Federal Register

7–28–05 Thursday
Vol. 70 No. 144 July 28, 2005

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OFFICIAL BUSINESS
Penalty for Private Use, $300

**********3-DIGIT 481
A FR BONNI346B MAR 06 R
BONNIE COLVIN
PROQUEST I & L
PO BOX 1346
ANN ARBOR MI 48106

Federal Register

7–28–05 Thursday
Vol. 70 No. 144 July 28, 2005

Pages 43625–43738

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

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

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

RESERVATIONS: (202) 741-6008

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 144

Thursday, July 28, 2005

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR
Proposed Rules:
20 43646
32 43646
150 43646

12 CFR
1731 43625

14 CFR
39 (2 documents) 43628, 43631
Proposed Rules:
39 43659

21 CFR
1308 43633

26 CFR
1 43635

28 CFR
Proposed Rules:
16 43661

33 CFR
165 43636

40 CFR
Proposed Rules:
52 43663

49 CFR
171 43638

50 CFR
679 43644
Proposed Rules:
600 43673

Rules and Regulations

Federal Register
Vol. 70, No. 144
Thursday, July 28, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1731

RIN 2550–AA31

Mortgage Fraud Reporting

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final regulation that sets forth safety and soundness requirements with respect to mortgage fraud reporting in furtherance of the supervisory responsibilities of OFHEO under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

EFFECTIVE DATE: August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Deputy General Counsel, telephone (202) 414–3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized and operate safely and soundly in compliance with applicable laws, rules, and regulations. To carry out its statutory responsibilities, OFHEO may, among other things, require an Enterprise to submit reports.[1]

On February 25, 2005, OFHEO published for comment a proposed regulation, at 70 FR 9255, which set forth proposed safety and soundness requirements with respect to mortgage fraud reporting. The 30-day comment period was extended until April 4, 2005.[2] All comments received have been made available to the public in the OFHEO Public Reading Room and also posted on the OFHEO Web site at *http://www.OFHEO.gov.*

Comments Received

Comments were received from the Inspector General for the Office of Housing and Urban Development; the Mortgage Asset Research Institute, a subsidiary of ChoicePoint Services Inc.; the Mortgage Bankers Association, a national association representing the real estate finance industry; the National Association of Mortgage Brokers; Freddie Mac; Fannie Mae; the Consumer Mortgage Coalition, a trade group of national residential mortgage lenders, servicers and service providers; AMCO, a valuation management firm; and various private citizens. All comments were taken into consideration. A discussion of the significant comments as they relate to the proposed sections of the regulation follows.

Purpose and Scope

Several commenters questioned the necessity for a regulation expressly requiring reporting of mortgage fraud and possible mortgage fraud and the benefits of such reporting to the Enterprises and the mortgage industry. Two commenters recommended that OFHEO consider alternative approaches, such as reliance on private industry "ineligible" lists.

The purpose of the regulation is to set forth safety and soundness requirements and expectations with respect to the reporting of mortgage fraud in furtherance of the supervisory responsibilities of OFHEO, that is, ensuring the safe and sound operations of the Enterprises. OFHEO must gain timely information on actual or possible mortgage fraud to assure that adequate internal controls and systems exist to protect the Enterprises from risks associated with such fraud. The information provided will be the subject of review by the examination force of OFHEO, as well as other appropriate OFHEO offices. The information will assist OFHEO in assessing internal controls, security efforts, management of risks, including reputation risk, and other factors relevant to the safe and sound operation of the Enterprises. The oversight by OFHEO of programs to detect and avoid mortgage fraud will provide public understanding of the expectation that the Enterprises will remain vigilant in resisting fraudulent practices and should have a deterrent effect. OFHEO will develop a process for sharing of information it acquires with law enforcement authorities, while assuring that the Enterprises do not encounter liability issues.

The Federal Bureau of Investigation (FBI) indicated in Financial Crimes Report to the Public (May 2005) that combating significant mortgage fraud is an FBI priority because mortgage lending and the housing market have a significant overall effect on the nation's economy.[3] The FBI explained that:

> A significant portion of the mortgage industry is void of any mandatory fraud reporting. In addition, mortgage fraud in the secondary market is often underreported. Therefore, the true level of mortgage fraud is largely unknown. The mortgage industry itself does not provide estimates on total industry fraud. Based on various industry reports and FBI analysis, mortgage fraud is pervasive and growing.

In combating mortgage fraud, the FBI noted that it works actively to investigate such fraud and has been fostering relationships and partnerships with the mortgage industry, including the Enterprises. While OFHEO has no authority to "police" the mortgage industry for fraud or to prosecute mortgage fraud, OFHEO has noted that the Enterprises, as part of the financial system, should operate in a manner to deter fraud and thereby assist in system-wide efforts to make mortgage fraud an unattractive avenue for corrupt individuals or institutions.

The Enterprises currently investigate and maintain information on mortgage

[1] 12 U.S.C. 4514.

[2] 70 FR 15018 (March 24, 2005).

[3] *http://www.fbi.gov/publications/financial/fcs_report052005/fcs_report052005.htm#d1.*

fraud and possible mortgage fraud. A formal reporting requirement to OFHEO will focus Enterprise efforts on ensuring that internal policies, procedures, and training programs are in place to minimize the risks from mortgage fraud. No evidence exists that a formal reporting requirement will create or increase burdens on the Enterprises. The Enterprises currently investigate fraud or possible fraud, report fraud to law enforcement authorities, and provide reports to OFHEO as required; this regulation contemplates such routine reporting to OFHEO. Additionally, no evidence exists that a formal reporting requirement will require the mortgage industry as a whole to take on additional burdens. The Enterprises currently, when fraud is suspected, inquire of seller-servicers and others about business transactions and practices. Furthermore, law enforcement authorities have reported that much of the fraud involving secondary market parties relates to institutional fraud, not individuals seeking to secure financing. Thus, Enterprise efforts to report on possible or actual mortgage fraud should have no regulatory burden for the mortgage finance industry as the Enterprises already conduct due diligence in dealing with seller-servicers and others in the mortgage finance system.

For the reasons set forth above and because of law enforcement reports of an increasing incidence of mortgage-related fraud—and the potential impact of such fraud on Enterprise profits, liquidity and reputation—OFHEO has determined to issue the mortgage fraud reporting regulation.

Definition of the Terms "Mortgage Fraud" and "Possible Mortgage Fraud."

