Response: The NRC believes that the revisions to requirements for T&E of AUs do not result in such extensive changes from current requirements that it should create difficulty for individuals to document their T&E. The ACMUI noted in its recommendations to the NRC for the development of the proposed rule (see SECY–02–0194) that it expected that the requirements of all boards for certification, that are currently recognized, would satisfy revised requirements. Thus, there should be little change in what an individual would be expected to present to a board to gain certification. Further,

the changes to the requirements for the alternate pathway are relatively few. Thus, these changes will not make the task of documenting T&E significantly more difficult. The NRC believes that these requirements are essential to ensuring adequacy of T&E for medical uses of byproduct material for which a WD is required and, therefore, that they should not apply only to individuals who begin training after the final rule is implemented. Further, under the provisions of § 35.57(b), experienced AUs (*e.g.*, individuals identified on a license) are not required to comply with requirements for T&E in Subparts D through H of Part 35. Therefore, the suggestion offered by the commenter was not adopted.

Issue 7: Should the term "laboratory training" be defined?

Comment: One Agreement State Commenter expressed concern that the meaning of the term, "laboratory training," should be more clearly defined. The commenter expressed concern that "laboratory" time could be interpreted as "clinical lab" which would be patient-care oriented rather than radiation-safety oriented.

Response: The NRC believes that defining the terms "classroom" and "laboratory" would not ensure compliance and would only serve to create a more prescriptive rule. However, the NRC expects that clinical laboratory hours that will be credited toward meeting the requirements for classroom and laboratory training in Subparts B and D through H will involve training in radiation safety aspects of the medical use of byproduct material. The NRC recognizes, for example, that physicians in training may not dedicate all of their clinical laboratory time specifically to the subject areas covered in these subparts and will be attending to other clinical matters involving the medical use of the material under the supervision of an AU (*e.g.*, reviewing case histories or interpreting scans). However, those hours spent on other duties, not related to radiation safety, should not be counted toward the minimum number of hours of required classroom and laboratory training in radiation safety. This type of supervised work experience, even though not specifically required by the NRC, may be counted toward the supervised work experience to obtain the required total hours of training (*e.g.*, 700 hours for § 35.390). Similarly, the NRC recognizes that clinicians will not dedicate all of their time in training specifically to the subject areas described in Subparts D though H and will be attending to other clinical matters. The NRC will broadly interpret "classroom training" to include various types of instruction received by candidates for approval, including online training, as long as the subject matter relates to radiation safety and safe handling of byproduct material.

Part III—Comments on Specific Sections in the Proposed Rule

Subpart A—General Information

Section 35.2—Definitions

Issue 1: Definitions of "authorized medical physicist" and "authorized nuclear pharmacist."

Comment: One Agreement State commenter stated that the current proposed definitions for "authorized medical physicist" and "authorized nuclear pharmacist" did not include individuals who had obtained preceptor statements and met the requirements for the alternate pathway, and that this did not appear to be correct.

Response: The NRC has considered this comment and determined not to change the definitions in § 35.2 for "authorized medical physicist" or "authorized nuclear pharmacist' to include individuals who are not board certified. These definitions clearly specify the individuals who are to be included within their scope and are not the same as the requirements for demonstrating the adequacy of training and experience. The means for a person to become an AMP, ANP, or AU, via the alternate pathway, are provided in Subparts B and D through H.

Authorized medical physicists are defined as individuals who are certified by specialty boards whose certifications are recognized by the NRC or an Agreement State or are identified as authorized individuals on a Commission or Agreement State license or permit. Authorized nuclear pharmacists are similarly defined and also include individuals who have been identified by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists, or are designated as authorized nuclear pharmacists in accordance with the requirements of § 32.72(b)(4). Although not noted by the commenter, the definitions similarly define an authorized user as a physician, dentist, or podiatrist who has been certified by a board whose certification has been recognized by the NRC or an Agreement State, or is identified as an authorized user on a Commission or Agreement State license or permit. These definitions are consistent with the requirements of § 35.13, which provide that a licensee must apply for and receive a license amendment before it permits anyone to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist under the license unless they are authorized individuals who either are certified by a board whose certification is recognized or are identified on a Commission or Agreement State license or by a commercial pharmacy authorized to identify authorized nuclear pharmacists. Neither the language of these provisions nor the **SUPPLEMENTARY INFORMATION** accompanying the initial promulgation of, and modifications to, these sections indicate an intent to include within their scope individuals who are not board certified and who meet the training and experience requirements of the alternate pathway. In fact, there is a clear indication in the **SUPPLEMENTARY INFORMATION** of a specific intent that before allowing a physician who does not have board certification or is not listed on a license or permit to work as an authorized user, the specific licensee of limited scope must continue to submit a license amendment and obtain NRC approval (58 FR 33401; June 17, 1993).

As these definitions are not intended to parallel the training and experience requirements, the NRC has determined that changing the definitions as the commenter has suggested would be outside the scope of this rulemaking.

Issue 2: Definition of "stereotactic radiosurgery."

Comment: One commenter made a distinction between "stereotactic radiosurgery procedures," which the commenter indicated must be conducted in one session, and "stereotactic radiotherapy," which is conducted over extended periods of time with a linear accelerator. The commenter recommended amending the definition of "stereotactic radiosurgery" to include the words "in one session," and to add a new definition of "stereotactic radiotherapy" as "the use of external radiation in conjunction with a stereotactic guidance device to deliver partial therapeutic dose to a tissue volume over a series of sessions.

Response: The NRC believes that it is not necessary to qualify the definition of stereotactic radiosurgery as suggested by the commenter, or to add a new definition, because the more general term used, "stereotactic radiosurgery," is sufficient to include both types of treatments, and addition of the qualifiers could be unduly restrictive in the future.

Issue 3: Definition of "preceptor." As currently defined, "preceptor" means an individual who provides or directs the training and experience required for an individual to become an authorized

user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

Comment: One commenter suggested that the NRC revise the definition of "preceptor" to read "an individual who provides, directs, or has knowledge of training and experience required for an individual to become. * * *" Deleting the definite article "the" before "training" would clarify that more than one person may serve as a preceptor, and would clarify that the preceptor does not need to be the individual who trained the applicant. Addition of the phrase "or has knowledge of," allows preceptors to address T&E that was not received under the supervision of the preceptor, *e.g.*, training for new uses for which no AU exists, such as those that might be licensed under § 35.1000. Other commenters supported removal of the word "the" in the phrase, "the training and experience," in the current definition. Another commenter also recommended rewording the definition of preceptor to include individuals who verify the training because, in some cases, the person who provides training, such as a vendor, may not meet the definition of a preceptor who provides or directs training and experience.

Response: The NRC agrees with the commenters and has removed the word "the" from the phrase "the training and experience" in the definition of preceptor. This change helps clarify that more than one individual may serve as a preceptor and that the regulations do not require the preceptor to be the same person who provides or directs training for an individual to be approved as an RSO, AMP, ANP, or AU. The NRC also agrees that there may be cases when the person who serves as preceptor may be able to verify that the training and experience meet requirements for T&E in the regulations (for example, training provided by a vendor for a specific type of use) and the definition of preceptor has been changed accordingly in the final rule.

Section35.10—Implementation

Comment: One commenter stated that the current transition period, which ends on October 24, 2004, must be extended to allow time for boards to prepare applications and for processing of applications by the NRC, including review by the ACMUI.

Response: The NRC agrees that additional time for the changes to T&E should be allowed beyond October 24, 2004. Therefore, by way of a separate rulemaking, the NRC has amended 10 CFR Part 35 to extend the expiration of Subpart J for 1 year beyond the current expiration date to October 24, 2005 (69 FR 55736, September 16, 2004). This will allow time for specialty boards to prepare and submit applications for recognition under the revised regulations.

The final rule also contains amendments to requirements for T&E that relate to the alternate pathway and the submission of preceptor statements for board certified individuals under § 34.14(a). The NRC is providing, in § 35.10, for implementation of these requirements, on or before October 25, 2005, to allow time for licensees and license reviewers to adopt revisions to requirements for T&E.

The NRC also notes that those board(s) whose certifications have been recognized by the NRC will continue to be listed on the NRC's Web site until Subpart J expires on October 24, 2005; only those boards whose certifications are recognized under the provisions of this final rule will be listed after October 24, 2005.

Section35.14—Notifications

Section 35.14(a) is being amended to require the submission of statements, signed by preceptors, in addition to a copy of a board's certification (required under current regulations). This change was made as a conforming change necessitated by amendments to requirements in Subparts B and D through H of Part 35 which removed the requirement for specialty boards to obtain preceptor statements as a condition of recognition of their certifications and, instead, requires applicants for licenses to submit preceptor statements, effected by the amendment to § 35.14(a).

Comment: One Agreement State commenter noted that it is unfortunate that certification by an accepted board alone will no longer be adequate to become an AU, AMP, RSO, or ANP. Initially this could be confusing to licensees who will need to become accustomed to submitting copies of valid preceptor statements and board certificates with the notification required by § 35.14.

Response: The NRC removed the requirements for boards to obtain preceptor attestations, as a condition of recognition of board certifications, upon the recommendation of the ACMUI, which indicated that the requirement should be de-coupled from requirements for recognition of board certifications. The revised regulations require applicants to submit preceptor attestations along with copies of board certifications. The NRC believes that the regulations, as amended, clarify this change, and the NRC staff will work with applicants to resolve questions, should they arise.

Comment: One commenter stated that the requirements in § 35.14(a) should call for written attestation, not a written certification.

Response: The NRC agrees with the comment and made this change in the final rule. This change also brings the paragraph into conformance with changes made in requirements for preceptor statements in Subparts B and D through H of Part 35.

Subpart B—General Administrative Requirements

Section 35.50—Training for Radiation Safety Officer

Comment: One commenter suggested that the NRC should define "professional experience in health physics" and "at least 3 years in applied health physics" in § 35.50(a)(2), expressing concern that, if full-time experience is required in the practice of health physics, then most radiologists would not qualify as RSOs.

Response: The NRC believes that these terms are in common usage and that it is not necessary to define the terms. The NRC believes that it is appropriate to require 1 year of full-time experience under the supervision of an RSO for candidates to meet requirements for T&E, via the alternate pathway, to ensure that they are able to serve independently as RSOs. Therefore, the NRC has retained the requirement for 1 year of full-time, supervised experience, with the exception of the new provisions in § 35.50 for approval of medical physicists as RSOs, for which a requirement for 2 years of full-time experience is required.

Comment: After stating support for proposed changes to § 35.50 that would permit medical physicists who are not AMPs to serve as RSOs, some commenters also indicated that the phrase referring to certification by a board whose certification process has been recognized "under § 35.51(a)" should be deleted from § 35.50(d)(2)(i). These commenters believe that including the connection would limit RSO medical physicists to medical physicists practicing in therapy. These commenters believe that it is critical that qualified medical physicists other than AMPs be able to serve as an RSO. Medical physicists, who are certified in diagnostic radiology or nuclear medicine, need to continue to be able to serve as an RSO.

Response: The NRC agrees that certain medical physicists may be well qualified to serve as RSOs. AMPs may now serve as RSOs. Therefore, § 35.50

has been amended to provide additional criteria for a medical physicist to qualify as an RSO. The new requirement for certification in medical physics by a specialty board that is recognized by the NRC or an Agreement State appears in § 35.50(c)(1), with requirements for recognition set out in § 35.50(a)(2). The criteria for NRC recognition of certification in medical physics for RSOs does not include a requirement for examination in "clinical radiation therapy," but provides a pathway for approval as RSOs of medical physicists certified in diagnostic radiology or nuclear medicine. The adequacy of T&E for individuals to serve as RSOs is ensured by requirements in the final rule for a preceptor statement and for training in radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. The NRC agrees with the commenters and believes that these requirements are appropriate to demonstrating the adequacy of T&E in radiation safety for individuals to serve as RSOs.

Section 35.51—Training for an Authorized Medical Physicist

Issue 1: The requirements for T&E for AMPs include, in § 35.51(b)(1), that the training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy and brachytherapy services.

Comment: Two Agreement State commenters questioned the use of the term "high-energy" in the requirement for training of AMPs, suggesting that there is no definition for the term and that it might be interpreted differently by different States and individuals. The commenter asserted that, because experience with high-energy, external beam therapy is essential for approval of a medical physicist, it would seem appropriate that the term be understood.

Response: The term "high-energy" is used in the rule text in §§ 35.51(a)(2)(ii) and 35.51(b)(1) to specify the type of training to be included in T&E for AMPs. The NRC revised §§ 35.51(a)(2)(ii) and 35.51(b)(1) to indicate that high-energy radiation is considered to be photons and electrons with energies greater than or equal to 1 million electron volts, which is consistent with the definition of high-energy used by the International Commission on Radiation Units and Measurements in Report 42, *Use of Computers in External Beam Radiotherapy Procedures with High-Energy Photons and Electrons.*

Issue 2: During the transition from previous regulations and changes under the final rule on T&E, should medical physicists, serving in functional roles as AMPs but not named on licenses, be allowed to continue serving as AMPs?

Comment: The ACMUI suggested that the rule grandfather those medical physicists, who serve as authorized medical physicists for intravascular brachytherapy, high-dose rate brachytherapy, cobalt-60 teletherapy, and cobalt-60 gamma knife therapy, to allow them to serve as AMPs in these respective categories regardless of whether they are currently listed on Agreement State or NRC licenses. Other commenters agreed, expressing concern that some Agreement States have not established processes for credentialing physicists authorized to perform critical QA and safety checks for intravascular brachytherapy, or gamma stereotactic treatments, and that some Agreement States, which have established requirements for T&E for these AMPs, do not explicitly list them on licenses. Therefore, this issue should be clarified so there could be an initial pool of AMPs to serve as preceptors and any physicist who meets the requirements of the board certification or alternate pathway under § 35.51, and has clinical experience performing AMP duties in the past 7 years, should be grandfathered.

Response: Prior to the implementation of current regulations in Part 35 (published on April 24, 2002; 67 FR 20249), the NRC staff evaluated, on a case-by-case basis, the qualifications of individuals to perform the functions of medical physicists and identified them as AMPs on NRC licenses. These individuals are "grandfathered" under § 35.57(a). Hence, the concern of the ACMUI would relate primarily to those medical physicists performing functions for licensees of Agreement States but who are not identified on Agreement State licenses. To "grandfather" (approve as AMPs) these medical physicists in Agreement State, it is necessary to evaluate the training and experience of these individuals to serve as AMPs to ensure that they have achieved a level of radiation safety knowledge sufficient to function independently as an AMP for each type of medical unit for which the individual would be responsible. The NRC staff does not believe that it is appropriate to "grandfather" medical physicists to allow them to serve as AMPs, absent such an evaluation having been conducted. Regulatory agencies in Agreement States, that have not been identifying on licenses those individuals who have been authorized to serve as medical physicists for the types of use and of concern to the ACMUI should identify (approve) medical physicists on licenses and amendments for types of use for which status as an AMP is required under revised regulations, including previously authorized medical physicists. These individuals, who have been identified on a license, would also be able to serve as preceptors for individuals to become AMPs.

Issue 3: Requirements for clinical experience to serve as an AMP.

Comment: Some commenters believe that proposed § 35.51(a)(2)(i) would allow individuals with no clinical experience (*e.g.*, research post-doctoral candidates supervised by a boarded physicist), to sit for board certification examinations. Therefore, they suggested the following change to § 35.51(a)(2): "Have 2 years of full-time practical training and/or experience in a clinical radiation oncology facility providing high-energy external beam therapy and brachytherapy services under the supervision of (i) a medical physicist who is certified by a board recognized by the Commission or an Agreement State, or (ii) physicians who meet the requirements for §§ 35.490 or 35.690 authorized users."

Response: As in the proposed rule, the regulations in the final rule for recognition of specialty board certifications for AMPs require candidates for certification to have 2 years of practical training and/or supervised experience in medical physics and to pass an examination which assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery. The NRC believes that these requirements, in combination with the requirements for type of use specific training and for a preceptor attestation that a candidate for AMP has achieved a level of competency sufficient to function independently as an AMP, are adequate to assess the T&E of candidates for status as AMPs.

Section 35.57—Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized User, and Nuclear Pharmacist

Comment: The ACMUI suggested that licenses should be amended to provide that current authorized users of sodium iodine-131 for imaging and localization, involving greater than 30 microcuries, continue to be authorized for these uses.

Response: Section 35.57(b)(1) provides that AUs who are identified on a license or permit are not required to comply with the training requirements

in Subparts D through H to continue performing those medical uses for which they were authorized before October 24, 2002 (the effective date of the current regulations). Under § 35.57(b)(2), the same provision applies to AUs authorized between October 24, 2002 and the effective date of this final rule, (April 29, 2005). NRC licenses are being amended accordingly.

Subpart D—Unsealed Byproduct Material—Written Directive Not Required

Section 35.290—Training for Imaging and Localization Studies

Comment: The ACMUI suggested that the revised regulations should, in the future, allow § 35.200 practitioners to conduct any I–131 imaging and localization involving greater than 30 microcuries, excluding sodium iodine, without further training and experience.

Response: Section 35.57(b)(1) provides the exception sought by the commenter by not requiring AUs to comply with the training requirements in Subparts D through H and to continue performing those medical uses for which they were authorized before October 24, 2002 (the effective date of the current regulations). Section 35.57(b)(2) allows AUs, authorized between October 24, 2002 and the effective date of this final rule (April 29, 2005) to continue performing those medical uses for which they were authorized during this period. NRC licenses are being modified accordingly.

Comment: The ACMUI recommended that the NRC provide a clarification that, for the diagnostic use of I–131 as sodium iodide which falls under § 35.392 for diagnostic use only, the training which an individual may cite for uses under § 35.392 may also serve as credit as part of the 700 hours of training for uses under § 35.200.

Response: The NRC requirement for 80 hours of training for uses under § 35.392 may be credited towards the 700 hours of training for uses under § 35.200 under the current regulations in § 35.290 and under the final rule.

Subpart E—Unsealed Byproduct Material—Written Directive Required

Section 35.390—Training for Use of Unsealed Byproduct Material for Which a Written Directive Is Required

Comment: A commenter indicated that the NRC is imposing a new requirement in its regulations for 700 hours of training for uses for which a WD is required. The commenter indicated that this is 620 hours more than is required for the use of sodium iodide I–131 in quantities up to 1.2 GBq (33 millicuries) for therapeutic applications, for which 80 hours of training is required under § 35.392. Further, an examination is required for recognition of certifications of specialty boards under § 35.390, but not under § 35.392. The commenter stated that risk-based regulations could not be used to justify the requirement for 620 more hours of training given that only 80 hours of training are required for the use of I–131 for treatment, and that virtually all medical events related to the use of unsealed sources are due to the use of I–131. Another commenter expressed similar views and added that it is inconsistent to have minimal requirements for alternate training pathways while placing more prescriptive requirements for training on specialty boards that already require far more than the alternative pathway. The commenter stated that the NRC should reconsider the requirements for the alternate pathway to remove these inconsistencies.

Response: The NRC did not propose to change requirements for the number of hours of T&E for individuals to qualify as AUs via the alternate pathway under §§ 35.390, 35.392, or 35.394. The issues raised by the commenter were discussed extensively in the **SUPPLEMENTARY INFORMATION** for the current rule in response to public comments in Part II, General Issues, Section E, Training and Experience, published in the **Federal Register** on April 24, 2002 (67 FR 20249). That discussion indicates that the NRC agreed with comments indicating that the T&E requirements should be increased for individuals who wish to use byproduct material for which a WD is required. The number of hours required were increased from 80 to 700 hours in § 35.390 for uses of unsealed byproduct material for which a WD is required. In addition, the work experience in the administration of such dosages to patients must include at least three cases in each of the following categories for which the individual is requesting AU status: (1) Oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I–131, for which a written directive is required; (2) Oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I–131; (3) Parenteral administration of any beta-emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or (4) Parenteral administration of any other radionuclide, for which a written directive is required. Physicians who are authorized under § 35.390 for all of these types of administrations also meet the requirements in §§ 35.190, 35.290, 35.392, and 35.394. The NRC continues to believe that the increase in T&E hours was needed because these physicians are authorized to elute generators and prepare radioactive drugs, as well as to administer a wide variety of radionuclides for which WDs are required. Thus, the associated radiation risks of the use could be greater. The discussion in the **SUPPLEMENTARY INFORMATION** for the current rule also indicates that requirements for T&E were carried forward into the current rule, in § 35.392, for AUs to perform oral administration of sodium iodide I–131 in dosages less than or equal to 1.22 gigabecquerels (GBq) (33 millicuries (mCi)), if they do not prepare radioactive drugs using generators and reagent kits. To qualify as an AU under this limited authorization, an individual must have 80 hours of classroom and laboratory training and supervised work experience that includes 3 cases involving the oral administration of sodium iodide I–131 in dosages less than or equal to 1.22 GBq (33 mCi). Finally, the discussion indicated that requirements were carried forward to the current rule, in § 35.394, for AUs to perform oral administration of sodium iodide I–131 in dosages greater than 1.22 GBq (33 mCi), and do not prepare radioactive drugs using generators and reagent kits. To qualify as an AU under this limited authorization, an individual must have 80 hours of classroom and laboratory training and work experience that includes 3 cases involving the oral administration of sodium iodide I–131 in quantities greater than 1.22 GBq (33 mCi). Physicians authorized under § 35.394 also meet the T&E criteria in § 35.392. Based on licensee use, NRC inspections, and experience with medical events reported since the current rule became effective, on October 24, 2002, the NRC continues to believe that the requirements in §§ 35.390, 35.392, and 35.394 are necessary and sufficient.

Comment: One commenter suggested that the NRC add "diagnostic radiology" to the description of residency programs, which now includes "residency training in radiation therapy or nuclear medicine training program or a program in a related medical specialty."

Response: The NRC believes that the description of "residency programs" should be limited to those which have direct applicability to the use of byproduct material for which a WD is required. Use of the general term

"related medical specialty," allows for training in diagnostic radiology.

Comment: Some commenters believe that to recognize radiation therapy and nuclear medicine residency programs as they now exist, the T&E criteria in § 35.390(a)(1) should be changed to allow for a 2-year nuclear medicine residency program as an alternative to a 3-year residency program in radiation therapy.

Another commenter indicated that the requirement for a 3-year residency should be removed from § 35.390 because it is inappropriate for the NRC to specify training requirements related to the practice of medicine.

Response: The NRC agrees that the requirement for residency programs to be 3 years in duration should be removed from § 35.390. In the final rule, this section no longer refers to the duration of residency programs.

Comment: Two commenters requested that the requirements in § 35.390 be changed to permit individuals trained in radiation oncology residency programs to use unsealed sources under § 35.300. The totality of all work experience possessed by individuals who have completed an accredited residency program in radiation oncology should be considered. The rule should exempt these individuals from requirements in § 35.390(b)(1)(ii) because radiation oncologists have unique experience that qualifies them to perform therapeutic procedures using unsealed sources. Another commenter stated that the American Board of Medical Specialties (ABMS) certified nuclear medicine physicians, radiologists, and radiation oncologists have unique training, experience, and examinations that go well beyond the minimum requirements of the alternate pathway. Therefore, the NRC should only require in § 35.390 that any ABMS medical specialty board meet the same minimal requirements specified for the alternate pathway in proposed § 35.390(b)(1)(ii). The commenter also suggested removal of any additional requirements for an ABMS board such as an examination, and approval of ABMS boards based upon their formal training and examination procedures which would be outlined by the boards in their applications for approval.

Response: The NRC agrees that physicians trained in radiation oncology may have adequate T&E for certain medical uses of unsealed byproduct material for which a WD is required. One pathway now exists (*i.e.*, licensees may apply for approval of physicians to serve as AUs for use under § 35.300 via the alternate pathway), which includes a requirement for completion of a residency program that includes 700 hours of training and experience in basic radionuclide handling techniques, applicable to the medical use of unsealed byproduct material for which a WD is required, as specified in § 35.390(b)(1). The NRC understands, however, that there are classes of physicians who may be well qualified but do not meet the requirement for 700 hours of T&E for unsealed byproduct material. For example, physicians who meet the requirements for T&E for uses under §§ 35.490 or 35.690 have a good understanding of radiation which applies to the use of sealed sources that is common to the use of unsealed sources. However, the NRC believes that, because of the increased risk associated with the use of unsealed sources for which a WD is required, it is essential to ensure that AUs have adequate T&E for this use. Commenters suggested removing requirements for 700 hours of T&E for uses under § 35.300, but that would remove essential requirements for T&E for use of unsealed byproduct material for which a WD is required. Therefore, the NRC has included a new § 35.396 in the final rule to provide a pathway for becoming a AU for uses of byproduct material under § 35.300, for individuals who may have acquired adequate T&E other than that specified in § 35.390 and other sections of Subpart E. This new § 35.396, "Training for the parenteral administration of unsealed byproduct material for which a written directive is required," specifies requirements for T&E that relate to the use of unsealed byproduct material for which a WD is required. These requirements were modeled after the requirements in other sections of Subpart E and include 80 hours of T&E specific to the use of unsealed sources and experience with at least three cases involving parenteral administration of byproduct material for which a WD is required. Section 35.396 allows for individuals to take credit for T&E associated with other medical uses of byproduct material that may be applicable to the uses of unsealed byproduct material, *e.g.*, individuals who are certified by boards who meet the requirements of §§ 35.490 or 35.690 for the use of sealed sources. The NRC believes that this new section will provide the flexibility needed to allow individuals, who do not meet other requirements in Subpart E, to serve as AUs for parenteral administration of byproduct material for which a WD is required while ensuring adequacy of T&E for these uses to be safe.

Comment: One commenter stated that § 35.390(b)(1)(ii)(G) deals with the therapeutic administration of certain unsealed sources orally and by parenteral administration, *i.e.*, by way of the intestines. The commenter stated that, because radiopharmaceutical therapies are now delivered by a variety of routes, the term "parenteral administration" should be changed to "administration by any route."

Response: The NRC believes that the hazards and precautions associated with parenteral administrations of unsealed byproduct material are significantly different from those associated with oral administrations and that the requirements in § 35.390(b)(1)(ii)(G) are sufficiently broad as to cover the various uses for which a WD is required. Therefore, the NRC has retained requirements for experience with both oral and parenteral administrations for which a WD is required. The NRC also notes that the medical use of byproduct material under § 35.300 is not limited to "therapeutic" administrations, but applies to uses for which a WD is required (*see* § 35.40 for related requirements).

Comment: The ACMUI recommended removing the requirement for work experience with elution of generators and measuring, testing, and processing of eluates for preparation of radiolabeled drugs in § 35.390(b)(1)(ii)(F). The ACMUI believes that it is not necessary to require all users of byproduct material, under § 35.300, to have experience with elution of generators and, further, that it is sufficient to require, in § 35.390(b)(1)(ii)(C), work experience with safely preparing patient or human research dosages. However, the ACMUI recommended that the requirement for elution of generators be retained for training in the use of byproduct material for individuals who may become AUs under provisions of § 35.290(b) by virtue of having been approved as an AU under § 35.390. A conforming change was recommended for § 35.100(b) for those AUs who qualify to prepare dosages if they meet the requirements in § 35.390, and in [revised] § 35.290(c)(2) for requirements for preceptors who meet the requirements of § 35.390.

Response: The NRC agrees with the recommendation of the ACMUI to remove the requirement for elution of generators and eluates in § 35.390(b)(1)(ii)(F) because this should not be required for AUs who do not need to use generators for uses of byproduct material under § 35.300 and because there is a requirement for safely preparing dosages in § 35.390(b)(1)(ii)(C). This change was made in the final rule along with conforming changes to retain the

requirement for this experience in §§ 35.100(b), 35.200(b) and 35.290(b).

Comment: One commenter stated that the Accreditation Council for Graduate Medical Education (ACGME) was incorrectly referred to as the "Accreditation Council on Medical Education."

Response: References to the ACGME have been corrected in the discussion of changes to §§ 35.390, 35.490, and 35.690.

Section 35.392—Training for The Oral Administration of Sodium Iodide I–131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 Millicuries)

Comment: One commenter suggested that there should be a grandfathering clause in § 35.392 to allow AUs who were permitted to perform diagnostic total body imaging scans, previously under § 35.200, when the scans were classified as "diagnostic" and "therapeutic" rather than as procedures for which WD is required, to continue to perform these procedures.

Response: Section 35.57(b) provides that experienced AUs, identified on a license or permit, are not required to comply with the training requirements in Subparts D through H to continue performing those medical uses for which they were authorized before October 24, 2002 (the effective date of the current regulations). This provides the "grandfathering" requested by the commenter.

Subpart H of Part 35—Photon Emitting Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

Section 35.690—Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

Comment: One commenter stated that AUs should be required to be neurosurgeons for use of gamma stereotactic radiosurgery treatments because a neurosurgeon is the only trained physician who has the knowledge unique to understanding the neuroanatomy of the brain. The commenter also suggested other changes to regulations, including a recommendation that the NRC require that WDs for gamma stereotactic radiosurgery be signed by both a treating neurosurgeon and radiation oncologist and that a neurosurgeon should be required to be physically present during treatments involving the gamma unit, with the radiation oncologist also present during the initiation of treatment.

Response: The NRC believes that it would be an unwarranted intrusion into the practice of medicine to specify that only neurosurgeons may serve as AUs for the use of byproduct material in stereotactic radiosurgery. The NRC believes that sufficient protections are included in Subpart H of Part 35 and other applicable sections of 10 CFR Part 35 to ensure that licensees develop safety procedures and training to ensure safety. They include several requirements for safe use of byproduct material specific to high dose rate units in § 35.615(a)–(g) as well as requirements for the physical presence of an authorized user and authorized medical physicist (in § 35.615(f)(3)).

Part IV—Implementation by Agreement States—Timing and Compatibility

Issue 1: Should Agreement States establish the requirements to conform with this proposed rule by October 24, 2005, or should they follow the normal process and be given a full 3 years to develop a compatible rule?

Comment: Agreement State commenters were generally in agreement that they should have 3 years to adopt the final rule. One commenter stated that there is not a basis for considering emergency action, and that time is needed to allow for States to develop implementation procedures as well as revising their regulations. Another commenter noted that a requirement to adopt the final rule by October 25, 2005, would result in that State not meeting Compatibility B requirements.

Other commenters indicated that it may take a full 3 years for some Agreement States to adopt comparable regulations, but they should be urged to do so as soon as practical, and the compatibility level for these regulations should remain as compatibility B. One commenter states that Agreement States can and should meet the October 24, 2005, deadline for developing a compatible rule. The commenter believes there is much confusion and misunderstanding on the part of applicants seeking AU status as they have one [or more] sets of requirements in Agreement States and another in non-Agreement States. In some States, these changes will require legislative action and the process needs to be started immediately to achieve compliance with the NRC's requirements. The commenter opposed this delay in the final implementation, indicating that extension of the deadline is quite unreasonable and unnecessary.

Response: The NRC acknowledges that the adoption of the final rule may take legislative action in some Agreement States and that some legislative cycles are up to 2 years in length. To allow adequate time for all Agreement States to adopt the final rule, and help avoid transboundary issues relating to differing standards between States, the NRC has determined that 3 years will be allowed for adoption of this Compatibility B final rule.

Comment: One commenter stated that obstacles to obtaining licensure in individual States discourage endocrinologists from providing treatment with I–131 when, in fact, endocrinologists, with their broad base of experience and training in all forms of thyroid disease and access to various forms of thyroid testing, are in the best position to judge the timing and appropriateness of radioiodine treatment.

Response: Current regulations, in §§ 35.392 and 35.394, include requirements that are specifically intended to enable endocrinologists (and other physicians) to obtain authorized user status for oral administration of sodium iodide I–131 for which a written directive is required. The requirements include 80 hours of classroom and laboratory training in subjects applicable to this usage plus work experience covering procedures important to this usage, including administering dosages to at least 3 patients or human research subjects. Preceptor statements required in the regulations can be completed by users authorized under these sections. The revised rule maintains these provisions. Because requirements for T&E are designated as compatibility category B, Agreement States must establish requirements that are essentially identical to NRC's.

Comment: One commenter suggested that the NRC enforce the compatibility requirements for Agreement States to comply with the requirements for T&E, published in the revised 10 CFR Part 35 on April 24, 2002, by October 25, 2005. The issues in the proposed rule are limited and do not affect the core of the training and experience requirements. The commenter indicated that progress on implementing compatibility in the Agreement States has been very slow. In some States, the regulatory changes must be implemented by legislative action, and the process should be started immediately to achieve compliance with the Federal mandate. Further delay in the adoption of the T&E requirements will inject added uncertainty into the process and delay unnecessarily the final resolution of the T&E issue.