As proposed, the term "mortgage fraud" would be defined under § 1731.2 to mean a material misstatement, misrepresentation, or omission relied upon by an Enterprise to fund or purchase—or not to fund or purchase—a mortgage, mortgage backed security, or similar financial instrument. The term would include, but not be limited to, identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent. The term "possible mortgage fraud" would be defined to mean that an Enterprise has cause to believe that that mortgage fraud is occurring or has occurred.

OFHEO received a few comments on the definition of the term "mortgage fraud." One commenter noted that the definition treats all mortgage-backed securities (MBS) as equivalent to mortgages for purposes of mortgage fraud, whether issued or guaranteed by an Enterprise or whether issued or guaranteed by a third party. The commenter explained that MBS issued and guaranteed by a third party may present securities fraud issues, but not mortgage fraud issues, and requested that the definition make clear that it covers only MBS issued or guaranteed by an Enterprise. Two other commenters requested that the definition should include the concept that the material misstatement, misrepresentation, or omission be "knowingly made" or "intentionally made."

OFHEO has revised the definition of the term "mortgage fraud" to clarify that it covers MBS issued or guaranteed by an Enterprise. OFHEO does not believe that it is necessary to include the concept that the material misstatement, misrepresentation, or omission be "knowingly made" or "intentionally made." Such language goes to the definition of fraud that is well established, as opposed to the definition of a particular type, that is, fraud related to mortgages. In addition, benchmarks or "triggers" for providing information to OFHEO, as discussed below, will be developed as the reporting requirements are implemented.

The term "possible mortgage fraud" was proposed to be defined to mean that an Enterprise has cause to believe that mortgage fraud may be occurring or has occurred. Some commenters recommended that OFHEO should provide guidance, through regulation or through guidance documents, as to triggers and level of verification, otherwise the definition, they argued, is too broad. OFHEO agrees and will provide guidance, as requested, as to these and related matters as part of the implementation of the reporting requirements.

One commenter recommended that the definition should include the element of good-faith judgment on the part of the Enterprise. Another commenter recommended that the definition should include the element of reasonable or justifiable cause to believe that mortgage fraud may be occurring or has occurred. OFHEO agrees that the definition should be modified to include "reasonable cause" and has clarified the definition of the term "possible mortgage fraud" accordingly.

Unsafe and Unsound Conduct

Proposed § 1731.3 would provide that an Enterprise may not require the repurchase of or may not decline to purchase a mortgage, mortgage backed security, or similar financial instrument because of possible mortgage fraud without promptly reporting to the Director under § 1731.4. One commenter requested that this section should clearly state that it does not prohibit the Enterprises from declining purchases or requiring repurchases if the Enterprises are properly reporting mortgage fraud or possible mortgage fraud. OFHEO agrees, and has clarified the language of § 1731.3 accordingly.

Reporting Time-Period

As proposed, § 1731.4 would set forth the procedures for reporting fraud and possible mortgage fraud to OFHEO. OFHEO would issue implementation instructions with respect to reporting such fraud. Section 1731.4 also would provide that if a situation requires the immediate attention of OFHEO, an Enterprise would report immediately by telephone or electronic communication.

A few commenters recommended that the proposed four-day notification period was too short and recommended either a 30-day period or that notification be "prompt." OFHEO agrees that a requirement for "prompt reporting" would permit flexibility in addressing different situations and changing needs in the implementation of the reporting requirement and has modified the definition accordingly to remove the fixed time period and will address notification requirements as part of the implementation of the rule. The requirement for immediate reporting, when appropriate, remains.

One commenter recommended that the reporting requirement should not be retroactive and apply only to mortgages purchased or not purchased six months after the effective date of the regulation. OFHEO did not propose and does not intend that the regulation have retroactive application; OFHEO will work with the Enterprises for an effective transition while the Enterprises develop and implement or enhance reporting systems.

Non-Disclosure and Safe Harbor

As proposed, the section would prohibit the disclosure of reporting mortgage fraud or possible mortgage fraud to the parties connected with such fraud without the prior written approval of the Director. The proposed section expressly stated that the requirement would not prevent an Enterprise from disclosing or reporting such fraud pursuant to legal requirements, including reporting to appropriate law enforcement authorities.

One commenter expressed a concern that the proposed section would discourage the Enterprises from reporting fraud; another argued that the Enterprises should be required to report fraud to law enforcement authorities.

The Enterprises already have the authority to report fraud to law enforcement; the major focus of concern of the proposed regulation is the need to make routine reporting of possible mortgage fraud to OFHEO and for OFHEO to take actions regarding such possible fraud. Another commenter recommended the addition of a clarification that the requirement of this section does not limit the Enterprise from reporting fraud to a third party or from taking any legal or business action it may deem appropriate, including an action involving the party or parties connected with the mortgage fraud or possible mortgage fraud. OFHEO agrees that this clarification is useful and has modified the section accordingly.

A few commenters addressed "safe harbor" concerns, in that the safe harbor provisions of the Bank Secrecy Act would not apply to the Enterprises reporting of mortgage fraud to OFHEO, and leave the Enterprises vulnerable to liability should OFHEO refer an Enterprise report to another government agency. OFHEO recognizes the liability concerns; nevertheless, OFHEO will continue to provide information on mortgage fraud to appropriate authorities while addressing concerns related to the absence of an explicit safe harbor.

Except with respect to the clarifications of the proposed language as noted above, OFHEO has determined to issue the regulation as proposed.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The regulation is not classified as an economically significant rule under Executive Order 12866 because it would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. Nevertheless, the proposed regulation was submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the states, on the relationship or distribution of power between the Federal Government and the states, or on the distribution of power and responsibilities among various levels of government. The Enterprises are federally chartered corporations supervised by OFHEO. The regulation would require reporting of mortgage fraud to OFHEO. It would not affect in any manner the powers and authorities of any state with respect to the Enterprises or alter the distribution of power and responsibilities between Federal and state levels of government. It would in no way limit the authority of any state to take actions for violations of its laws. Therefore, OFHEO has determined that the regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation would not be likely to have a significant economic impact on a substantial number of small business entities because it would be applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1731

Administrative practice and procedure, Government sponsored enterprises.

■ For the reasons stated in the preamble, part 1731 is added to chapter XVII, title 12 of the Code of Federal Regulations to read as follows:

PART 1731—MORTGAGE FRAUD REPORTING

Sec.

Authority: 12 U.S.C. 4513(a) and 4513(b)(1), (2), and (7).

§ 1731.1 Purpose and scope.