Response: The NRC disagrees with the commenter's assertion that the

amendments proposed do not affect "core" requirements for T&E. Changes between current regulations and the final rule are substantial and Agreement States will need time to adopt the regulations, as noted in the commenter's observation that, in some States, legislative action will be required to adopt revised requirements for T&E. Therefore the NRC is allowing the full three years for adoption of the final rule.

Issue 2: Additional issues relating to implementation by Agreement States: Consistency of requirements.

Comment: Three commenters indicated that the regulations on T&E should remain classified as Compatibility B.

Response: The NRC has not changed its compatibility designation for requirements for T&E in the final rule; they remain classified as Compatibility B.

Comment: Some Agreement State commenters stated that T&E requirements are designated as Compatibility B because of transboundary issues. However, consistency will not be ensured unless a minimum number of classroom hours are specified for AUs in §§ 35.190, 35.290, and 35.390, and for nuclear pharmacists in § 35.55. Each Agreement State will either accept whatever is submitted by an applicant or will designate a minimum number of hours that will be accepted. In either situation, inconsistency will exist.

Response: The NRC's designation of requirements for T&E as Compatibility B is intended to establish uniformity regarding requirements to ensure consistency of requirements for T&E between Agreement States and between the NRC and Agreement States. The NRC agrees with the assertion of the Agreement States that a specification for a minimum number of hours of classroom and laboratory training will promote consistency of regulations between Agreement States, and between the NRC and Agreement States when applied to the alternate pathway. However, this requirement need not be added to requirements for recognition of specialty board certifications to ensure consistency. For these reasons and those discussed in Part II, Issue 1, of the Summary of Public Comments, requirements for a minimum number of hours of classroom and laboratory training have been included in §§ 35.55(b)(1)(i), 35.190(c)(1), 35.290(c)(1), and 35.390(b)(1) of the final rule. These amendments to the regulations will also help ensure that Agreement States maintain Compatibility B status of their regulations for T&E.

Comment: A commenter for OAS indicated that, in response to a poll, some Agreement State commenters argued against categorizing requirements for T&E as Compatibility B. Comments included the argument that this has diminished safety for certain uses of byproduct material, *e.g.*, for oral administrations of I–131 under §§ 35.392 and 35.394. One commenter also noted that a national standard for T&E makes sense because some States use the T&E evaluation of other licensing jurisdictions as part or all of their review of qualifications of applicants to become AUs. One commenter noted, however, that some Agreement States have, in the past, disagreed with the NRC's requirements for T&E and have effectively licensed users with differing qualifications, and recommended a change of designation for T&E regulations to Compatibility C.

Response: The issue of adequacy of T&E for oral administration of I–131 sodium iodide was thoroughly reviewed by the NRC in the **SUPPLEMENTARY INFORMATION** when the current regulations for medical use of byproduct material were developed for the revision of 10 CFR Part 35, published on April 24, 2002 (67 FR 20249). This analysis included a careful consideration to numerous public comments in relation to adequacy of T&E. Many of the issues raised by the commenters to justify a redesignation of T&E requirements as Compatibility C were also given considerable review during the development of the current regulations and the conclusion was reached that the assignment of the specific compatibility categories to the requirements in the current regulations was necessary to assure that byproduct material is used with a uniform level of radiation safety nationwide. Therefore, a basis for redesignation of Compatibility is unnecessary. Further discussion of the Compatibility designation for requirements for T&E appears above.

V. Summary of Final Revisions

Section 35.2—Definitions

The definition of "preceptor" is changed from "Preceptor means an individual who provides or directs the training and experience * * *." to read "Preceptor means an individual who provides, directs, or verifies training and experience * * *." The definition of "Radiation Safety Officer" is changed to include individuals who qualify as RSOs by meeting the new requirements in § 35.50(c)(1).

Section 35.8—Information Collection Requirements: OMB Approval

This section is amended to incorporate a conforming change related to the addition of § 35.396 to Subpart E of Part 35. The information collection related to this new section is noted in paragraph (b) by the addition of "§ 35.396" to the list of sections appearing therein.

Section 35.10—Implementation

This section is amended to incorporate a conforming change necessitated by the amendment of other sections. Paragraph (b) is amended to require implementation, on or before October 25, 2005, of §§ 35.50(a) and (e), 35.51(a) and (c), 35.55(a), 35.55(b)(1)(i), 35.190(a), 35.190(c)(1), 35.290(a), 35.290(c)(1), 35.390(a), 35.390(b)(1), 35.392(a), 35.394(a), 35.396(a), 35.396(c), 35.490(a), 35.590(a) and (c), and 35.690(a) and (c) and the requirement, in § 35.14(a), to provide a copy of written attestations to the Commission.

Section 35.13—License Amendments

This section is amended to incorporate conforming changes necessitated by amendments of other sections. Paragraph (b)(3) is amended to reference requirements for training specific for types of use specified in new § 35.51(c).

Section 35.14—Notifications

This section is amended to add a requirement to paragraph (a) to submit a copy of a written attestation, signed by a preceptor, in addition to a copy of the board certification now required in this paragraph. The section is also amended to require licensees to provide verification of completion of relevant training for individuals permitted to work as authorized individuals under § 34.13(b)(4).

Section 35.50—Training for Radiation Safety Officer

This section is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway (§ 35.50(b) in the current regulations), paragraph (a) is amended to provide separate requirements for a specialty board's certification process. This includes a requirement to pass an examination, administered by diplomates of the specialty board, that evaluates knowledge and competency in areas that are important to functioning

as an RSO. Requirements for training are changed to add requirements for a bachelor's or graduate degree from an accredited college or university in physical science, engineering, or biological science with a minimum of 20 college credits in physical science. Training requirements also include a minimum of 5 years of professional experience in health physics, including at least 3 years in applied health physics (graduate training could be substituted for up to 2 years of experience). Paragraph (a) is amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certifications. This requirement appears in paragraph (d) and applies to individuals for both the certification and alternate pathways. New paragraphs (a)(2) and (c)(1) are added that specify requirements for medical physicists to serve as RSOs. The term "classroom and laboratory training" is substituted for the word "didactic" in paragraph (b)(1)(i) to be consistent with usage in other sections. A new paragraph (e) is added to require training in radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks authorization. Paragraph (e) applies to all pathways. The requirement for a "written certification," signed by a preceptor, is changed to a requirement for a "written attestation," signed by a preceptor, in paragraph (d).

Section 35.51—Training for an Authorized Medical Physicist

This section is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) is amended to provide separate requirements for a specialty board's certification process. This process includes a requirement to pass an examination, administered by diplomates of the specialty board, that evaluates knowledge and competency in areas that are important to functioning as a medical physicist. Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certifications and now applies to each individual seeking approval as an AMP via either the certification or alternate pathway and is added to paragraph (a). A new paragraph (c) is added to require training related to the type of use for which authorization is sought that includes "hands on" device operation, safety procedures, clinical use, and operation of a treatment planning system. Paragraph (c) applies to the certification and alternate pathways. In addition, for the alternate pathway (paragraph (b)(1)), the acceptable areas of concentration for degrees are expanded, and a requirement that the degree be from an accredited college or university is added. Paragraph (b)(1) is also amended to list the specific areas for which the individual needs to have training and work experience, instead of referring to other sections of 10 CFR Part 35, and allows for the T&E to be received in clinical radiation facilities that provide high-energy, external beam therapy with photons and electrons with energies greater than or equal to 1 million electron volts and brachytherapy services. The term "written certification" in paragraph (b)(2) is changed to "written attestation."

Section 35.55—Training for an Authorized Nuclear Pharmacist

This section is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) is amended to provide separate requirements for a specialty board's certification process. This certification process includes a requirement to pass an examination, administered by diplomates of the specialty board, that evaluates knowledge and competency in areas that are important to functioning as an ANP. Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The requirement for didactic training in paragraph (b)(1)(i) is changed to specify that 200 hours of the 700 hours of training required under paragraph (b)(1) must be classroom and laboratory training; the term "classroom and laboratory training" is substituted for the word "didactic" to be consistent with usage in other sections. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certifications and now applies to each individual seeking approval as an AMP and is referenced in paragraph (a). The term "written certification" in paragraph (b)(2) is changed to "written attestation."

Section 35.57—Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist, and Authorized Nuclear Pharmacist

This section is amended by adding two paragraphs, (a)(2) and (b)(2), to provide that (1) individuals identified as RSO's, AMPs or ANPs on a Commission or Agreement State license or permit, after the effective date (October 24, 2002) of the current requirements in Subpart B, and before the effective date of this final rule, may continue to serve in these positions; and (2) physicians, dentists or podiatrists identified as AUs on a Commission or Agreement State license or permit, who perform only those medical uses for which they were authorized between October 24, 2002, and the effective date of this final rule, need not comply with the training requirements of Subparts D through H.

Section 35.75—Release of Individuals Containing Unsealed Byproduct Material or Implants Containing Byproduct Material

Paragraph (a) is amended to remove "(draft)" from footnote 1.

Section 35.100—Use of Unsealed Byproduct Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive Is Not Required

A conforming change is made in § 35.100(b)(2) to add, and thereby retain, a requirement, formerly incorporated by reference to § 35.390(b)(1)(ii)(F), for work experience with elution of generators and the measuring, testing, and preparation of labeled radioactive drugs for those individuals who qualify for preparation of dosages for use under § 35.100 as AUs approved under § 35.390. The addition is accomplished by adding a reference to § 35.290(c)(1)(ii)(G) in § 35.100(b).

Section 35.190—Training for Uptake, Dilution, and Excretion Studies

Paragraph (a) is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification to be recognized by the Commission or an Agreement State for uses under § 35.190. A requirement is added that candidates must pass an examination administered by diplomates of the specialty board. The requirement for obtaining a preceptor statement is removed from the

requirements for recognition of specialty board certifications and now applies to each individual seeking approval as an AU under § 35.100 and is referenced in paragraph (a). Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The introductory text of paragraph (c)(1) is amended to provide that a minimum of 8 hours of the 60 of training and experience, required in this paragraph, must be classroom and laboratory training. Paragraph (a)(1) is amended to clarify that this requirement does not apply to the certification pathway. The introductory text of paragraph (c)(1)(ii)(B) is amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The term "written certification" is changed to "written attestation" in paragraph (c)(2).

Section 35.200—Use of Unsealed Byproduct Material for Imaging and Localization Studies for Which a Written Directive Is Not Required

A conforming change is made in §§ 35.200(b) to add, and thereby retain, a requirement, formerly incorporated by reference to § 35.390(b)(1)(ii)(F), for work experience with elution of generators and the measuring, testing, and preparation of labeled radioactive drugs, for those individuals who qualify for use under § 35.200 as AUs approved under § 35.390. The addition is accomplished by adding a reference to § 35.290(c)(1)(ii)(G) in § 35.200(b)(2).

Section 35.290—Training for Imaging and Localization Studies

Paragraph (a) is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification to be recognized by the Commission or an Agreement State for uses under § 35.290. A requirement is added that candidates must pass an examination administered by diplomates of the specialty board. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certifications and now applies to each individual seeking approval as an AU under § 35.200. Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The introductory text of paragraph (c)(1) is amended to provide that a minimum of 80 hours of the 700 hours of training and experience, required in this paragraph, must be classroom and laboratory training. Paragraph (a)(1) is amended to clarify that this requirement does not apply to the certification pathway. Paragraph (c)(1)(ii)(B) is amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The term "written certification" is changed to "written attestation" in paragraph (c)(2). A conforming change is made in §§ 35.290(b) and 35.290(c)(1)(ii) to add a requirement for work experience with elution of generators and the measuring, testing, and preparation of labeled radioactive drugs for those individuals who qualify for use under § 35.290 as AUs approved under § 35.390. These requirements are also applicable to individuals serving as preceptors under § 35.290(c)(2).

Section 35.390—Training for Use of Unsealed Byproduct Material for Which a Written Directive Is Required

This section is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification process to be recognized by the Commission or an Agreement State for uses under § 35.390. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) is amended to provide separate requirements for a specialty board's certification process. The requirement for experience with administration of dosages in paragraph (b)(1)(ii)(G) is no longer included in requirements for recognition of board certifications, but is retained as a requirement for individuals to become AUs for uses for which a WD is required by adding a reference, in paragraph (a), to paragraph (b)(1)(ii)(G). In paragraph (a)(1), the training and experience required for the certification pathway is changed to include a requirement that individuals complete residency training in a radiation therapy, nuclear medicine, or a related medical specialty training program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. A requirement is added that candidates must pass an examination administered by diplomates of the specialty board. Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certifications and now applies to each individual seeking approval as an AU under § 35.390 and is referenced in paragraph (a). The introductory text of paragraph (b)(1) is amended to provide that a minimum of 200 hours of the 700 hours of training and experience, required in this paragraph, must be classroom and laboratory training. Paragraph (b)(1)(ii)(B) is amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. Paragraphs (b)(1)(ii)(G)(*1*), (*3*) and (*4*) are amended to revise requirements for work experience involving parenteral administration of dosages, clarifying them to indicate that the experience is to be with cases for which written directives are required. Paragraph (a)(2) is amended to clarify that candidates must pass an examination that tests knowledge and competence in use of unsealed byproduct material for which a WD is required. Paragraph (b)(1)(ii)(F) is removed to eliminate the requirement for work experience with elution of generators and the measuring, testing, and processing of eluates for preparing labeled radioactive drugs. The term "written certification" in paragraph (b)(2) is changed to "written attestation."

Section 35.392—Training for the Oral Administration of Sodium Iodide I–131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 Millicuries)

Paragraph (a) is amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certifications and now applies to each individual seeking approval as an AU under § 35.392 and is referenced in paragraph (a). Paragraph (c)(2)(ii) is amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The term "written certification" in paragraph (c)(3) is changed to "written attestation."

Section 35.394—Training for the Oral Administration of Sodium Iodide I–131 Requiring a Written Directive in Quantities Greater Than 1.22 Gigabecquerels (33 Millicuries)

Paragraph (a) is amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certification processes and now applies to each individual seeking approval as an AU under § 35.392 and is referenced in paragraph (a). Paragraph (c)(2)(ii) is amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The term "written certification" in paragraph (c)(3) is changed to "written attestation."

Section 35.396—Training for the Parenteral Administration of Unsealed Byproduct Material Requiring a Written Directive

A new § 35.396 is added to Subpart E. The section establishes T&E requirements applicable to AUs for the parenteral administration of unsealed byproduct material for which a written directive is required. The following individuals may serve as AUs under this section if they meet specified T&E requirements—

- Under paragraph (a), AUs under § 35.390 or, before October 24, 2005, § 35.930 for uses listed in §§ 35.390(b)(1)(ii)(G)(*3*) and 35.390(b)(1)(ii)(G)(*4*), or equivalent Agreement State requirements.
- Under paragraph (b), AUs for uses under §§ 35.400 or 35.600 or, before October 24, 2005, §§ 35.940 or 35.960, or equivalent Agreement State requirements.
- Under paragraph (c), physicians certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State under §§ 35.400 or 35.600 or, before October 24, 2005, §§ 35.940 or 35.960.

The specified requirements for AUs under § 35.396 are as follows:

- T&E specific to the use specified in paragraphs (d)(1) and (d)(2), including 80 hours of classroom and laboratory training that includes topics and experience necessary for the safe use of unsealed byproduct material for parenteral administrations for which a written directive is required, and;
- Preceptor statements as specified in paragraph (d)(3).

Section 35.490—Training for Use of Manual Brachytherapy Sources

This section is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification processes to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) provides separate requirements for a specialty board's certification process. In paragraph (a)(1), the training and experience required for the certification pathway is changed to include a requirement that individuals complete a minimum of 3 years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. A requirement is added that candidates must pass an examination administered by diplomates of the specialty board. Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certification processes and now applies to each individual seeking approval as an AU under § 35.490 and is referenced in paragraph (a). The term "written certification" is changed to "written attestation" in the requirements for preceptor attestation in paragraph (b)(3). Paragraph (b)(2) is amended to include the Royal College of Physicians and Surgeons of Canada in the listing of organizations that can provide approval of the formal training program.

Section 35.491—Training for Ophthalmic Use of Strontium-90

Paragraph (b)(3) is amended to change the term "written certification" to "written attestation."

Section 35.590—Training for Use of Sealed Sources for Diagnosis

Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. Paragraph (c) was added and applies to both the certification and the alternate pathways. This revision separates the requirement for training in the use of the device for the uses requested from the requirement for 8 hours of classroom and laboratory training in basic radionuclide handling techniques.