The purpose of this section is to set forth safety and soundness requirements with respect to the reporting of mortgage fraud in furtherance of the supervisory responsibilities of OFHEO under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*).

§ 1731.2 Definitions.

For purposes of this part—

(a) *Director* means the Director of OFHEO, or his or her designee.

(b) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(c) *Mortgage fraud* means a material misstatement, misrepresentation, or omission relied upon by an Enterprise to fund or purchase—or not to fund or purchase—a mortgage, including a mortgage associated with a mortgage-backed security or similar financial instrument issued or guaranteed by an Enterprise. Such mortgage fraud includes, but is not limited to, a material misstatement, misrepresentation, or omission in identification and employment documents, mortgagee or mortgagor identity, and appraisals that are fraudulent.

(d) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(e) *Possible mortgage fraud* means that an Enterprise has a reasonable belief, based upon a review of information available to the Enterprise, that mortgage fraud may be occurring or has occurred.

§ 1731.3 Unsafe and unsound conduct.

An Enterprise may not require the repurchase of or may not decline to purchase a mortgage, mortgage backed security, or similar financial instrument because of possible mortgage fraud without promptly reporting to the Director under § 1731.4. An Enterprise may decline such purchase or require such repurchase if it is reporting mortgage fraud or possible mortgage fraud in accordance with § 1731.4.

§ 1731.4 Procedures for reporting.

(a) *Procedures for reporting.* (1) *Prompt report.* An Enterprise shall report promptly mortgage fraud or possible mortgage fraud in writing to the Director in such format and under such notification procedures as prescribed by OFHEO. The report shall describe the mortgage fraud or possible mortgage fraud in detail sufficient under OFHEO guidance. The Enterprise, at the sole discretion of the Director, may be required to provide additional or continuing information in connection with such mortgage fraud.

(2) *Immediate report.* In addition to reporting in writing under paragraph (a)(1) of this section, in any situation requiring immediate attention by OFHEO, an Enterprise shall report the mortgage fraud or possible mortgage fraud to the Director by telephone or electronic communication.

(b) *Retention of records.* An Enterprise shall maintain a copy of any report submitted to the Director and the original or business record equivalent of any supporting documentation for a period of five years from the date of submission.

(c) *Nondisclosure.* An Enterprise may not disclose, without the prior written approval of the Director, to the party or parties connected with the mortgage fraud or possible mortgage fraud that it has reported such fraud under this part. This restriction does not prohibit an Enterprise from—

(1) Disclosing or reporting such fraud pursuant to legal requirements, including reporting to appropriate law enforcement or other governmental authorities; or

(2) Taking any legal or business action it may deem appropriate, including any action involving the party or parties connected with the mortgage fraud or possible mortgage fraud.

(d) *Acceptance of other forms.* The Director may, upon written notice to each Enterprise, accept reports of mortgage fraud or possible mortgage fraud in formats promulgated by any Federal agency that has jurisdiction over the reporting of mortgage fraud or possible mortgage fraud by the Enterprises.

(e) *No waiver of privilege.* An Enterprise does not waive any privilege it may claim under law by reporting mortgage fraud or possible mortgage fraud under this part.

§ 1731.5 Internal controls, procedures, and training.

An Enterprise shall establish adequate and efficient internal controls and procedures and an operational training program to assure an effective system to detect and report mortgage fraud or possible mortgage fraud under this part.

§ 1731.6 Supervisory action.

Failure by an Enterprise to comply with §§ 1731.3, 1731.4, and 1731.5 may subject the Enterprise or the board members, officers, or employees thereof to supervisory action by OFHEO under the Federal Housing Enterprises Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), including but not limited to, cease-and-desist proceedings and civil money penalties.

Dated: July 25, 2005.

Stephen A. Blumenthal,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 05–14957 Filed 7–27–05; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–343–AD; Amendment 39–14203; AD 2005–15–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8F–54, and DC–8F–55 Airplanes; and DC–8–50, DC–8–60, DC–8–60F, DC–8–70, and DC–8–70F Series Airplanes

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

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models. This AD requires a one-time test to determine the material of the upper inboard spar cap of the wing, and corrective actions if necessary. This action is necessary to prevent stress corrosion cracking in the forward tang of the upper inboard spar cap of the wing, which could result in structural damage to adjacent components of the wing and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 1, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 1, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8F–54, and DC–8F–55 airplanes; and DC–8–50, DC–8–60, DC–8–60F, DC–8–70, and DC–8–70F series airplanes; was published in the **Federal Register** on August 14, 2003 (68 FR 48576). For certain airplanes, that action proposed to require a one-time test to determine the material of the upper inboard spar cap of the wing, or a one-time inspection to determine if the slant panel cap has been repaired previously. For most airplanes, this action also proposed to require a one-time inspection for corrosion of the slant panel cap of the wing leading edge assembly, and follow-on actions.

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 from a single commenter, who is the airplane manufacturer.

Request To Add Conductivity Test for Group 2 Airplanes

The commenter requests that we revise paragraph (a) of the proposed AD to add Group 2 airplanes, as identified in McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995. (Paragraph (a) of the proposed AD specifies that the actions in that paragraph apply to airplanes in Group 1 of that service bulletin.) The commenter points out that Group 1 airplanes are those that do not have a

previous repair on the upper inboard spar cap. Group 2 airplanes are those airplanes modified previously under Condition 2 of the referenced service bulletin, or certain Service Rework Drawings. The commenter states that Group 2 airplanes should be added to paragraph (a) to ensure that all subject airplanes are inspected.

We agree. The proposed AD separated requirements for Group 1 and Group 2 airplanes into paragraphs (a) (for airplanes in Group 1) and (b) (for airplanes in Group 2). The difference between the two paragraphs is that no conductivity test was specified for airplanes in Group 2. However, not providing the option to perform the conductivity test on Group 2 airplanes could result in airplanes being subject to unnecessary requirements if the upper inboard spar cap is made from 7075–T73 material. Thus, we have revised paragraph (a) of this final rule to specify the conductivity test for all affected airplanes. We have also included a new paragraph (b) to state that, for airplanes in Group 2, accomplishing the modification in paragraph (a)(2) of this AD without accomplishing the one-time eddy current conductivity test to determine the material of the upper inboard spar cap of the wing is acceptable for compliance with this AD.

Request To Defer Requirements for Group 3 Airplanes

The commenter states that no action is necessary for Group 3 airplanes, as identified in McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, until McDonnell Douglas DC–8 Service Bulletin 57–30 has been accomplished. The commenter points out that replacing the slant panel cap of the wing leading edge is not necessary to address the unsafe condition (an issue which is discussed fully later on in this final rule), and McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, provides for deferral of the other action specified for Group 3 airplanes in the following statement:

"Modification of the front spar stiffeners is to provide compatibility with rework of the lower spar cap rework per DC–8 Service Bulletin 57–30, Revision 4[,] and may be deferred until accomplishing DC–8 Service Bulletin 57–30."

However, in the section "Differences Between Proposed AD and Service Information" of the proposed AD, the FAA states that the proposed AD would not allow this deferral. The commenter states that if McDonnell Douglas DC–8 Service Bulletin 57–30 is done, McDonnell Douglas Service Bulletin DC8–57–072 will be necessary for compatibility.

We infer that the commenter is requesting that we reinstate the deferral of action for airplanes in Group 3 until DC–8 Service Bulletin 57–30 is accomplished. We agree for the reasons stated by the commenter. Therefore, we have revised paragraph (c) of this final rule to state that, for Group 3 airplanes as identified in McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, the actions specified by paragraph (a) of this AD are not required until the actions specified in McDonnell Douglas DC–8 Service Bulletin 57–30 are accomplished, or within 48 months after the effective date of this AD, whichever is later. If the actions specified in McDonnell Douglas DC–8 Service Bulletin 57–30 have been accomplished before the effective date of the AD, the actions required by paragraph (a) of this AD must be accomplished within 48 months after the effective date of this AD.

Request To Remove Requirements for Slant Panel Cap

The commenter requests changes throughout the proposed AD to remove requirements that would apply to the slant panel cap of the wing leading edge. The commenter notes that the unsafe condition is stress corrosion cracking of upper inboard spar caps made of 7079–T6 material. The commenter states that the only time that an inspection of the slant panel cap is needed is during the modification of the upper inboard spar cap. The commenter points out that, in paragraph (a)(1) of the proposed AD, if the test reveals that the upper inboard spar cap is made from 7075–T73 material, then the proposed AD should specify that no further action is needed. The commenter also notes that paragraphs (a)(2) and (b) of the proposed AD should be revised to note that the inspection of the slant panel cap for corrosion and previous repairs is needed to determine what modification configuration applies. The steps of repairing corrosion and repairing or replacing the slant panel cap, as applicable, are not relevant and should not be included. The commenter points out that the slant panel cap can be repaired separately from the service bulletin without affecting the actions required by this proposed AD for the upper inboard spar cap.

We agree with the commenter's request to remove actions that would have applied to the slant panel cap. Including these actions in this AD would place an unnecessary burden on affected operators, and would not benefit safety as it relates to the unsafe condition addressed by this AD. Accordingly, we have revised paragraph (a)(1) of this final rule to state that, if the upper inboard spar cap is made from 7075–T73 material, no further action is needed. We have also revised paragraph (a)(2) to remove the instructions to inspect for corrosion or previous repairs, and repair or replace the slant panel cap. (Inspecting for corrosion or previous repairs to determine the condition that applies is incidental to accomplishing the required actions.) Paragraph (a)(2) now explains that the procedures in the service bulletin include trimming the forward tang of the upper inboard spar cap, installing a spar cap angle doubler and stiffener clips, installing a wing upper surface doubler, and trimming the front spar stiffeners, as applicable. (As explained previously, the information in paragraphs (b) and (c) of the proposed AD does not appear in this final rule, so we have not changed paragraphs (b) and (c) of this final rule in this regard.) We have also revised the Summary section to state that this AD requires a one-time test to determine the material of the upper inboard spar cap of the wing; and corrective actions if necessary. We have also revised the Cost Impact estimate in this AD accordingly.

Request To Allow Conductivity Test Without Removing Leading Edge

The commenter requests that we revise the proposed AD to allow the conductivity test to determine the material of the upper inboard spar cap to be performed without removing the wing leading edge. The commenter notes that the Accomplishment Instructions of the service bulletin specify that the leading edge must be removed. However, the manufacturer has received requests from operators to allow the test to be done without removing the leading edge. The commenter states that it is possible to access the upper inboard spar cap through the leading edge access doors (on certain airplane models), through the center wing fuel tank, or through the fuselage, without removing the wing leading edge.

We agree with the commenter's request. We have revised paragraph (a) of this final rule to allow the conductivity test to be performed without removing the wing leading edge.

Request To Revise Applicability

The commenter notes that the Discussion paragraph of the proposed AD states that, "The FAA has received reports indicating that cracking has been found in the forward tang of the upper inboard spar cap of the wing on certain McDonnell Douglas Model DC–8–70

series airplanes." The commenter states that this statement must be revised because all Model DC–8 airplanes need to be inspected because the engineering order that changed the material of the upper inboard spar cap (from 7079–T6 material to 7075–T73 material) allowed installing upper inboard spar caps made from 7079–T6 material until spares were exhausted. Thus, upper inboard spar caps were installed randomly through the fleet. The commenter states that the effectivity listing of the referenced service bulletin correctly identifies affected airplanes.

We acknowledge the commenter's concerns. The section of the proposed AD referenced by the commenter states that cracking was found on the upper inboard spar cap of the wing on certain McDonnell Douglas Model DC–8–70 series airplanes. This is not intended to imply that only Model DC–8–70 series airplanes are subject to the proposed AD. Indeed, the applicability section of this AD, as proposed, identifies "Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category; as identified in McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995." We find that this applicability statement includes all airplanes that should be subject to this AD. In addition, we note that the Discussion section is not restated in the final rule. We have not changed this AD in this regard.

Explanation of Additional Changes Made to This AD

We have revised paragraph (a) of this AD to refer specifically to McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995, instead of referring to "the service bulletin."

Also, Boeing has received a Delegation Option Authorization (DOA). We have revised paragraph (e)(2) of this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

We have revised compliance times in this AD to be stated in months (48 months after the effective date of this AD) instead of in years (4 years after the effective date of this AD).

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 303 airplanes of the affected design in the worldwide fleet. The FAA estimates that 229 airplanes of U.S. registry will be affected by this AD.

The electrical conductivity test will take approximately 1 work hour per airplane, at the average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $14,885, or $65 per airplane.

For airplanes subject to corrective action, the modification will take between 110 and 416 work hours per airplane, at the average labor rate of $65 per work hour. Required parts will cost between $4,554 and $19,687. Based on these figures, the cost impact of these actions is estimated to be between $11,704 and $46,727 per airplane.