Section 35.690—Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

This section is amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board's certification processes to be recognized by the Commission or an Agreement State for uses under § 35.600. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) is amended to provide separate requirements for a specialty board's certification process. Paragraph (a) is also amended to include a statement that the names of recognized board certifications will be posted on the NRC's web page. In paragraph (a)(1) the training and experience required for the certification pathway is changed to include a requirement that individuals complete a minimum of 3 years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. A requirement is added, in paragraph (a)(2), that candidates must pass an examination administered by diplomates of the specialty board. The requirement for obtaining a preceptor statement is removed from the requirements for recognition of specialty board certifications and now applies to each individual seeking approval as an AU under § 35.690. Additionally, for the alternate pathway, paragraph (b)(2) is amended to include the Royal College of Physicians and Surgeons of Canada in the listing of organizations that can provide approval of the formal training program. The requirement for experience in "radiation oncology" in paragraph (b)(2) is changed to require experience in "radiation therapy." The term "written certification" is changed to "written attestation" in the requirements for preceptor attestation in paragraph (b)(3). A new paragraph (c) is added to require training in device operation, safety procedures, and clinical use for the type(s) of use for which approval as an AU is sought. Paragraph (c) applies to all pathways.

Section 35.980—Training for an Authorized Nuclear Pharmacist

Paragraph (b)(2) is amended to change the term "written certification" to "written attestation," a conforming

change made to maintain consistency with other subparts of 10 CFR Part 35.

VI. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this final rule is a matter of compatibility between NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The Compatibility classifications for sections amended in the final rule are unchanged. The new § 35.396 is classified as Compatibility Category B. A summary of compatibility classifications for amended sections in the final rule appears below.

Compatibility: Section.

Compatibility Category B: § 35.2, Definitions: Preceptor, radiation safety officer; §§ 35.50, 35.51, 35.55, 35.57, 35.190, 35.290, 35.390, 35.392, 35.394, 35.396, 35.490, 35.491, 35.590, 35.690.

Compatibility Category C: §§ 35.11, 35.75(a).

Compatibility Category H&S: §§ 35.100, 35.200.

Compatibility Category D: §§ 35.8, 35.10, 35.13, 35.14, 35.980.

A Compatibility Category B designation means the requirement has significant direct transboundary implications. Compatibility Category B designated Agreement State requirements should be essentially identical to those of NRC.

A Compatibility Category C designation means the essential objectives of this section should be adopted by the State to avoid conflicts, duplications, or gaps. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met.

A Compatibility Category H&S designation means program elements are not required for purposes of compatibility; however, they do have particular health and safety significance. The State should adopt the essential objectives of such program elements to maintain an adequate program.

A Compatibility Category D designation means that the essential objectives of the section are not required for purposes of compatibility and do not need to be adopted by the Agreement States.

VII. Implementation

The revised regulations in 10 CFR Part 35 become effective on April 29, 2005. The Commission provides, by amendments to § 35.10(b), that licensees will have until October 24, 2005, to comply with the training requirements for authorized users, authorized medical physicists, authorized nuclear pharmacists, and Radiation Safety Officers. During this period, licensees will have the option of complying with either requirements of Subpart J, the expiration of which was extended by a separate rulemaking to October 24, 2005 (69 FR 55736, September 16, 2004), or the requirements in Subparts B and D through H of Part 35. The transition period will allow additional time for other specialty boards to seek NRC recognition of certifications as provided in §§ 35.50(a), 35.51(a), 35.55(a), 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.490(a), 35.590(a), and 35.690(a). The transition period will also allow individuals from Agreement States time to satisfy the training requirements to work in NRC jurisdictions. The Commission also provides, by amendment to § 35.57, that individuals who have been named on existing Commission or Agreement State licenses and permits, between the October 24, 2002 (the effective date of current requirements for T&E, revised on April 24, 2002) and the effective date of this final rule, are exempt from the new requirements in Subparts D through H. The effect of this change to the regulations is to "grandfather" those individuals named on an existing Commission or Agreement State license or permit, for those use(s) for which they have been approved to serve as an RSO, AMP, ANP, or AU.

VIII. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is modifying the training and experience requirements for radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, or authorized users. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

IX. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. The environmental assessment is presented below.

Introduction

The NRC is amending its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers (RSOs), authorized medical physicists (AMPs), authorized nuclear pharmacists (ANPs), or authorized users (AUs). The final rule also revises requirements for demonstrating the adequacy of training and experience for pathways other than the board certification pathway. This rulemaking is necessary to address the training and experience issue for recognition of specialty board certifications.

The Final Action

This action amends the Commission's regulations governing the medical use of byproduct material (10 CFR Part 35). The final rule changes the requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as an RSO, AMP, ANP, or AU. This action also amends certain requirements for the training and experience of individuals who do not choose the board certification pathway.

During its revision of 10 CFR Part 35, the Commission became aware that, as a result of the changes to its training and experience requirements, specialty board certifications recognized by the NRC under the former regulations no longer would be qualified for recognition, and that this could result in a shortage of authorized individuals. As a temporary measure to address this issue, the Commission reinserted Subpart J to Part 35 into the final rule which was published in the **Federal Register** on April 24, 2002 (67 FR 20249). Subpart J to Part 35 was effective for a 2-year transition period, which would have expired on October 24, 2004. This action addresses the issue relating to recognition of board certifications after expiration of Subpart J on October 24, 2005.

Need for the Action

This rulemaking is needed to address the training and experience issue for recognition of certifications of specialty boards by the NRC for approval of individuals to serve as RSOs, AMPs,

ANPs, or AUs. Without this rulemaking, the issue of board recognition would not be addressed. Subpart J to Part 35 expires on October 24, 2005, and without this rulemaking, there could be a potential shortage of individuals authorized to perform medical procedures involving the use of byproduct material.

Alternatives to This Action

An alternative to this final rule would be to take no action. Subpart J to Part 35 would expire on October 24, 2005. The no-action alternative is not favored because the issues related to training and experience, as they relate to NRC's recognition of specialty boards, would not be resolved, and this could result in a shortage of RSOs, AMPs, ANPs, and AUs.

Environmental Impacts of the Final Action

The NRC prepared an environmental assessment as part of the development of the Part 35 final rule published in the **Federal Register** on April 24, 2002 (67 FR 20249). The conclusion from this environmental assessment was that the 10 CFR Part 35 amendments would have no significant impact on the public and the environment. Specifically, pertaining to the training and experience requirements, the environmental assessment stated: "The amendments to the training and experience requirements in 10 CFR Part 35 focus on knowledge and experience that is integral to radiation safety. These changes are expected to have no significant impact on public health and safety, occupational health and safety, and the environment." The NRC finds that the conclusion is still valid for the revisions to the training and experience requirements in this final rule. The revisions also focus on the knowledge and experience that is integral to radiation safety. The amendments to 10 CFR Part 35 are expected to have no significant impact on the public health and safety, occupational health and safety, and the environment.

Agencies and Persons Consulted and Sources Used

The environmental assessment for the final 10 CFR Part 35 rulemaking (67 FR 20249; April 24, 2002), was used in the preparation of this environmental assessment. The draft environmental assessment was sent to Agreement States and the Advisory Committee on the Medical Use of Isotopes for review and comment. The NRC staff has determined that this final action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The NRC staff has determined that this action is not the type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*).

Finding of No Significant Impact

Based on the foregoing environmental assessment, the NRC concludes that this rulemaking will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this rulemaking.

The determination of this environmental assessment is that there will be no significant impact to the public from this action.

X. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0010 and 3150–0120.

The burden to the public for these information collections is estimated to average 1.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0010/3150–0120), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

XI. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–7608, e-mail *RWB@nrc.gov.*

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule amends the regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, or authorized users. This rule also revises the requirements for demonstrating the adequacy of training and experience of individuals who do not choose pathways other than the board certification pathway. This rule will have no burden or economic impact on licensees because it does not add new requirements; it provides a revision to an existing option. Therefore, it does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 10 CFR Part 121.

XIII. Backfit Analysis

The Commission has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR Chapter 1.

XIV. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety

and health, Radiation protection, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 1. The authority citation for Part 35 continues to read as follows:

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

■ 2. In § 35.2, the definition "Radiation Safety Officer" is amended by republishing the introductory text and revising paragraph (1) of the definition, and the definition of "Preceptor" is revised to read as follows:

§ 35.2 Definitions.

* * * * *

Preceptor means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

* * * * *

Radiation Safety Officer means an individual who—

(1) Meets the requirements in §§ 35.50(a) or (c)(1) and 35.59; or, before October 24, 2005, §§ 35.900(a) and 35.59; or

* * * * *

■ 3. In § 35.8, paragraph (b) is revised to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.6, 35.12, 35.13, 35.14, 35.19, 35.24, 35.26, 35.27, 35.40, 35.41, 35.50, 35.51, 35.55, 35.60, 35.61, 35.63, 35.67, 35.69, 35.70, 35.75, 35.80, 35.92, 35.190, 35.204, 35.290, 35.310, 35.315, 35.390, 35.392, 35.394, 35.396, 35.404, 35.406, 35.410, 35.415, 35.432, 35.433, 35.490, 35.491, 35.590, 35.604, 35.605, 35.610, 35.615, 35.630, 35.632, 35.633, 35.635, 35.642, 35.643, 35.645, 35.647, 35.652, 35.655, 35.690, 35.900, 35.910, 35.920, 35.930, 35.940, 35.950, 35.960, 35.961, 35.980, 35.981, 35.1000, 35.2024, 35.2026, 35.2040, 35.2041, 35.2060, 35.2061, 35.2063, 35.2067, 35.2070, 35.2075, 35.2080, 35.2092, 35.2204, 35.2310, 35.2404, 35.2406, 35.2432, 35.2433, 35.2605, 35.2610, 35.2630, 35.2632, 35.2642, 35.2643, 35.2645, 35.2647, 35.2652, 35.2655, 35.3045, 35.3047 and 35.3067.

* * * * *

■ 4. In § 35.10, paragraph (b) is revised to read as follows:

§ 35.10 Implementation.

* * * * *

(b) A licensee shall implement the training requirements in §§ 35.50(a) and (e), 35.51(a) and (c), 35.55(a) and (b)(1)(i), 35.59, 35.190(a) and (c)(1), 35.290(a) and (c)(1), 35.390(a) and (b)(1), 35.392(a), 35.394(a), 35.396(b) and (c), 35.490(a), 35.590(a), and 35.690(a) and (c) on or before October 25, 2005. A licensee shall implement the requirement in § 35.14(a) to provide to the Commission a copy of written attestation(s), signed by a preceptor, on or before October 25, 2005.

* * * * *

■ 5. In § 35.13, paragraphs (b)(1) and (b)(3) are revised to read as follows:

§ 35.13 License amendments.

* * * * *

(b) * * *

(1) For an authorized user, an individual who meets the requirements in §§ 35.59 and 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.490(a), 35.590(a), 35.690(a), 35.910(a), 35.920(a), 35.930(a) and 35.390(b)(1)(ii)(G), 35.392, 35.394, 35.940(a), 35.950(a), or 35.960(a) and 35.690(c);

* * * * *

(3) For an authorized medical physicist, an individual who meets the requirements in §§ 35.59 and 35.51(a) and (c); or §§ 35.59 and 35.961(a) or (b);

* * * * *

■ 6. In § 35.14, paragraph (a) is revised to read as follows:

§ 35.14 Notifications.

(a) A licensee shall provide the Commission a copy of the board certification and the written attestation(s), signed by a preceptor, the Commission or Agreement State license, the permit issued by a Commission master material licensee, the permit issued by a Commission or Agreement State licensee of broad scope, or the permit issued by a Commission master material license broad scope permittee for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist, under § 35.13(b). For individuals permitted to work under § 35.13(b)(4), within the same 30 day time frame, the licensee shall also provide, as appropriate, verification of completion of;

(1) Any additional case experience required in § 35.390(b)(1)(ii)(G) for an authorized user under § 35.300;

(2) Any additional training required in § 35.690(c) for an authorized user under § 35.600; and

(3) Any additional training required in § 35.51(c) for an authorized medical physicist.

* * * * *

■ 7. In § 35.50, paragraph (a), the introductory text of paragraph (b)(1)(i), paragraphs (b)(1)(ii)(G), and (c) are revised, paragraph (b)(2) is removed and reserved, and paragraphs (d) and (e) are added to read as follows:

§ 35.50 Training for Radiation Safety Officer.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraphs (d) and (e) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1)(i) Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

(ii) Have 5 or more years of professional experience in health physics (graduate training may be substituted for no more than 2 years of the required experience) including at least 3 years in applied health physics; and

(iii) Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(2)(i) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) Have 2 years of full-time practical training and/or supervised experience in medical physics—

(A) Under the supervision of a medical physicist who is certified in

medical physics by a specialty board recognized by the Commission or an Agreement State; or

(B) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in §§ 35.290, 35.390, or, before October 24, 2005, §§ 35.920, or 35.930; and

(iii) Pass an examination. administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(b) * * *

(1) * * *

(i) 200 hours of classroom and laboratory training in the following areas-(ii) * * *

(G) Disposing of byproduct material; or

* * * * *

(c)(1) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State under § 35.51(a) and has experience in radiation safety for similar types of use of byproduct material for which the licensee is seeking the approval of the individual as Radiation Safety Officer and who meets the requirements in paragraphs (d) and (e) of this section; or

(2) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has Radiation Safety Officer responsibilities; and,

(d) Has obtained written attestation, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in paragraph (e) and in paragraphs (a)(1)(i) and (a)(1)(ii) or (a)(2)(i) and (a)(2)(ii) or (b)(1) or (c)(1) of this section, and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; and

(e) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a Radiation Safety Officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

■ 8. In § 35.51, paragraphs (a) and (b) are revised, and paragraph (c) is added to read as follows:

§ 35.51 Training for an authorized medical physicist.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraphs (b)(2) and (c) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(2) Have 2 years of full-time practical training and/or supervised experience in medical physics—

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Commission or an Agreement State; or

(ii) In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in §§ 35.490 or 35.690, or, before October 24, 2005, authorized users who meet the requirements in §§ 35.940 or 35.960; and

(3) Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(b)(1) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed 1 year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:

(i) Performing sealed-source leak tests and inventories;

(ii) Performing decay corrections;

(iii) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c) and (a)(1) and (2), or (b)(1) and (c) of this section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in § 35.51, or, before October 24, 2005, § 35.961, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(c) Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

■ 9. In § 35.55, paragraphs (a), (b)(1)(i) introductory text, and (b)(2) are revised to read as follows:

§ 35.55 Training for an authorized nuclear pharmacist.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraph (b)(2) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To have its

certification process recognized, a specialty board shall require all candidates for certification to:

(1) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(2) Hold a current, active license to practice pharmacy;

(3) Provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and

(4) Pass an examination in nuclear pharmacy administered by diplomates of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(b) * * *

(1) * * *

(i) 200 hours of classroom and laboratory training in the following areas—

* * * * *

(2) Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in paragraphs (a)(1), (a)(2), and (a)(3) or (b)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

■ 10. Section 35.57 is revised to read as follows:

§ 35.57 Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

(a)(1) An individual identified as a Radiation Safety Officer, a teletherapy or medical physicist, or a nuclear pharmacist on a Commission or Agreement State license or a permit issued by a Commission or Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2002, need not comply with the training requirements of §§ 35.50, 35.51, or 35.55, respectively.

(2) An individual identified as a Radiation Safety Officer, an authorized medical physicist, or an authorized nuclear pharmacist on a Commission or Agreement State license or a permit issued by a Commission or Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope between October 24, 2002 and April 29, 2005 need not comply with the training requirements of §§ 35.50, 35.51, or 35.55, respectively.

(b)(1) Physicians, dentists, or podiatrists identified as authorized users for the medical use of byproduct material on a license issued by the Commission or Agreement State, a permit issued by a Commission master material licensee, a permit issued by a Commission or Agreement State broad scope licensee, or a permit issued by a Commission master material license broad scope permittee before October 24, 2002, who perform only those medical uses for which they were authorized on that date need not comply with the training requirements of Subparts D through H of this part.

(2) Physicians, dentists, or podiatrists identified as authorized users for the medical use of byproduct material on a license issued by the Commission or Agreement State, a permit issued by a Commission master material licensee, a permit issued by a Commission or Agreement State broad scope licensee, or a permit issued by a Commission master material license broad scope permittee who perform only those medical uses for which they were authorized between October 24, 2002 and April 29, 2005, need not comply with the training requirements of Subparts D through H of this part.

§ 35.75 [Amended]

■ 11. In § 35.75, paragraph (a), footnote 1, remove "(draft)".