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

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 adding the following new airworthiness directive:

2005–15–14 McDonnell Douglas: Amendment 39–14203. Docket 2001–NM–343–AD.

Applicability: Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72,

DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category; as identified in McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking in the forward tang of the upper inboard spar cap of the wing, which could result in structural damage to adjacent components of the wing and consequent reduced structural integrity of the airplane, accomplish the following:

Inspection and Investigative and Other Specified Actions

(a) Within 48 months after the effective date of this AD, except as provided by paragraphs (b) and (c) of this AD, perform a one-time eddy current conductivity test of the upper inboard spar cap of the wing to determine the type of material, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995. Although the Accomplishment Instructions of the service bulletin specify that it is necessary to remove the wing leading edge to perform this test, this AD does not require removing the wing leading edge to access the upper inboard spar cap. The conductivity test can be accomplished through the access panels on the lower surface of the wing leading edge, through the main fuel tank, or through the fuselage at station 680, as applicable.

(1) If the test reveals that the upper inboard spar cap is made from 7075–T73 material (as defined in the service bulletin): No further action is required by this paragraph.

(2) If the test reveals that the upper inboard spar cap is made from 7079–T6 material: Within 48 months after the effective date of this AD, except as provided by paragraph (c) of this AD, accomplish the modification specified in the service bulletin, in accordance with the Accomplishment Instructions of the service bulletin. The procedures specified in the service bulletin include determining the condition that applies, trimming the forward tang of the upper inboard spar cap, installing a spar cap angle doubler and stiffener clips, installing wing upper surface doublers, and trimming the front spar stiffeners, as applicable.

Group 2 Airplanes: Waiver of Conductivity Test

(b) For airplanes in Group 2 as defined by McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995: In lieu of accomplishing the one-time eddy current conductivity test to determine the material of the upper inboard spar cap of the wing required by paragraph (a) of this AD, accomplishing the modification in paragraph (a)(2) of this AD within the compliance time specified in that paragraph is acceptable for compliance with this AD.

Group 3 Airplanes: Inspection and Modification

(c) For airplanes in Group 3 as defined by McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995: The actions specified by paragraph (a) of this AD are not required until the actions specified in McDonnell Douglas DC–8 Service Bulletin 57–30 are accomplished. If the actions specified in McDonnell Douglas DC–8 Service Bulletin 57–30 have not been accomplished before the effective date of the AD, the actions required by paragraph (a) of this AD must be accomplished concurrent with McDonnell Douglas DC–8 Service Bulletin 57–30 (if McDonnell Douglas DC–8 Service Bulletin 57–30 is accomplished), or within 48 months after the effective date of this AD, whichever is later. If the actions specified in McDonnell Douglas DC–8 Service Bulletin 57–30 have been accomplished before the effective date of the AD, the actions required by paragraph (a) of this AD must be accomplished within 48 months after the effective date of this AD.

Accomplishing Certain Actions Constitutes Compliance With AD 90–16–05

(d) Accomplishment of the action(s) required by this AD constitutes compliance with the inspections required by paragraph A. of AD 90–16–05, amendment 39–6614, as it pertains to McDonnell Douglas DC–8 Service Bulletin 57–72, Revision 2, dated July 16, 1971; and McDonnell Douglas DC–8 Service Bulletin 57–34, Revision 3, dated December 29, 1970. Accomplishment of the actions required by this AD does not terminate the remaining requirements of AD 90–16–05 as it applies to other service bulletins; operators are required to continue to inspect and/or modify in accordance with the other service bulletins listed in that AD.

Alternative Methods of Compliance

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

(2) An AMOC that provides an acceptable level of safety may be used for 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, Los Angeles ACO, to make such 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.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions must be done in accordance with McDonnell Douglas Service Bulletin DC8–57–072 R03, Revision 03, dated October 2, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this 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). To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; 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.*

Effective Date

(g) This amendment becomes effective on September 1, 2005.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14684 Filed 7–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20138; Directorate Identifier 2004–NM–167–AD; Amendment 39–14204; AD 2005–15–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes Equipped With Pratt & Whitney or Rolls-Royce Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200PF, and –200CB series airplanes. This AD requires inspecting to determine the part number of the upper link forward fuse pins of the engine struts and replacing the fuse pins as necessary. This AD is prompted by a report indicating that, due to an incorrect listing in the illustrated parts catalog, persons performing maintenance on the engine strut(s) could have installed an incorrect upper link forward fuse pin. We are issuing this AD to prevent a ruptured wing box, due to the engine not separating safely during certain emergency landing conditions, which could lead to a fuel spill and consequent fire.

DATES: This AD becomes effective September 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of September 1, 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–2005–20138; the directorate identifier for this docket is 2004–NM–167–AD.

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 757–200, –200PF, and –200CB series airplanes. That action, published in the **Federal Register** on January 28, 2005 (70 FR 4050), proposed to require inspecting to determine the part number of the upper link forward fuse pins of the engine struts and replacing the fuse pins as 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.

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Revise the Applicability

One commenter, the manufacturer, requests that paragraph (c) of the proposed AD be changed from "Model 757–200, –200PF, and –300 series airplanes" to "Model 757–200, –200PF, and –200CB series airplanes." The manufacturer states that the applicability is incorrect.

We agree with this request. We have determined that, though the summary of the proposed AD listed the affected airplanes correctly, the applicability did not. Model 757–300 series airplanes, which fall outside the series of line numbers 1–735 listed in the service information, were included in error; while Model 757–200CB series airplanes, which are contained within line numbers 1–735, were not included. We have revised paragraph (c) of the final rule to match the summary of the final rule and the service information.

Request for Alternative to Inspections

Two commenters request that a review of maintenance records be permitted as an alternative to the inspections required in the proposed AD. One commenter states that operator maintenance records list part numbers of parts that are installed on airplanes during maintenance activities, and that such records are sufficient to satisfy the requirements of the proposed AD.

We agree with this request. Operators are required to log the part numbers of all parts installed on airplanes. We have determined that, as an alternative to the inspections required by paragraph (f) of this AD, an operator may submit properly kept maintenance records to establish the parts configuration of the struts on an airplane. Therefore, we have revised paragraph (f) of this AD, inserted new paragraph (h), and reidentified the subsequent paragraphs accordingly.

Request To Delete Requirement To Use Aircraft Maintenance Manual (AMM) Procedures

One commenter requests that we delete paragraph (g) of the proposed AD. Paragraph (g) requires the use of AMM procedures and does not permit the use of operator equivalent procedures. The operator states that this requirement adds a level of complication with respect to compliance and is unenforceable.