■ 12. In § 35.100, paragraph (b)(2) is revised to read as follows:

§ 35.100 Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required.

* * * * *

(b) * * *

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, or 35.390 and 35.290(c)(1)(ii)(G), or, before October 24, 2005, § 35.920; or

* * * * *

■ 13. In § 35.190, paragraphs (a), the introductory text of (c)(1), (c)(1)(ii)(B) and (c)(2) are revised to read as follows:

§ 35.190 Training for uptake, dilution, and excretion studies.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraph (c)(2) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies that includes the topics listed in paragraphs (c)(1)(i) and (c)(1)(ii) of this section; and

(2) Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

* * * * *

(c) * * *

(1) Has completed 60 hours of training and experience, including a minimum of 8 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies. The training and experience must include—

(ii) * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.190, 35.290, or 35.390, or, before October 24, 2005, §§ 35.910, 35.920, or 35.930, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1) or (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.100.

■ 14. In § 35.200, paragraph (b)(2) is revised to read as follows:

§ 35.200 Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required.

* * * * *

(b) * * *

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, or 35.390 and

35.290(c)(1)(ii)(G), or, before October 24, 2005, § 35.920; or

* * * * *

■ 15. In § 35.290, paragraphs (a), (b), the introductory text of (c)(1) and (c)(1)(ii) introductory text, (c)(1)(ii)(B), and (c)(2) are revised to read as follows:

§ 35.290 Training for imaging and localization studies.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraph (c)(2) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies that includes the topics listed in paragraphs (c)(1)(i) and (c)(1)(ii) of this section; and

(2) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(b) Is an authorized user under § 35.390 and meets the requirements in § 35.290(c)(1)(ii)(G), or, before October 24, 2005, § 35.920, or equivalent Agreement State requirements; or

(c)(1) Has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material for imaging and localization studies. The training and experience must include, at a minimum—

* * * * *

(ii) Work experience, under the supervision of an authorized user, who meets the requirements in §§ 35.290, or 35.290(c)(1)(ii)(G) and 35.390, or, before October 24, 2005, § 35.920, or equivalent Agreement State requirements, involving—

* * * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.290 or 35.390 and 35.290(c)(1)(ii)(G), or, before October 24, 2005, § 35.920, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (a)(1) or (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under §§ 35.100 and 35.200.

■ 16. In § 35.390, paragraph (a), the introductory text of paragraphs (b)(1) and (b)(1)(ii) introductory text, paragraphs (b)(1)(ii)(B), (b)(1)(ii)(G)(1), (3) and (4), and (b)(2) are revised, and paragraph (b)(1)(ii)(F) is removed and reserved.

§ 35.390 Training for use of unsealed byproduct material for which a written directive is required.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraphs (b)(1)(ii)(G) and (b)(2) of this section. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in paragraphs (b)(1)(i) through (b)(1)(ii)(E) of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed byproduct material for which a written directive is required; or

(b)(1) Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material requiring a written directive. The training and experience must include—

* * * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in § 35.390, or, before October 24, 2005, § 35.930, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b) or, before October 24, 2005, § 35.930(b), must also have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)) as the individual requesting authorized user status. The work experience must involve—

* * * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

* * * * *

(G) * * *

(*1*) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I–131, for which a written directive is required;

* * * * *

(*3*) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or

(*4*) Parenteral administration of any other radionuclide, for which a written directive is required; and

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (a)(1) and (b)(1)(ii)(G) or (b)(1) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in § 35.390, or, before October 24, 2005, § 35.930, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in § 35.390(b), or, before October 24, 2005, § 35.930(b), must have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)) as the individual requesting authorized user status.

■ 17. In § 35.392, paragraphs (a), (c)(2)(ii) and (c)(3) are revised to read as follows:

§ 35.392 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries).

* * * * *

(a) Is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs (c)(1) and (c)(2) of this section and whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraph (c)(3) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.); or

* * * * *

(c) * * *

(2) * * *

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.390, 35.392, or 35.394, or, before October 24, 2005, §§ 35.930, 35.932, or 35.934, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirement in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*1*) or (*2*).

■ 18. In § 35.394, paragraphs (a), (c)(2)(ii) and (c)(3) are revised to read as follows:

§ 35.394 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).

* * * * *

(a) Is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs (c)(1) and (c)(2) of this section, and whose certification has been recognized by the Commission or an Agreement State, and who meets the requirements in paragraph (c)(3) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.); or

* * * * *

(c) * * *

(2) * * *

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.390 or 35.394, or, before October 24, 2005, §§ 35.930 or 35.934, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*).

■ 19. Section 35.396 is added to read as follows:

§ 35.396 Training for the parenteral administration of unsealed byproduct material requiring a written directive.

Except as provided in § 35.57, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who-(a) Is an authorized user under § 35.390 or, before October 24, 2005, § 35.930 for uses listed in §§ 35.390(b)(1)(ii)(G)(*3*) or 35.390(b)(1)(ii)(G)(*4*), or equivalent Agreement State requirements; or

(b) Is an authorized user under §§ 35.490 or 35.690, or, before October 24, 2005, §§ 35.940 or 35.960, or equivalent Agreement State requirements and who meets the requirements in paragraph (d) of this section; or

(c) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State under §§ 35.490 or 35.690, or, before October 24, 2005, §§ 35.940 or 35.960; and who meets the requirements in paragraph (d) of this section.

(d)(1) Has successfully completed 80 hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training must include—

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of byproduct material for medical use; and

(v) Radiation biology; and

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.390 or 35.396, or, before October 24, 2005, § 35.930, or equivalent Agreement State requirements, in the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in §§ 35.390 or 35.930 must have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(*3*) and/or 35.390(b)(1)(ii)(G)(*4*). The work experience must involve—

(i) Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(v) Using procedures to contain spilled byproduct material safely, and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that include at least 3 cases involving the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV and/or at least 3 cases involving the parenteral administration of any other radionuclide, for which a written directive is required; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (b) or (c) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in §§ 35.390, 35.396, or, before October 24, 2005, § 35.930, or equivalent Agreement State

requirements. A preceptor authorized user, who meets the requirements in § 35.390, or, before October 24, 2005, § 35.930, must have experience in administering dosages as specified in §§ 35.390(b)(1)(ii)(G)(*3*) and/or 35.390(b)(1)(ii)(G)(*4*).

■ 20. In § 35.490, paragraphs (a), (b)(2) and (b)(3) are revised to read as follows:

§ 35.490 Training for use of manual brachytherapy sources.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State, and who meets the requirements in paragraph (b)(3) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(b) * * *

(2) Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in § 35.490, or, before October 24, 2005, § 35.940, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in § 35.490, or, before October 24, 2005, § 35.940, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (a)(1), or (b)(1) and (b)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under § 35.400.

■ 21. In § 35.491, paragraph (b)(3) is revised to read as follows:

§ 35.491 Training for ophthalmic use of strontium-90.

* * * * *

(b) * * *

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in §§ 35.490 or 35.491, or, before October 24, 2005, §§ 35.940 or 35.941, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

■ 22. In § 35.590, paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 35.590 Training for use of sealed sources for diagnosis.

* * * * *

(a) Is certified by a specialty board whose certification process includes all of the requirements in paragraphs (b) and (c) of this section and whose certification has been recognized by the Commission or an Agreement State. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.); or

(b) Has completed 8 hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include—

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity; and

(4) Radiation biology; and

(c) Has completed training in the use of the device for the uses requested.

■ 23. In § 35.690, paragraphs (a), (b)(2) and (b)(3) are revised, and paragraph (c) is added to read as follows:

§ 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in paragraphs (b)(3) and (c) of this section. (The names of board certifications which have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(b) * * *

(2) Has completed 3 years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in § 35.690, or, before October 24, 2005, § 35.960, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (a)(1) or (b)(1) and (b)(2), and (c) of this section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in § 35.690, or, before October 24, 2005, § 35.960, or equivalent Agreement State requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(c) Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

■ 24. In § 35.980, paragraph (b)(2) is revised to read as follows:

§ 35.980 Training for an authorized nuclear pharmacist.

* * * * *

(b) * * *

(2) Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Dated at Rockville, Maryland, this 22nd day of March, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–6103 Filed 3–29–05; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Wednesday,
March 30, 2005

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 61, et al.
Advanced Qualification Program;
Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. FAA–2005–20750; Notice No. 05–04]

RIN 2120–AI59

Advanced Qualification Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to codify the requirements of the Advanced Qualification Program (AQP). The AQP would continue as a regulatory alternative program to the traditional training program. AQP would continue to be an alternative for airlines that seek more flexibility in training than the traditional training program allows. Currently, the AQP requirements are in a Special Federal Aviation Regulation that expires on October 2, 2005. The intended effect of this proposal is to make AQP a permanent, alternative method of complying with FAA's training requirements for carriers.

DATES: Send your comments on or before April 29, 2005.

ADDRESSES: You may send comments [identified by Docket Number FAA–2005–20750] using any of the following methods:

- *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; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov*. You can also go to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas M. Longridge, AFS–230, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, P.O. Box 20027, Dulles International Airport, Washington, DC 20041–2027; telephone (703) 661–0260; e-mail: *thomas.longridge@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment 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 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Authority for the Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged with promoting the safe flight of civil aircraft in air commerce by prescribing, in addition to specified regulations, regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority since it permanently codifies the current requirements and practices of a regulatory compliance option for the training and qualification of air crew personnel, and represents the FAA's continuing efforts to promote aviation safety.

Background

In 1975, the FAA began to address two issues in part 121 pilot training and checking. One issue was the hardware requirements needed for total simulation. The other issue was the redesign of training programs to deal with increasingly complex human

factors problems and to increase the safety benefits gained from the simulation. At the urging of the air transportation industry, the FAA addressed the hardware issue first. In 1980, this effort resulted in the FAA developing the Advanced Simulation Program, in 14 CFR part 121, appendix H.

Since then, the FAA has continued to pursue approaches for the redesign of training programs to increase the benefits of Advanced Simulation and to deal with the increasing complexity of cockpit human factors.

On August 27, 1987, FAA Administrator McArtor addressed the chief pilots and certain executives of many air carriers at a meeting held in Kansas City. One of the issues discussed at the meeting focused on flight crewmember performance issues. This meeting led to creating a Joint Government-Industry Task Force on flight crew performance (Joint Task Force). Representatives from major air carriers and air carrier associations, flight crewmember associations, commuter air carrier and regional airline associations, and government organizations took part. On September 10, 1987, the Joint Task Force met at the Air Transport Association's headquarters to identify and discuss flight crewmember performance issues. The Joint Task Force formed working groups in three major areas: (1) Man/machine interface; (2) flight crewmember training; and (3) operating environment. Each working group submitted a report and recommendations to the Joint Task Force. On June 8, 1988, the Joint Task Force presented its recommendations to Administrator McArtor.

The major recommendations to the Administrator from the flight crewmember training working group were the following:

(1) Require 14 CFR part 135 commuters whose airplane operations require two pilots to comply with part 121 training, checking, qualification, and record keeping requirements;

(2) Provide for a Special Federal Aviation Regulation (SFAR) and Advisory Circular to permit development of innovative training programs;

(3) Establish a National Air Carrier Training Program Office that provides training program oversight at the national level;

(4) Require seconds-in-command to satisfactorily perform their duties under the supervision of check airmen during operating experience;

(5) Require all training to be accomplished through a certificate holder's training program;

(6) Provide for approval of training programs based on course content and training aids rather than using specific programmed hours;

(7) Require Cockpit Resource Management (CRM) (now called Crew Resource Management) Training.

The working group listed specific recommendations for regulatory changes. They separated the recommendations into those changes that should be incorporated into an SFAR and those that should be incorporated into an accompanying Advisory Circular.

In June 1988, the National Transportation Safety Board (NTSB) issued a Safety Recommendation (A–88–71) on the subject of CRM. The recommendation stemmed from an NTSB accident investigation of a Northwest Airline crash on August 16, 1987, in which 148 passengers, 6 crewmembers, and 2 people on the ground were killed.

The NTSB noted that both crewmembers had received single-crewmember training during their last simulator training and proficiency checks. In addition, the last CRM training they had received was 3.5 hours of ground school (general) CRM training in 1983. Because of its investigation, the NTSB recommended that all part 121 carriers review initial and recurrent flight crew training programs to ensure that they include simulator or aircraft training exercises which involve cockpit resource management and active coordination of all crewmember trainees and which will permit evaluation of crew performance and adherence to those crew coordination procedures.

In response to the recommendations from the Joint Task Force and from the NTSB, in October 1990, the FAA published SFAR No. 58, Advanced Qualification Program (AQP), which addresses all of the recommendations discussed previously. The FAA also published an Advisory Circular on AQP that describes an acceptable method by which the terms of the SFAR may be achieved. Under SFAR No. 58, the FAA provides certificated air carriers, as well as training centers they employ, with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the requirements of 14 CFR parts 121 and 135.

Air carriers can choose to use a traditional training program or to participate in AQP. Carriers electing not to take part in AQP must continue to operate under the traditional FAA rules for training and checking. AQP offers several long-range advantages to participation such as the flexibility to tailor training and certification activities to a carrier's particular needs and operational circumstances. AQP encourages innovation in developing training strategies. It includes wide latitude in choice of training methods and media. AQP allows the use of flight training devices for training and checking on many tasks that historically have been accomplished in airplane simulators. It provides an approved means for the applicant to replace FAA-mandated uniform qualification standards with carrier-proposed alternatives tailored to specific aircraft. It allows the applicant to set up an annual training and checking schedule for all personnel, including pilots-in-command, and provide a basis for extending that interval under certain circumstances.

From an FAA perspective, the overriding advantage of AQP is the quality of training. AQP provides a systematic basis for matching technology to training requirements and for approving training program content based on relevance to operational performance.

The main goal of the AQP SFAR was to improve flight crew performance by providing alternative means of complying with certain rules that may inhibit innovative use of modern technology for flight crewmember training. The SFAR has been successful in encouraging carriers to become innovative in their approach to training.

The FAA is now proposing to incorporate the requirements of SFAR No. 58 into 14 CFR part 121. The AQP would continue as an alternative to the traditional training program. AQP would continue to be an alternative for airlines that seek more flexibility in training than the traditional program allows. Thus, this NPRM proposes no new costs to affected operators.

Section-by-Section Discussion of Subpart Y (§§ 121.901–121.925)

This section by section discussion presents the proposed changes to the AQP. AQP is currently in SFAR No. 58 under part 121. Any significant, substantive change and the justification for that change is discussed under the appropriate proposed section below.

Section 121.901 Purpose and Eligibility

The proposed section outlines the purpose and eligibility of the alternate method of training and qualification, known as "Advanced Qualification Program." The AQP is an alternative

method for qualifying, training, certifying, and otherwise ensuring competency of flight crewmembers, flight attendants, and dispatchers. Proposed paragraphs (a), (b) and (c) are based on existing language from SFAR No. 58, section 1.

Section 121.903 General Requirements for Advanced Qualification Programs

Proposed paragraph (b) states that certificate holders who get approval of an AQP must comply with its provisions. Proposed paragraph (b) clarifies that an AQP is an alternative to complying with the training and qualification requirements for crewmembers, aircraft dispatchers, instructors, and evaluators in parts 61, 63, 65, 121, and 135. Proposed paragraph (b) also states that each applicable requirement of parts 61, 63, 65, 121, or 135 that is not specifically addressed in an AQP curriculum would continue to apply to the certificate holder and to the individuals being trained and qualified by the certificate holder. The FAA may accept alternatives for the practical test requirements of parts 61, 63, and 65, but each applicable requirement of parts 61, 63, 65, 121, or 135, including but not limited to practical test requirements, that is not specifically addressed in an approved AQP curriculum would continue to apply to the certificate holder. This proposal is based on existing SFAR No. 58, section 1, paragraph (e), section 8, paragraph (a), and section 10, paragraph (b)(3). A new sentence in paragraph (b) would add that no person may be trained under an AQP unless the AQP is currently approved and the person complies with all of its provisions.

Proposed paragraph (c) states that no certificate holder that conducts its training program under an AQP may use any person, nor may any person serve in any duty position, as a required crewmember, an aircraft dispatcher, a flight instructor, or an evaluator (*e.g.*, a check airman, check flight attendant, or aircrew program designee (APD)), unless that person has satisfactorily accomplished the training and evaluation of proficiency required by the AQP for that type airplane and duty position. The prohibition against using a person in operations under this part who has not accomplished the required training and evaluation would also apply to any person receiving "special tracking" training, whose schedule for training and evaluating may be different from others employed by that certificate holder.