We do not agree with this request. On at least two occasions, operator-developed procedures and tools that were thought to be equivalent to AMM procedures made certain unsafe conditions more unsafe. We have determined that the installation of engine struts and components must be accomplished according to the manufacturer's procedures. We have not changed the final rule in this regard. However, an operator may apply for an alternative method of compliance under the provisions of paragraph (j) of the final rule, if data are submitted to substantiate that an operator's equivalent procedure would provide an acceptable level of safety.

Request To Revise Fuse Pin Bore Dimensions

One commenter requests that we revise the dimensions given in paragraphs (f)(3)(i) and (f)(3)(ii) of the proposed AD for the inside dimensions of the fuse pin bore. The commenter states that it has reviewed the design drawings and has determined that dimensions other than those given in the proposed AD should be shown. The commenter has submitted dimensions and asserts that they are correct.

We do not agree with this request. We have determined that the dimensions provided by the commenter do not agree with the manufacturer's design drawings, and that the instructions shown in the proposed AD are correct. Further, the dimension of 0.850 inch shown in paragraphs (f)(3)(i) and (f)(3)(ii) of the proposed AD, which is below the minimum pin bore dimension of the –1 part and above the maximum pin bore dimension of the –2 part, was specified to simplify the inspection process for all operators. 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.

Costs of Compliance

There are about 735 airplanes of the affected design in the worldwide fleet. This AD will affect about 478 airplanes of U.S. registry. The inspection will take about 1 work hour per fuse pin (2 fuse pins per airplane), at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the required actions to U.S. operators is $62,140, or $130 per airplane.

Replacement of any upper link forward fuse pin, if required, will take about 26 work hours, at an average labor rate of $65 per work hour. Required parts will cost about $431. Based on these figures, the estimated cost of a replacement is $2,121 per fuse pin.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–15–15 Boeing: Amendment 39–14204. Docket No. FAA–2005–20138; Directorate Identifier 2004–NM–167–AD.

Effective Date

(a) This AD becomes effective September 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes, line numbers 1 through 735 inclusive, certificated in any category; equipped with Pratt & Whitney or Rolls-Royce engines.

Unsafe Condition

(d) This AD was prompted by a report indicating that, due to an incorrect listing in the illustrated parts catalog, persons performing maintenance on the engine strut(s) could have installed an incorrect upper link forward fuse pin having part number (P/N) 311N5501–2. We are issuing this AD to prevent a ruptured wing box, due to the engine not separating safely during certain emergency landing conditions, which could lead to a fuel spill and consequent fire.

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 of Fuse Pin

(f) Within 24 months after the effective date of this AD, perform a detailed inspection to determine the P/N of the upper link forward fuse pins of the engine struts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–54–0048, dated May 13, 2004, except as provided in paragraphs (g) and (h) of this AD.

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

(1) If the fuse pin is P/N 311N5501–1 or P/N 311N5060–1, no further action is required for that fuse pin.

(2) If the fuse pin is P/N 311N5501–2, prior to further flight, replace the fuse pin with a new or serviceable fuse pin, P/N 311N5501–1, in accordance with the Accomplishment Instructions of the service bulletin.

(3) If the P/N of the fuse pin cannot be determined by inspection, use a tool such as an inside reading micrometer to determine the inside diameter (ID) of the fuse pin bore.

(i) If the ID of the fuse pin bore is greater than or equal to 0.850 inch, no further action is required for that fuse pin.

(ii) If the ID of the fuse pin bore is less than 0.850 inch, prior to further flight, replace the fuse pin as specified in paragraph (f)(2) of this AD.

(g) Where Boeing Special Attention Service Bulletin 757–54–0048, dated May 13, 2004, permits the use of an "approved equivalent procedure" for access and replacement of the fuse pin(s), this AD requires that access and replacement be done in accordance with the instructions of the aircraft maintenance manual (AMM) as specified in the service bulletin.

Optional Alternative to Inspections

(h) Instead of the inspections required by paragraph (f) of this AD, a review of the airplane maintenance records is acceptable if the P/N of the fuse pins can be positively determined from that review.

Parts Installation

(i) As of the effective date of this AD, no person may install a fuse pin, P/N 311N5501–2, on any airplane identified in the applicability of this AD.

Alternative Methods of Compliance (AMOCs)

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

(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. 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.

Material Incorporated by Reference

(k) You must use Boeing Special Attention Service Bulletin 757–54–0048, dated May 13, 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. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 14, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14685 Filed 7–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–267F]

21 CFR Part 1308

Schedules of Controlled Substances: Placement of Pregabalin Into Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid], including its salts, and all products containing pregabalin into Schedule V of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule V will be applicable to the manufacture, distribution, dispensing, importation and exportation of pregabalin and products containing pregabalin.

DATES: This rule is effective July 28, 2005.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2004, the Food and Drug Administration (FDA) approved pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid] for marketing under the trade name Lyrica™. Lyrica™ will be marketed in the United States as a prescription drug product for the management of neuropathic pain associated with diabetic peripheral neuropathy (DPN) and postherpetic neuralgia (PHN). Pregabalin has recently been placed on the market in some European countries for the treatment of epilepsy and neuropathic pain.

On April 4, 2005, the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS), sent the Administrator of the DEA a letter recommending that pregabalin, and its salts, be placed into Schedule V of the CSA. Enclosed with the April 4, 2005, letter was a document prepared by the FDA entitled, "Basis for the Recommendation for Control of Pregabalin in Schedule V of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

Based on the recommendation of the Acting Assistant Secretary for Health and an independent review of the available data by the DEA, the Deputy Administrator of the DEA, in a May 13, 2005, **Federal Register** Notice of Proposed Rulemaking (70 FR 25502), proposed placement of pregabalin into Schedule V of the CSA. The proposed rule provided an opportunity for all interested persons to submit their comments, objections or requests for hearing to be received by the DEA on or before June 13, 2005.

Comments Received

The DEA received two comments in response to the Notice of Proposed Rulemaking. One commenter stated that the DEA should not minimize the similarity in effects produced by pregabalin and diazepam and should place pregabalin in Schedule IV of the CSA.