Proposed paragraph (d) states that all documentation and data required under this subpart must be submitted in a form and manner acceptable to the FAA. This proposal is based on existing SFAR No. 58, section 10, paragraph (b)(1).

Proposed paragraph (e) states that any training or evaluation required under an AQP that is satisfactorily completed in the calendar month before or the calendar month after the calendar month in which it is due is considered to have been completed in the calendar month it was due. This proposal provides some flexibility in complying with an AQP and is consistent with the practice of current AQP participants. It is based on existing SFAR No. 58, section 6, paragraph (b)(3)(ii)(A); however, in the current SFAR, the provision applies only to on-line evaluations of pilots-in-command (PIC). The FAA is proposing to broaden this provision to apply to any training and evaluation deadline for any duty position.

Section 121.905 Confidential Commercial Information

This proposed section is new and specifies the procedure for a certificate holder to make a claim that AQP information or data submitted to the FAA is entitled to confidential treatment under 5 U.S.C 552 (b)(4). The certificate holder must clearly identify its claim of confidentiality on each submission and must justify that claim. The FAA office of primary responsibility for the AQP will evaluate a submitter's claim for confidential treatment of information or data. The FAA office of primary responsibility for the AQP will make the determination whether the information submitted is entitled to protection under 5 U.S.C 552(b)(4), within a reasonable time, and with review by the Office of the Chief Counsel.

Section 121.907 Definitions

This proposed section contains definitions used throughout proposed subpart XXX. The proposed definitions of "evaluator" and "variant" contain language from the existing definition in SFAR No. 58, section 2. The following definitions are new: "Crew Resource Management (CRM)," "Curriculum outline," "Evaluation of proficiency," "First Look," "Instructional systems development," "Job task listing," "Line operational evaluation (LOE)," "Line operational simulation (LOS)," "Planned hours," "Qualification standard," "Qualification standards document," "Special tracking," and "Training session." "Line operational evaluation" is an evaluation conducted in a simulated line environment consisting of a complete scenario. "Instructional systems development" is defined as "a systematic methodology for deriving and maintaining qualification standards and associated curriculum content based on a documented analysis of the job tasks, skills, and knowledge required for job proficiency." Under proposed § 121.909 AQP applicants must provide a description of the methodology they will use for instructional systems development. The FAA provides guidance in the AQP Advisory Circular.

Section 121.909 Approval of Advanced Qualification Program

Proposed paragraph (a), which outlines the approval process, is based on existing SFAR No. 58, section 10, paragraph (a). In the approval process, the certificate holder applies for approval of an AQP curriculum to the Manager of the Advanced Qualification Program, after going through the FAA office responsible for approval of the certificate holder's operations specifications. The existing rule states that the certificate holder applies for approval to the certificate holder's FAA Flight Standards District Office. The new wording reflects existing procedures for the review and approval of AQP documentation at both a local and a national level.

Proposed paragraph (b), which discusses the application process for approval of an AQP curriculum, is based on existing SFAR No. 58, section 3 and section 10, paragraph (b). The introductory text of paragraph (b) specifies the applicant must have separate curriculums for indoctrination, qualification, and continuing qualification (including upgrade, transition, and requalification). The FAA is proposing new language to describe current requirements concerning the instructional systems development methodology. This new language would not impose any additional costs on the operator as we are just codifying and clarifying the requirements of the AQP. This methodology would have to incorporate a thorough analysis of the certificate holder's operations, aircraft, line environment, and job functions. All AQP qualification and continuing qualification curriculums would have to integrate the training and evaluation of CRM and technical skills and knowledge.

Proposed paragraph (b)(1) states the AQP would have to meet all the requirements of proposed subpart Y. Proposed paragraph (b)(2) adds new language to describe current curriculum documentation requirements for indoctrination, qualification, and

continuing qualification (including upgrade, transition, and requalification). The documentation for each curriculum would have to include the initial application for AQP, the initial job task listing, a description of the instructional systems development methodology, a qualification standards document, the curriculum outline, and an implementation and operations plan. Applicants are not required to have all types of curriculums (*e.g.*, indoctrination, qualification, continuing qualification). However, for each curriculum they propose, they must provide the documentation required in paragraphs (b)(2)(i)–(vi).

AQP participants may propose requirements in addition to, or in place of, the requirements in part 61, 63, 65, 121, or 135. An approved AQP serves as an alternative to the requirements in parts 61, 63, 65, 121, and 135. The applicant must justify any differences between parts 61, 63, 65, 121, and 135 and the AQP. The FAA must approve such differences for that AQP.

Proposed paragraph (b)(3) states that, subject to approval by the FAA, certificate holders could elect, where appropriate, to consolidate information about multiple programs within any of the documents referenced in proposed paragraph (b)(2). For example, if an applicant has more than one curriculum for different aircraft, the applicant could provide one document that addresses one or more curriculums.

Proposed paragraph (b)(4) is similar to existing SFAR No. 58, section 10, paragraph (b)(3). Under the proposed rule the certificate holder would have to establish an initial justification and a continuing process, approved by the FAA, to show how the AQP curriculum provides an equivalent level of safety for each requirement in parts 61, 63, 65, 121, or 135 that is replaced by an AQP curriculum. The continuing process is, in effect, a quality assurance process. For each certificate holder using an AQP, the FAA receives annual reports, data submissions, and information on the performance of flight instructors and evaluators. The FAA studies these to make sure the certificate holder continually evaluates itself to ensure that it continues to meet the AQP agreement. This expectation of self-monitoring on the part of certificate holders is not specifically addressed in the current SFAR, but certificate holders currently using AQPs are using quality assurance programs. This change would codify that practice.

Proposed paragraph (c) refers only to the requirement in existing SFAR No. 58, section 10, paragraph (c), for AQP applications to include a transition plan for moving from an existing program to an AQP program. The reference in existing SFAR No. 58, section 10(c), to revisions of an AQP has been moved entirely to proposed paragraph (d).

Proposed paragraph (d) addresses rescissions of approval and requirements for revisions. It is the same as existing SFAR No. 58, section 10, paragraph (d) except that it deletes reference to § 135.325, to allow revisions to be approved in accordance with the applicant's approved AQP and proposed subpart Y. Proposed paragraph (d) adds to existing language, which states the FAA may require the certificate holder to submit revisions or to submit and obtain approval of a transition plan to part 121, subpart N, if the FAA finds the certificate holder is not meeting the provisions of the certificate holder's approved AQP. This requirement just codifies current practice therefore there is no additional costs imposed on the operator. The proposed paragraph (d) adds to that language the words, "or if otherwise warranted". This additional language would permit approval to be withdrawn for any reason that the FAA finds to be warranted. This could include, for example, a determination that compliance with the approved program is no longer consistent with safety. Also, a new sentence is added to paragraph (d) that would allow for the use of a transition plan, approved under proposed subpart Y, as a means for accomplishing voluntary withdrawal from the AQP, when such withdrawal is initiated by the certificate holder. The existing SFAR does not specifically address the use of a transition plan as a means for voluntary withdrawal.

Proposed paragraph (e) is new language stating that final approval of an AQP by the FAA would indicate that the FAA has accepted the justification provided under paragraph (b)(4) and that the applicant's initial justification and a continuing process establish an equivalent level of safety for each requirement of parts 61, 63, 65, 121 or 135 that is being replaced.

Section 121.911 Indoctrination Curriculum

The proposed section is based on existing language from SFAR No. 58, section 4. Proposed paragraphs (a), (b), (c), and (d) are the same as existing SFAR No. 58, section 4, paragraphs (a), (b), (c), and (d), respectively.

Section 121.913 Qualification Curriculum

The proposed section contains requirements for qualification curriculums and is based on existing SFAR No. 58, section 5, paragraph (b). In the proposed § 121.913 introduction, "qualification" from existing SFAR No. 58, section 5, paragraph (b), is changed to "evaluation," because "evaluation" is the more specific term in this context.

Proposed paragraph (a) contains a requirement for documentation of the certificate holder's planned hours of training, evaluation, and supervised operating experience. The proposed paragraph is the same as existing SFAR No. 58, section 5, paragraph (a).

Proposed paragraph (b) contains qualification curriculum requirements for crewmembers, aircraft dispatchers, and other operations personnel. Proposed paragraph (b) is based on existing SFAR No. 58, section 5, paragraph (b)(1). In the proposed paragraph (b)(2) the term "qualification standards of each task" is used instead of "each maneuver and procedure." New language is also added in proposed (b)(4), stating that each qualification curriculum would have to include a list of and text describing evaluation/remediation strategies, provisions for special tracking, and how recency of experience requirements would be accomplished. This new language is codifying current practice and would not impose any additional costs on the operator.

Proposed paragraph (c) is new language and would require qualification to include an initial operating experience and line check for flight crewmembers. This new language is current practice and would not impose any additional costs on the operator as we are just codifying and clarifying the requirements of the AQP. The language of paragraph (c) is more specific than under the current SFAR, but this practice is currently followed by certificate holders under AQP.

Proposed paragraphs (d) and (e) outline qualification curriculum requirements for flight instructors and evaluators, respectively. Proposed paragraph (d) is based on existing SFAR No. 58, section 5, paragraph (b)(2). Proposed paragraph (e) is based on existing SFAR No. 58, section 5, paragraph (b)(3). New language is added to each, clarifying current requirements to include a list of and text describing the knowledge requirements, subject materials, job skills, and qualification standards of each procedure and task to be trained and evaluated, and a list of and text describing evaluation/remediation strategies, standardization policies and recency requirements. This new language would not impose any additional costs on the operator as we are just codifying and clarifying the requirements of the AQP.

Section 121.915 Continuing Qualification Curriculum

The proposed section contains program requirements for continuing qualification curriculums. The introductory paragraph is based on existing SFAR No. 58, section 6 introduction.

Proposed paragraph (a) is based on existing SFAR No. 58, section 6, paragraphs (a)(1) and (b). The existing language states that each person qualified under AQP receives a balanced mix of training and evaluation to ensure that he or she "maintains at least the current minimum proficiency level of knowledge, skills, and attitudes required for original qualification." In the proposed paragraph the introductory language is changed to state that each person "maintains the proficiency level in knowledge, technical skills, and cognitive skills required for initial qualification." The proposed paragraph revises the current rule to state that this training and evaluation must be in accordance with: (1) The approved continuing qualification AQP; (2) evaluation/remediation strategies; and (3) provisions for special tracking.

Proposed paragraph (a)(1), which discusses continuing qualification cycle evaluation periods, is based on existing SFAR No. 58, section 6, paragraph (b)(1). New language is included that defines the continuing qualification cycle as initially consisting of two or more evaluation periods of equal duration. This new language would not impose any additional costs on the operator as we are just codifying current practice.

Proposed paragraph (a)(2), which outlines continuing qualification cycle training requirements, is based on existing SFAR No. 58, section 6, paragraph (b)(2). The proposed paragraph revises the requirements to state that continuing qualification training must be in accordance with the approved program documentation.

Proposed paragraph (a)(2)(i) is new language codifying current practice that states that for pilots in command, seconds in command, and flight engineers, continuing qualification training must include First Look in accordance with the certificate holder's FAA-approved program documentation. This new language would not impose any additional costs on the operator. "First Look" is defined in proposed § 121.907 as the assessment of performance to determine proficiency on designated flight tasks before any briefing, training, or practice on those tasks is given in the training session for a continuing qualification curriculum. The FAA proposes that "First Look" be conducted during an AQP continuing qualification cycle to determine trends of degraded proficiency, if any, due in part to the length of the interval between training sessions.

Proposed paragraph (a)(2)(ii) addresses ground training requirements for continuing qualification and is the same as existing SFAR No. 58, section 6, paragraph (b)(2)(i).

Proposed paragraph (a)(2)(iii) outlines continuing qualification proficiency training requirements for crewmembers, flight instructors, evaluators, and other operational personnel who conduct their duties in flight. It is based on existing SFAR No. 58, section 6, paragraph (b)(2)(ii).

Proposed paragraph (a)(2)(iv) outlines continuing qualification ground training requirements for dispatchers and other operational personnel who do not conduct their duties in flight, and is based on existing SFAR No. 58, section 6, paragraph (b)(2)(i). The proposed paragraph adds a requirement for a line observation program, if applicable.

Proposed paragraph (a)(2)(v) is based on existing SFAR No. 58, section 6, paragraph (b)(2)(iii), but with clarifying language to separately address: (1) Flight instructors and evaluators, in general; and (2) flight instructors and evaluators who are limited to conducting their duties in flight simulators and flight training devices. Continuing qualification for each group must include training in the type flight training device or the type flight simulator, as appropriate, regarding training equipment operation and training in operational flight procedures and maneuvers (normal, abnormal, and emergency), respectively.

Proposed paragraph (b), which outlines continuing qualification cycle evaluation requirements, is based on existing SFAR No. 58, section 6, paragraph (b)(3). The existing language is revised to state that evaluation of performance for continuing qualification will be done "on a sample" of events and major subjects. Existing SFAR No. 58, section 6(b)(3) states that continuing qualification evaluations must include all events and major subjects required for original qualification, and online evaluations for pilots in command and other eligible flight crewmembers; however, current AQPs use a sample of events. Under the proposed paragraph (b) requirements, the sample of events and major subjects used in evaluation would be identified as diagnostic of competence and approved for that purpose by the FAA.

Instead of basing curriculums on prescribed generic maneuvers, procedures and knowledge items, AQP curriculums are based on a detailed analysis of the specific job tasks, knowledge and skill requirements of each duty position for the individual airline. The analysis applies the following factors: Criticality, currency, need for training, applicable conditions, and applicable standards. The determination of criticality and currency guides when and how the objective is trained, validated, or evaluated. To make this determination the applicant and FAA answer a series of questions about each task to describe its performance requirements, both on the line and in the training setting. Criticality is a determination of the relative impact of substandard task performance on overall safety. It indicates an increased need for awareness, care, exactness, accuracy, or correctness during task performance. Critical tasks are proficiency objectives that are trained, validated, or evaluated more frequently during an AQP evaluation period. A currency task is a proficiency objective for which individuals or crews maintain proficiency by repeated performance of the item in normal line, duty or work operations. Most currency items are validated during line checks and may be sampled in the Continuing Qualification Cycle. Tasks that are determined to be critical and not current are trained, validated, or evaluated each evaluation period. Tasks that are determined to be neither critical nor current are trained, validated, or evaluated each continuing qualification cycle.

Proposed paragraph (b)(1), which contains requirements for evaluations of proficiency, is the same as existing SFAR No.58, section 6, paragraph (b)(3)(i).

Proposed paragraph (b)(2), which discusses line checks, is based on existing SFAR No. 58, section 6, paragraph (b)(3)(ii) with a few revisions. The term "online evaluations" is changed to "line checks" in the proposed language. Further, proposed paragraph (b)(2)(i), which addresses line checks for pilots in command, begins with the qualifying statement "Except as provided in paragraph (b)(2)(ii) of this section * * *"

Paragraph (b)(2)(ii) is new language that addresses "No-notice Line Checks." The proposed language states that with the FAA's approval, no-notice line checks could be used in place of line checks, although the certificate holder who elects to exercise this option would have to ensure that no advance notice of the evaluation is given. Further, the AQP certificate holder would be required to ensure that each pilot in

command receives at least one "no-notice" line check every 24 months. Also, the certificate holder would have to ensure that, at a minimum, the number of these checks given each calendar year equates to at least 50% of the certificate holder's pilot-in-command workforce, in accordance with a strategy approved by the FAA for that purpose. Under this proposed requirement, the line checks would be conducted over all geographic areas flown by the certificate holder in accordance with a sampling methodology approved by the FAA for that purpose. This proposed language is consistent with existing exemptions that have been granted to some AQP certificate holders in order to allow a longer period between line checks in exchange for such no-notice line checks. The no-notice feature of the random line check procedure provides evaluators with an increased opportunity to observe typical behavior, and the requirement for conducting such checks over all geographic routes better assures that such information is representative of performance over the airline's entire operation.

Proposed paragraph (b)(2)(iii), which further addresses line check requirements, is the same as existing SFAR No. 58, section 6, paragraph (b)(3)(ii)(B), except that it codifies the existing requirement in § 121.440(b)(1) and contains the additional requirement that the line check evaluator must hold the certificates and ratings required of the pilot in command for that aircraft.

Proposed paragraph (c), which discusses recency of experience requirements, is based on existing SFAR No. 58, section 6, paragraphs (a)(2) and (b)(4). The proposed paragraph expands the existing application of the recency of experience requirements to include flight engineers, flight attendants, aircraft dispatchers, instructors, and evaluators.