The DEA does not agree. Careful consideration of all the available data suggests that pregabalin has less abuse potential than Schedule IV substances. Pregabalin does not substitute for benzodiazepines in benzodiazepine-dependent animals. Data from clinical trials suggest that some of pregabalin's positive psychic effects are limited and do not continue with time or continued drug use. The data are consistent with a substance that could be abused intermittently for reward, but not for reinforcement. In addition, withdrawal effects of pregabalin are less severe than with other substances currently controlled in Schedule IV.

Another commenter stated that, in their experience with pregabalin in clinical trials, pregabalin does not demonstrate any risk that would merit being considered a scheduled drug.

The DEA does not agree. Preclinical studies indicated that pregabalin is transiently and sporadically self-administered at rates greater than vehicle but substantially lower than active comparators pentobarbital (CII) and methohexital (CIV). In clinical trials, pregabalin produces some pharmacological effects characteristic of diazepam and alprazolam and is likely to be abused for its positive psychic effects. The percentage of individuals that experienced acute euphoric effects was unusually high for pregabalin in clinical trials. Pregabalin also produced dizziness, somnolence, dry mouth, edema, blurred vision, weight gain and attentional problems more frequently than placebo. These data suggest that pregabalin does have sufficient abuse potential to warrant control under the CSA. The DHHS recommended control in Schedule V of the CSA and the DEA concurs.

Scheduling of Pregabalin

Relying on the scientific and medical evaluation and the recommendation of the Acting Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by the DEA, and after a review of the comments received in response to the Notice of Proposed Rulemaking, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Pregabalin has a low potential for abuse relative to the drugs or other substances in Schedule IV;

(2) Pregabalin has a currently accepted medical use in treatment in the United States; and

(3) Abuse of pregabalin may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV. (21 U.S.C. 812(b)(5))

Based on these findings, the Deputy Administrator of the DEA concludes that pregabalin, including its salts, and all products containing pregabalin, warrant control in Schedule V of the CSA.

In order to make pregabalin pharmaceutical products available for medical use as soon as possible, the Schedule V controls for pregabalin will be effective July 28, 2005. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule V regulations regarding pregabalin. The applicable regulations are as follows:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, conducts research or instructional activities or chemical analysis or proposes to engage in such activities with pregabalin, must submit an application for Schedule V registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before August 29, 2005, and may continue their activities until the DEA has approved or denied that application.

Security. Pregabalin is subject to Schedule III–V security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77 of Title 21 of the Code of Federal Regulations on and after July 28, 2005.

Labeling and Packaging. All labels and labeling for commercial containers of pregabalin shall comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of pregabalin must keep an inventory of all stocks of pregabalin on

hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations on and after July 28, 2005. Every registrant who desires registration in Schedule V for pregabalin is required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to §§ 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations on and after July 28, 2005.

Prescriptions. All prescriptions for pregabalin or prescriptions for products containing pregabalin must be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21, 1306.23–1306.27.

Importation and Exportation. All importation and exportation of pregabalin must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations on and after July 28, 2005.

Criminal Liability. Any activity with pregabalin not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on and after July 28, 2005, shall be unlawful.

Regulatory Certifications

Administrative Procedure Act

The Administrative Procedure Act permits an agency to make a rule effective upon the date of publication when the agency finds good cause exists and publishes its findings with the rule (5 U.S.C. 553(d)(3)). As noted previously, on December 31, 2004, the FDA approved pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid] for marketing under the trade name Lyrica. On April 4, 2005, the Acting Assistant Secretary for Health of the DHHS sent the Administrator of the DEA a scientific and medical evaluation and a scheduling recommendation that pregabalin, and its salts, be placed in Schedule V of the CSA. Since this is a new drug not previously available in the United States and the first drug product specifically approved for the treatment of neuropathic pain associated with diabetic peripheral neuropathy (DPN) and postherpetic neuralgia (PHN), in order to prevent harm to the public health and safety by delaying the availability of this new drug, the DEA finds good cause to make this Final Rule effective immediately upon publication.

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Pregabalin products will be prescription drugs used for the treatment of neuropathic pain. Handlers of pregabalin often handle other controlled substances used to treat pain which are already subject to the regulatory requirements of the CSA.

Pregabalin is a new drug in the United States; recent approval of Lyrica™ by the FDA will allow it to be marketed once it is placed into Schedule V of the CSA. This final rule will allow medical access to a new pharmaceutical product.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $115,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

■ Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES [AMENDED]

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

■ 2. Section 1308.15 is amended by adding a new paragraph (e) to read as follows:

§ 1308.15 Schedule V.

* * * * *

(e) *Depressants.* Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid] 2782

(2) [Reserved]

Dated: July 22, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–15036 Filed 7–27–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9186]

RIN 1545–BD42

Qualified Amended Returns; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a correction to temporary regulations.

SUMMARY: This document corrects a correction to temporary regulations (TD 9186) which was published in the **Federal Register** on June 23, 2005 (70 FR 36345). The temporary regulations modify the rules relating to qualified amended returns by providing additional circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return.

DATES: This correction is effective on March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Nancy Galib, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9186) that is the subject of this correction is under section 6664 of the Internal Revenue Code.

Need for Correction

As published, the correction to the temporary regulations (TD 9186) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to the temporary regulations (TD 9186) that is the subject of FR Doc. 05–12386, is corrected as follows:

On page 36345, column 2, in the preamble, under the paragraph heading "Background", line 3, the language "are under section 6227 of the Internal" is corrected to read "are under section 6664 of the Internal".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 05–14902 Filed 7–27–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–030]

RIN 1625–AA11

Safety Zone: Camp Rilea Offshore Small Arms Firing Range; Warrenton, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone offshore of Camp Rilea, Warrenton, Oregon. Small arms training and fire will be conducted within this zone, and a safety zone is needed to ensure the safety of persons and vessels operating in this area during the specified periods. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative.

DATES: This rule is effective from 6 a.m. July 25, 2005 through 9 p.m. July 29, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–05–030 and are available for inspection or copying at Coast Guard Sector Portland, 6767 North Basin Avenue, Portland, OR 97217–3992 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Shadrack Scheirman, Chief Port Operations, USCG Sector, Portland, OR 97217, telephone number (503) 240–9310.

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) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**.

In order to maintain an increased maritime security posture, the Coast Guard has increased training requirements for the carriage of weapons during homeland security operations. The crews required to carry out homeland security operations must be trained to perform their operational obligations. Crews from multiple units along the Oregon and Washington coasts are participating in this exercise. Unit operational schedules converged to make July 25–29 the only date to accommodate all parties.

Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public from small arms fire during the live fire training. Such training is necessary in order to ensure Coast Guard crews are qualified to carry Crew Served Weapons required to fulfill their Military and Homeland Security responsibilities.