Proposed paragraph (d), which addresses duration of cycles and periods, is based on existing SFAR No. 58, section 6, paragraph (c), but includes revisions to the existing duration of periods, based on the FAA's observations of program administration since the original inception of the AQP in 1990. The proposed changes decrease the maximum allowable duration of the initial continuing qualification cycle approved for an AQP from 26 to 24 calendar months. Also, the proposed requirements would decrease the duration ceiling for the subsequent continuing qualification cycles from 39 to 36 calendar months in order to accommodate evaluation period multiples based on 6, 12, or 18 months. This new language would not impose any additional costs on the operator. The reductions above align the timeframes with current practice. An AQP participant has never requested the maximum durations. The language in the existing SFAR that the Administrator may approve extensions in 3-month increments has been deleted because the FAA has found this requirement cumbersome and difficult to implement. Regardless of the length of the continuing qualification cycle, the grace period allowed in proposed § 121.903(e) would apply.

Proposed paragraph (e), which discusses requalification requirements, is the same as existing SFAR No. 58, section 6, paragraph (d).

Section 121.917 Other Requirements.

Proposed § 121.917 is based on existing SFAR No. 58, section 7. These proposed paragraphs contain additional requirements that must be included in each AQP qualification and continuing qualification curriculum.

Proposed paragraph (a) requires each qualification curriculum to include integrated crew resource management (CRM) or Dispatcher Resource Management (DRM) ground and flight training applicable to each position for which training is provided under an AQP. Proposed paragraph (a) is the same as existing SFAR No. 58, section 7, paragraph (a), except that "Approved Cockpit Resource Management Training" is changed to "Integrated Crew Resource Management ground and flight training" in the proposed paragraph. Also, the requirement for DRM training is added to clarify that if dispatchers are included under an AQP, they must also receive DRM training.

Proposed paragraph (b) would require each qualification curriculum to include approved training on and evaluation of skills and proficiency of each person being trained under AQP to use their crew resource management skills and their technical skills in an actual or simulated operations scenario. Proposed paragraph (b) is the same as existing SFAR No. 58, section 7, paragraph (b), except that under the proposed rule, "aircraft" is added to the list of approved devices for flight crewmembers training and evaluation for certificate holders who have obtained approval for its use under subpart Y.

Proposed paragraph (c) outlines qualification curriculum data collection and analysis processes requirements. Proposed paragraph (c) is based on existing SFAR No. 58, section 7, paragraph (c), but proposed paragraph (c) is revised to address both data collection and analysis processes. The FAA proposes to require that the certificate holder provide the FAA with information on its analysis process to ensure that the certificate holder is applying an effective methodology for data driven quality assurance purposes. Further, the proposed paragraph states that the data will enable both the certificate holder and the FAA to make determinations about the effectiveness of the curriculum. This new language would not impose any additional costs on the operator. This change is consistent with existing AQP practices, and is made in order to identify the requirement that the certificate holder employ its own AQP data for curriculum effectiveness determinations.

Section 121.919 Certification

The proposed introductory paragraph to this section is identical to existing SFAR No. 58, section 8 introduction.

Proposed paragraph (a) outlines the establishment of a certification requirement and is based on existing SFAR No. 58, section 8, paragraph (a). Existing SFAR No. 58, section 8, paragraph (a), states that for certification the Administrator may accept substitutes for the practical test requirements of parts 61, 63, and 65, as applicable. Proposed paragraph (a) replaces the word "substitutes" with "alternatives" to the certification and rating criteria of parts 61, 63, and 65 of this chapter. It also adds further qualifying language, to the effect that the FAA may approve such alternatives if it can be demonstrated that the newly established criteria represent an equivalent or better measure of airman competence, operational proficiency, and safety. This qualifying language is similar to the wording of existing SFAR No. 58, section 10(b)(3), to the effect that the certificate holder must show how the AQP curriculum provides an equivalent level of safety for each requirement that is replaced.

Proposed paragraph (b) contains the qualification curriculum completion requirement for certification and is the same as existing SFAR No. 58, section 8, paragraph (b).

Proposed paragraph (c) contains the knowledge and skill competency requirements for certification and is the same as existing SFAR No. 58, section 8, paragraph (c), except that "cockpit resource management knowledge and skills" is changed to "crew resource management knowledge and skills," including either CRM or DRM, in the proposed paragraph. In addition, with regard to testing both piloting and CRM skills in scenarios that test both

together, proposed paragraph (c) identifies Line Operational Evaluation (LOE) as the scenario methodology. This new language would not impose any additional costs on the operator as we are just codifying current practice.

Proposed paragraph (d) is identical to existing SFAR No. 58, section 8, paragraph (d).

The FAA is adding paragraph (e) to require the certification applicant to be trained to proficiency on the certificate holder's approved AQP qualification standards, and to pass an LOE administered by an APD or the FAA. This new language should not impose any additional costs on the operator.

This is current practice and would make clear that the final evaluation event for certification purposes under an AQP must be administered by the same level of evaluator as is required for a traditional part 121 or 135 program.

Section 121.921 Training Devices and Simulators

Proposed paragraph (a) outlines the process for qualification and approval of flight training devices and simulators and is the same as existing SFAR No. 58, section 9, paragraph (a). Proposed paragraph (a) lists potential training device and simulator uses and is the same as existing SFAR No. 58, section 9, paragraph (a). Proposed paragraph (b), which contains requirements for the approval of other training devices, is the same as existing SFAR No. 58, section 9, paragraph (b).

Section 121.923 Approval of Training, Qualification, or Evaluation by a Person Who Provides Training by Arrangement

Proposed paragraph (a), which discusses AQP training given by an outside source, referred to as a "training provider," is based on existing SFAR No. 58, section 11, paragraph (a).

Proposed paragraph (a)(1) would require that a training provider be a part 119 or part 142 certificate holder.

Proposed paragraph (a)(2), which contains the requirements for provisional approval, is the same as existing SFAR No. 58, section 11, paragraph (a)(1), except that the application for provisional approval, under the proposed rule, would be made through the FAA office directly responsible for oversight of the training center, to the Manager of the Advanced Qualification Program. This change should not impose any additional costs on the operator. Proposed paragraphs (a)(3), (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), and (c)(2), which contain requirements for the approval of training, qualification, or evaluation by a person who provides training by arrangement, are the same as existing SFAR No. 58, section 11, paragraphs (a)(2), (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), and (c)(2), respectively.

Section 121.925 Recordkeeping requirements

This proposed section, which contains recordkeeping requirements, is based on existing SFAR No. 58, section 12, with no substantive changes.

Individual recordkeeping by certificate holders is needed to show whether each crewmember, aircraft dispatcher, or other operations personnel is in compliance with the AQP and subpart Y. The recordkeeping requirement of § 121.925 is a separate function from the data collected and analyzed under the requirements of proposed § 121.917(c), which must be submitted to the FAA for analysis and validation without names or other elements that would identify an individual or group of individuals. The data collected under § 121.917 is analyzed to monitor the effectiveness of AQP training, to determine the validity of requests for extensions of training intervals and cycles, and to monitor the effectiveness of CRM training.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Advanced Qualification Program.

Summary: AQP is an existing rule and the data currently required is being submitted. Data collection and analysis of data is a fundamental part of AQP. AQP is continuously validated through the collection and analysis of trainee performance. Data collection and analysis processes ensure that the certificate holder provides performance information on its crewmembers, flight instructors, and evaluators that will enable the certificate holder and the FAA to determine whether the forma and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

Use of: The Voluntary Safety Programs Branch, AFS–230, receives the AQP data monthly in order to monitor program compliance, effectiveness, and efficiency. AFS–230 processes the information for errors and omissions then analyzes the data. The FAA principal operations inspector (POI) responsible for oversight of the certificate holder reviews the analyzed data. The POI and his staff make use of this information to monitor training trends, to identify areas in need of corrective action, to plan targeted surveillance of curricula, and to verify that corrective action is effective. In general, this information is used to provide an improved basis for curriculum approval and monitoring, as well as agency decisions concerning air carrier training regulation and policy.

Respondents (Including Number of): The likely respondents to this proposed data collection requirement are 16 airlines and 2 manufacturers.

Frequency: The frequency of data collection is monthly.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

- *Number of respondents with approved AQPs:* 18.
- *Frequency of response per respondent:* Monthly.
- *Estimated number of hours per respondent to prepare information to be submitted to the FAA:* 2.0.
- *Estimated annual hour burden per respondent:* 24.
- *Total estimated hours of industry burden:* 432.

The estimated 2-hour burden is the time required to transform the data already produced monthly by the certificate holder as part of an approved AQP into the appropriate form for use by the FAA.

Currently sixteen airlines and two manufacturers have established AQP programs. However, not all of the participants' aircraft fleet types (personnel) are covered by an AQP. Based on a cost benefit study from certificate holders with existing AQP programs, the average cost of an AQP analyst is $60 per hour. Therefore, the maximum cost of this burden is:

- Industry per annum (432 hours) $25,920.
- Each participant per annum (24 hours) $1440.

The agency is soliciting 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 April 29, 2005, and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Proposed changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the 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, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, or $100 million or more annually (adjusted for inflation).

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation.

This NPRM proposes to make permanent an existing temporary regulatory alternative for operators to comply with carrier training requirements. We have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory Policies and Procedures, because such an evaluation is not required where the economic impact of a rule is minimal. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

In conducting these analyses, the FAA has determined this rule (1) has minimal costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and 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 regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if the agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Because we are proposing to make permanent an existing temporary regulatory alternative for operators to comply with carrier training requirements, we certify that this action will not have a significant economic impact on a substantial number of small entities. We solicit comments on this determination.

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. The FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This NPRM does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this 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.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aviation safety, Safety.

14 CFR Part 63

Air safety, Air transportation, Airmen, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airmen, Aviation safety, Air transportation, Aircraft.

14 CFR Part 121

Aircraft pilots, Airmen, Aviation safety, Pilots, Safety.

14 CFR Part 135

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

The Proposed Amendment

The Federal Aviation Administration proposes to amend parts 61, 63, 65, 121, and 135 of Title 14, Code of Federal Regulations (14 CFR parts 61, 63, 65, 121 and 135) as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SFAR No. 58 [Removed]

2. Remove SFAR No. 58 from part 61.

3. Amend 61.58(b) by removing "SFAR 58" and adding "subpart Y of part 121 of this chapter" in its place.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

4. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40108, 40113, 44701–44703, 44710, 44712, 44714, 44716, 44717, 44722, 45303.

SFAR No. 58 [Removed]

5. Remove SFAR No. 58 from part 63.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

6. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SFAR No. 58 [Removed]

7. Remove SFAR No. 58 from part 65.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

8.–9. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

SFAR No. 58 [Removed]

10. Remove Special Federal Aviation Regulation (SFAR) No. 58.—Advanced Qualification Program from part 121.

11. Add subpart Y to read as follows:

Subpart Y—Advanced Qualification Program

Sec.

121.901 Purpose and eligibility.
121.903 General requirements for Advanced Qualification Programs.
121.905 Confidential commercial information.
121.907 Definitions.
121.909 Approval of Advanced Qualification Program.
121.911 Indoctrination curriculum.
121.913 Qualification curriculum.
121.915 Continuing qualification curriculum.
121.917 Other requirements.
121.919 Certification.
121.921 Training devices and simulators.
121.923 Approval of training, qualification, or evaluation by a person who provides training by arrangement.
121.925 Recordkeeping requirements.

§ 121.901 Purpose and eligibility.

(a) Notwithstanding the provisions of parts 61, 63, 65, 121, 135, and 142 of this chapter, this subpart provides for approval of an alternative method (known as "Advanced Qualification Program" or "AQP") for qualifying, training, certifying, and otherwise ensuring competency of crewmembers, aircraft dispatchers, other operations personnel, flight instructors, and evaluators who are required to be trained under parts 121 and 135 of this chapter.

(b) A certificate holder is eligible under this subpart if the certificate holder is required or elects to have an approved training program under §§ 121.401, 135.3(c), or 135.341 of this chapter.

(c) A certificate holder obtains approval of each proposed curriculum under this AQP as specified in § 121.909.

§ 121.903 General requirements for Advanced Qualification Programs.

(a) A curriculum approved under an AQP may include elements of existing training programs under part 121 and part 135 of this chapter. Each curriculum must specify the make, model, series or variant of aircraft and each crewmember position or other positions to be covered by that curriculum. Positions to be covered by the AQP must include all flight crewmember positions, flight instructors, and evaluators and may include other positions, such as flight attendants, aircraft dispatchers, and other operations personnel.

(b) Each certificate holder that obtains approval of an AQP under this subpart must comply with all of the requirements of the AQP and this subpart instead of the corresponding provisions of parts 61, 63, 65, 121, or 135 of this chapter. However, each applicable requirement of parts 61, 63, 65, 121, or 135 of this chapter, including but not limited to practical test requirements, that is not specifically addressed in the AQP continues to apply to the certificate holder and to the individuals being trained and qualified by the certificate holder. No person may be trained under an AQP unless that AQP has been approved by the FAA and the person complies with all of the requirements of the AQP and this subpart.

(c) No certificate holder that conducts its training program under this subpart may use any person nor may any person

serve in any duty position as a required crewmember, an aircraft dispatcher, a flight instructor, or an evaluator, unless that person has satisfactorily accomplished, in a training program approved under this subpart for the certificate holder, the training and evaluation of proficiency required by the AQP for that type airplane and duty position.

(d) All documentation and data required under this subpart must be submitted in a form and manner acceptable to the FAA.

(e) Any training or evaluation required under an AQP that is satisfactorily completed in the calendar month before or the calendar month after the calendar month in which it is due is considered to have been completed in the calendar month it was due.

§ 121.905 Confidential commercial information.

(a) Each certificate holder that claims that AQP information or data it is submitting to the FAA is entitled to confidential treatment under 5 U.S.C. 552(b)(4) because it constitutes confidential commercial information as described in 5 U.S.C. 552(b)(4), and should be withheld from public disclosure, must include its request for confidentiality with each submission.

(b) When requesting confidentiality for submitted information or data, the certificate holder must:

(1) If the information or data is transmitted electronically, embed the claim of confidentiality within the electronic record so that the portions claimed to be confidential are readily apparent when received and reviewed.

(2) If the information or data is submitted in paper format, place the word "CONFIDENTIAL" on the top of each page containing information or data claimed to be confidential.

(3) Justify the basis for a claim of confidentiality under 5 U.S.C. 552(b)(4).

§ 121.907 Definitions.

The following definitions apply to this subpart:

Crew Resource Management (CRM) means the effective use of all of the resources available to crewmembers, including each other, in order to achieve a safe and efficient flight.

Curriculum outline means a listing of each segment, module, lesson, and lesson element in a curriculum, or an equivalent listing acceptable to the FAA.

Evaluation of proficiency means a Line Operational Evaluation (LOE) or an equivalent evaluation under an AQP acceptable to the FAA.

Evaluator means a person who assesses or judges the performance of crewmembers, flight instructors, other evaluators, aircraft dispatchers, or other operations personnel.

First Look means the assessment of performance to determine proficiency on designated flight tasks before any briefing, training, or practice on those tasks is given in the training session for a continuing qualification curriculum. First Look is conducted during an AQP continuing qualification cycle to determine trends of degraded proficiency, if any, due in part to the length of the interval between training sessions.

Instructional systems development means a systematic methodology for developing or modifying qualification standards and associated curriculum content based on a documented analysis of the job tasks, skills, and knowledge required for job proficiency.

Job task listing means a listing of all tasks, subtasks, knowledge, and skills required for the accomplishment of the operational job.

Line Operational Evaluation (LOE) means a simulated line environment, the scenario content of which is designed to test the integration of technical and CRM skills.

Line Operational Simulation (LOS) means a training or evaluation session, as applicable, that is conducted in a simulated line environment using equipment qualified and approved for its intended purpose in an AQP.

Planned hours means the estimated amount of time (as specified in a curriculum outline) that it takes a typical student to complete a segment of instruction (to include all instruction, demonstration, practice, and evaluation, as appropriate, to reach proficiency).

Qualification standard means a statement of a minimum required performance, applicable parameters, criteria, applicable flight conditions, evaluation strategy, evaluation media, and applicable document references.

Qualification standards document means a single document containing all of the qualification standards for an AQP together with a prologue that provides a detailed description of all facets of the evaluation process.

Special tracking means the assignment of a person to an augmented schedule of training, checking, or both.

Training session means a contiguously scheduled period devoted to training activities at a facility accepted by the FAA for that purpose.

Variant means a specifically configured aircraft for which the FAA has identified training and qualifications that are significantly different from those applicable to other aircraft of the same make, model, and series.

§ 121.909 Approval of Advanced Qualification Program.

(a) *Approval process.* Application for approval of an AQP curriculum under this subpart is made, through the FAA office responsible for approval of the certificate holder's operations specifications, to the Manager of the Advanced Qualification Program.

(b) *Approval criteria.* Each AQP must have separate curriculums for indoctrination, qualification, and continuing qualification (including upgrade, transition, and requalification), as specified in §§ 121.911, 121.913, and 121.915. All AQP curriculums must be based on an instructional systems development methodology. This methodology must incorporate a thorough analysis of the certificate holder's operations, aircraft, line environment and job functions. All AQP qualification and continuing qualification curriculums must integrate the training and evaluation of CRM and technical skills and knowledge. An application for approval of an AQP curriculum may be approved if the program meets the following requirements:

(1) The program must meet all of the requirements of this subpart.

(2) Each indoctrination, qualification, and continuing qualification AQP, and derivatives must include the following documentation:

(i) Initial application for AQP.

(ii) Initial job task listing.

(iii) Instructional systems development methodology.

(iv) Qualification standards document.

(v) Curriculum outline.

(vi) Implementation and operations plan.

(3) Subject to approval by the FAA, certificate holders may elect, where appropriate, to consolidate information regarding multiple programs within any of the documents referenced in paragraph (b)(2) of this section.

(4) The Qualification Standards Document must indicate specifically the requirements of the parts 61, 63, 65, 121, or 135 of this chapter, as applicable, that would be replaced by an AQP curriculum. If a practical test requirement of parts 61, 63, 65, 121, or 135 of this chapter is replaced by an AQP curriculum, the certificate holder must establish an initial justification and a continuing process approved by the FAA to show how the AQP curriculum provides an equivalent level of safety for each requirement that is to be replaced.

(c) *Application and transition.* Each certificate holder that applies for one or more advanced qualification curriculums must include as part of its application a proposed transition plan (containing a calendar of events) for moving from its present approved training to the advanced qualification program training.

(d) *Advanced Qualification Program revisions or rescissions of approval.* If after a certificate holder begins training and qualification under an AQP, the FAA finds that the certificate holder is not meeting the provisions of its approved AQP, the FAA may require the certificate holder, pursuant to § 121.405(e), to make revisions. Or if otherwise warranted, the FAA may withdraw AQP approval and require the certificate holder to submit and obtain approval for a plan (containing a schedule of events) that the certificate holder must comply with and use to transition to an approved training program under subpart N of this part or under subpart H of part 135 of this chapter, as appropriate. The certificate holder may also voluntarily submit and obtain approval for a plan (containing a schedule of events) to transition to an approved training program under subpart N of this part or under subpart H of part 135 of this chapter, as appropriate.

(e) *Approval by the FAA.* Final approval of an AQP by the FAA indicates that the FAA has accepted the justification provided under paragraph (b)(4) of this section and that the applicant's initial justification and continuing process establish an equivalent level of safety for each requirement of parts 61, 63, 65, 121, and 135 of this chapter that is being replaced.

§ 121.911 Indoctrination curriculum.

Each indoctrination curriculum must include the following:

(a) For newly hired persons being trained under an AQP: The certificate holder's policies and operating practices and general operational knowledge.

(b) For newly hired crewmembers and aircraft dispatchers: General aeronautical knowledge appropriate to the duty position.

(c) For flight instructors: The fundamental principles of the teaching and learning process; methods and theories of instruction; and the knowledge necessary to use aircraft, flight training devices, flight simulators, and other training equipment in advanced qualification curriculums.

(d) For evaluators: General evaluation requirements of the AQP; methods of evaluating crewmembers and aircraft dispatchers and other operations personnel; and policies and practices used to conduct the kinds of evaluations particular to an AQP (*e.g.*, LOE).

§ 121.913 Qualification curriculum.

Each qualification curriculum must contain training, evaluation, and certification activities, as applicable for specific positions subject to the AQP, as follows:

(a) The certificate holder's planned hours of training, evaluation, and supervised operating experience.

(b) For crewmembers, aircraft dispatchers, and other operations personnel, the following:

(1) Training, evaluation, and certification activities that are aircraft- and equipment-specific to qualify a person for a particular duty position on, or duties related to the operation of, a specific make, model, series, or variant aircraft.

(2) A list of and text describing the knowledge requirements, subject materials, job skills, and qualification standards of each task to be trained and evaluated.

(3) The requirements of the certificate holder's approved AQP program that are in addition to or in place of, the requirements of parts 61, 63, 65, 121 or 135 of this chapter, including any applicable practical test requirements.

(4) A list of and text describing operating experience, evaluation/remediation strategies, provisions for special tracking, and how recency of experience requirements will be accomplished.

(c) For flight crewmembers: initial operating experience and line check.

(d) For flight instructors, the following:

(1) Training and evaluation activities to qualify a person to conduct instruction on how to operate, or on how to ensure the safe operation of a particular make, model, and series aircraft (or variant).

(2) A list of and text describing the knowledge requirements, subject materials, job skills, and qualification standards of each procedure and task to be trained and evaluated.

(3) A list of and text describing evaluation/remediation strategies, standardization policies and recency requirements.

(e) For evaluators: The requirements of paragraph (d)(1) of this section plus the following:

(1) Training and evaluation activities that are aircraft and equipment specific to qualify a person to assess the performance of persons who operate or who ensure the safe operation of, a particular make, model, and series aircraft (or variant).

(2) A list of and text describing the knowledge requirements, subject materials, job skills, and qualification standards of each procedure and task to be trained and evaluated.

(3) A list of and text describing evaluation/remediation strategies, standardization policies and recency requirements.

§ 121.915 Continuing qualification curriculum.

Each continuing qualification curriculum must contain training and evaluation activities, as applicable for specific positions subject to the AQP, as follows:

(a) *Continuing qualification cycle.* A continuing qualification cycle that ensures that during each cycle each person qualified under an AQP, including flight instructors and evaluators, will receive a mix that will ensure training and evaluation on all events and subjects necessary to ensure that each person maintains proficiency in knowledge, technical skills, and cognitive skills required for initial qualification in accordance with the approved continuing qualification AQP, evaluation/remediation strategies, and provisions for special tracking. Each continuing qualification cycle must include at least the following:

(1) *Evaluation period.* Initially the continuing qualification cycle is comprised of two or more evaluation periods of equal duration. Each person qualified under an AQP must receive ground training and flight training and an evaluation of proficiency during each evaluation period at a training facility. The number and frequency of training sessions must be approved by the FAA.

(2) *Training.* Continuing qualification must include training in all tasks, procedures and subjects required in accordance with the approved program documentation, as follows:

(i) For pilots in command, seconds in command, and flight engineers, First Look in accordance with the certificate holder's FAA-approved program documentation.

(ii) For pilots in command, seconds in command, flight engineers, flight attendants, flight instructors and evaluators: Ground training including a general review of knowledge and skills covered in qualification training, updated information on newly developed procedures, and safety information.

(iii) For crewmembers, flight instructors, evaluators, and other operational personnel who conduct their duties in flight: proficiency training in an aircraft, flight training device, flight simulator, or other

equipment, as appropriate, on normal, abnormal, and emergency flight procedures and maneuvers.

(iv) For dispatchers and other operational personnel who do not conduct their duties in flight: ground training including a general review of knowledge and skills covered in qualification training, updated information on newly developed procedures, safety related information, and, if applicable, a line observation program.

(v) For flight instructors and evaluators: Proficiency training in the type flight training device or the type flight simulator, as appropriate, regarding training equipment operation. For flight instructors and evaluators who are limited to conducting their duties in flight simulators or flight training devices: training in operational flight procedures and maneuvers (normal, abnormal, and emergency).

(b) *Evaluation of performance.* Continuing qualification must include evaluation of performance on a sample of those events and major subjects identified as diagnostic of competence and approved for that purpose by the FAA. The following evaluation requirements apply:

(1) Evaluation of proficiency as follows:

(i) For pilots in command, seconds in command, and flight engineers: An evaluation of proficiency, portions of which may be conducted in an aircraft, flight simulator, or flight training device as approved in the certificate holder's curriculum that must be completed during each evaluation period.

(ii) For any other persons covered by an AQP, a means to evaluate their proficiency in the performance of their duties in their assigned tasks in an operational setting.

(2) Line checks as follows:

(i) Except as provided in paragraph (b)(2)(ii) of this section, for pilots in command: A line check conducted in an aircraft during actual flight operations under part 121 or part 135 of this chapter or during operationally (line) oriented flights, such as ferry flights or proving flights. A line check must be completed in the calendar month at the mid-point of the evaluation period.

(ii) With the FAA's approval, a no-notice line check strategy may be used in lieu of the line check required by paragraph (b)(2)(i) of this section. The certificate holder who elects to exercise this option must ensure that the "no-notice" line checks are administered so that the flight crewmembers are not notified in advance of the evaluation. In addition, the AQP certificate holder must ensure that each pilot in command receives at least one "no-notice" line check every 24 months. As a minimum, the number of "no-notice" line checks administered each calendar year must equal at least 50% of the certificate holder's pilot-in-command workforce in accordance with a strategy approved by the FAA for that purpose. In addition, the line checks to be conducted under this paragraph must be conducted over all geographic areas flown by the certificate holder in accordance with a sampling methodology approved by the FAA for that purpose.

(iii) During the line checks required under paragraph (b)(2)(i) and (ii) of this section, each person performing duties as a pilot in command, second in command, or flight engineer for that flight, must be individually evaluated to determine whether the person remains adequately trained and currently proficient with respect to the particular aircraft, crew position, and type of operation in which he or she serves; and that the person has sufficient knowledge and skills to operate effectively as part of a crew. The evaluator must be a check airman, an APD, or an FAA inspector and must hold the certificates and ratings required of the pilot in command.

(c) *Recency of experience.* For pilots in command, seconds in command, flight engineers, aircraft dispatchers, flight instructors, evaluators, and flight attendants, approved recency of experience requirements appropriate to the duty position.

(d) *Duration of cycles and periods.* Initially, the continuing qualification cycle approved for an AQP must not exceed 24 calendar months in duration, and must include two or more evaluation periods of equal duration. Thereafter, upon demonstration by a certificate holder that an extension is warranted, the FAA may approve an extension of the continuing qualification cycle to a maximum of 36 calendar months in duration.

(e) *Requalification.* Each continuing qualification curriculum must include a curriculum segment that covers the requirements for requalifying a crewmember, aircraft dispatcher, other operations personnel, flight instructor, or evaluator who has not maintained continuing qualification.

§ 121.917 Other requirements.

In addition to the requirements of §§ 121.913 and 121.915, each AQP qualification and continuing curriculum must include the following requirements:

(a) Integrated Crew Resource Management (CRM) or Dispatcher Resource Management (DRM) ground and flight training applicable to each position for which training is provided under an AQP.

(b) Approved training on and evaluation of skills and proficiency of each person being trained under AQP to use his or her crew resource management skills and his or her technical (piloting or other) skills in an actual or simulated operations scenario. For flight crewmembers this training and evaluation must be conducted in an approved flight training device, flight simulator, or, if approved under this subpart, in an aircraft.

(c) Data collection and analysis processes acceptable to the FAA that will ensure that the certificate holder provides performance information on its crewmembers, flight instructors, and evaluators that will enable the certificate holder and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

§ 121.919 Certification.

A person subject to an AQP is eligible to receive a commercial or airline transport pilot, flight engineer, or aircraft dispatcher certificate or appropriate rating based on the successful completion of training and evaluation events accomplished under that program if the following requirements are met:

(a) Training and evaluation of required knowledge and skills under the AQP must meet minimum certification and rating criteria established by the FAA in parts 61, 63, or 65 of this chapter. The FAA may approve alternatives to the certification and rating criteria of parts 61, 63, or 65 of this chapter, including practical test requirements, if it can be demonstrated that the newly established criteria or requirements represent an equivalent or better measure of airman competence, operational proficiency, and safety.

(b) The applicant satisfactorily completes the appropriate qualification curriculum.

(c) The applicant shows competence in required technical knowledge and skills (*e.g.*, piloting) and crew resource management (*e.g.*, CRM or DRM) knowledge and skills in scenarios (*i.e.*, LOE) that test both types of knowledge and skills together.

(d) The applicant is otherwise eligible under the applicable requirements of part 61, 63, or 65 of this chapter.

(e) The applicant has been trained to proficiency on the certificate holder's approved AQP Qualification Standards as witnessed by a flight instructor, check airman, or APD and has passed a

LOE administered by an APD or the FAA.

§ 121.921 Training devices and simulators.

(a) Each flight training device or airplane simulator that will be used in an AQP for one of the following purposes must be evaluated by the FAA for assignment of a flight training device or flight simulator qualification level:

(1) Required evaluation of individual or crew proficiency.

(2) Training to proficiency or training activities that determine if an individual or crew is ready for an evaluation of proficiency.

(3) Activities used to meet recency of experience requirements.

(4) Line Operational Simulations (LOS).

(b) Approval of other training equipment.

(1) Any training equipment that is intended to be used in an AQP for purposes other than those set forth in paragraph (a) of this section must be approved by the FAA for its intended use.

(2) An applicant for approval of training equipment under this paragraph must identify the device by its nomenclature and describe its intended use.

(3) Each training device approved for use in an AQP must be part of a continuing program to provide for its serviceability and fitness to perform its intended function as approved by the FAA.

§ 121.923 Approval of training, qualification, or evaluation by a person who provides training by arrangement.

(a) A certificate holder operating under part 121 or part 135 of this chapter may arrange to have AQP training, qualification, evaluation, or certification functions performed by another person (a "training provider") if the following requirements are met:

(1) The training provider is certificated under part 119 or 142 of this chapter.

(2) The training provider's AQP training and qualification curriculums, curriculum segments, or portions of curriculum segments must be provisionally approved by the FAA. A training provider may apply for provisional approval independently or in conjunction with a certificate holder's application for AQP approval. Application for provisional approval must be made, through the FAA office directly responsible for oversight of the training provider, to the Manager of the Advanced Qualification Program.

(3) The specific use of provisionally approved curriculums, curriculum segments, or portions of curriculum segments in a certificate holder's AQP must be approved by the FAA as set forth in § 121.909.

(b) An applicant for provisional approval of a curriculum, curriculum segment, or portion of a curriculum segment under this paragraph must show that the following requirements are met:

(1) The applicant must have a curriculum for the qualification and continuing qualification of each flight instructor and evaluator used by the applicant.

(2) The applicant's facilities must be found by the FAA to be adequate for any planned training, qualification, or evaluation for a certificate holder operating under part 121 or part 135 of this chapter.

(3) Except for indoctrination curriculums, the curriculum, curriculum segment, or portion of a curriculum segment must identify the specific make, model, and series aircraft (or variant) and crewmember or other positions for which it is designed.

(c) A certificate holder who wants approval to use a training provider's provisionally approved curriculum, curriculum segment, or portion of a curriculum segment in its AQP, must show that the following requirements are met:

(1) Each flight instructor or evaluator used by the training provider must meet all of the qualification and continuing qualification requirements that apply to employees of the certificate holder that has arranged for the training, including knowledge of the certificate holder's operations.

(2) Each provisionally-approved curriculum, curriculum segment, or portion of a curriculum segment must be approved by the FAA for use in the certificate holder's AQP. The FAA will either provide approval or require modifications to ensure that each curriculum, curriculum segment, or portion of a curriculum segment is applicable to the certificate holder's AQP.

§ 121.925 Recordkeeping requirements.

Each certificate holder conducting an approved AQP must establish and maintain records in sufficient detail to demonstrate that the certificate holder is in compliance with all of the requirements of the AQP and this subpart.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ABOARD SUCH AIRCRAFT

12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 58 [Removed]

13. Remove SFAR No. 58 from part 135.

14. Amend § 135.1(a)(4) by removing "SFAR No. 58" and adding "subpart Y of part 121 of this chapter" in its place each place it appears.

Issued in Washington, DC on March 23, 2005.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 05–6141 Filed 3–29–05; 8:45 am]

BILLING CODE 4910–13–P

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S. 686/P.L. 109–3

For the relief of the parents of Theresa Marie Schiavo. (Mar. 21, 2005; 119 Stat. 15)

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108th Congress

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