Background and Purpose

Changes in Coast Guard policy and procedures require small boat crews to train on and fire crew served weapons from a vessel. In order to ensure the safety of persons and vessels operating in vicinity of this training from July 25, 2005 through July 29, 2005 a safety zone will be in effect during all small arms firing evolutions.

Discussion of Rule

This safety zone will be in effect to ensure the safety of persons and vessels in the vicinity of the live fire training. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative. A Coast Guard vessel will be on scene to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences. All persons and vessels shall comply with the instructions of the Captain of the Port or his/her designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Regulatory Evaluation

This 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). This rule only affects a small area for a limited duration. The proposed regulations have been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 anchor, fish or transit through the zone during the periods of enforcement from July 25, 2005 through July 29, 2005. The Coast Guard expects a minimal economic impact on a substantial number of small entities because the zone is in effect essentially during day light hours only for 4 days, there is little commercial activity in this area during the month of July, and vessels will be able to freely transit the areas outside of the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could 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 Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will 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 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 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 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, 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)(g), of the Instruction, from further environmental documentation. Categorical Exclusion is provided for temporary safety zones of less than one week in duration. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are 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, 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. A temporary § 165.T13–011 is added to read as follows:

§ 165.T13–011 Safety Zone; Camp Rilea Offshore Small Arms Firing Range, Warrenton, Oregon

(a) *Location.* The following area is established as a safety zone: the waters bounded by the following coordinates:

46°09′00″ N, 123°57′42″ W following the shoreline to 46°10′24″ N 124°07′06″ W then south to 46°02′54″ N 124°07′06″ W following the shoreline to 46°06′30″ N 123°56′36″ W then back to the point of origin.

(b) *Regulations.* (1) In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(2) A Coast Guard vessel will be on scene to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port or his/her designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

(c) *Effective period.* This rule is effective from 6 a.m. July 25, 2005 through 9 p.m. July 29, 2005.

(d) *Enforcement period.* This rule will be enforced from 6 a.m. to 9 p.m. daily from July 25 through July 29, 2005.

(e) The Captain of the Port will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio Channel 22 (157.1 MHz) and **Federal Register** Notice.

Dated: July 19, 2005.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 05–14970 Filed 7–25–05; 3:49 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 171

[Docket No. PHMSA–04–19173 (HM–223A)]

RIN 2137–AE04

Applicability of the Hazardous Materials Regulations to a "Person Who Offers" a Hazardous Material for Transportation in Commerce

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations to add a definition for "person who offers or offeror." The definition adopted in this final rule codifies long-standing interpretations and administrative determinations on the applicability of those regulations.

DATES: This final rule is effective October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

On September 24, 2004, the Research and Special Programs Administration—the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA)—published a notice of proposed rulemaking (NPRM; 69 FR 57245) proposing to add a definition for "person who offers or offeror" to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). Consistent with previously issued administrative determinations, as discussed in the NPRM (69 FR 57247–48) and placed in the docket for this rulemaking, we proposed to define "person who offers or offeror" to mean "[a]ny person who does either or both of the following: (i) Performs, or is responsible for performing, any pre-transportation function required under [the HMR] for transportation of the hazardous material [or] (ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce." The proposed definition specifically excluded a carrier that transfers, interlines, or interchanges hazardous materials to another carrier for continued transportation when the carrier does not perform any pre-transportation functions associated with the shipment. We further proposed to clarify that an offeror or a carrier may rely on information provided by a prior offeror or carrier unless the offeror or carrier "knows, or in the exercise of reasonable care, should know" that the information provided is incorrect.

II. Summary of Final Rule

In this final rule, we are making the following revisions to the HMR:

- We are defining "person who offers or offeror" to mean any person who performs or is responsible for performing any pre-transportation function required by the HMR or who tenders or makes the hazardous material available to a carrier for transportation in commerce. A carrier is not an offeror when it performs a function as a condition of accepting a hazardous material for transportation in commerce or when it transfers a hazardous material to another carrier for continued transportation without performing a pre-transportation function.
- We are clarifying that there may be more than one offeror of a hazardous material and that each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform.
- We are clarifying that each offeror or carrier may rely on information provided by a previous offeror or carrier unless the offeror or carrier knows or, a reasonable person acting in the circumstances and exercising reasonable care, would have knowledge that the information provided is incorrect.

III. Comments to the NPRM

We received 16 comments to the NPRM from industry associations and individual shippers and carriers. Most commenters are supportive of the goals of this rulemaking, but raise concerns related to the specific definition proposed and its impact on both offerors and carriers. These comments are discussed in detail below.

Several commenters raise issues that are beyond the scope of this rulemaking. For example, United Air Lines, and the Air Transport Association reiterate their objections to a formal interpretation, published February 23, 2003, that clarified the timing of "offer" and "acceptance" of passenger baggage; they request a comprehensive rulemaking on this subject. Because that issue is beyond the scope of this rulemaking, it is not addressed in this final rule.

A. Reasonable Reliance and Liability

As noted above, the NPRM proposed to clarify in § 171.2 that an offeror or carrier of a hazardous material may rely on information provided by a previous offeror or carrier in the absence of knowledge that the information is incorrect. Several commenters suggest that the language proposed in the NPRM is ambiguous and should be clarified. "The 'should know' standard should be interpreted as meaning that a carrier cannot rely on information given to the carrier when the carrier actually has credible information that the information provided by the offeror is incorrect." (Association of American Railroads) Several commenters object to the use of the phrase "should know" in the NPRM, noting that a "carrier must be permitted to rely upon [the shipper's certification] and conclude that pre-transportation functions have been performed in accordance with all hazardous materials regulations." (American Trucking Associations) These commenters suggest that we should more closely follow the statutory

language in Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5123(a)(1) of Federal hazmat law provides that:

> A person acts knowingly when—
> (A) The person has actual knowledge of the facts giving rise to the violation; or
> (B) A reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

We agree with commenters that the language proposed in § 171.2 should reflect the standard for "knowingly" established in Federal hazmat law. Therefore, in this final rule, we are revising paragraphs (b) and (f) of § 171.2 (proposed as paragraphs (a) and (b) of § 171.2 in the NPRM) for consistency with Federal hazmat law.

Note that a carrier that knows that information accompanying a hazardous materials shipment is incorrect may not accept the shipment for transportation unless and until the information has been corrected and any discrepancies involving this shipment have been resolved. Indeed, a carrier that knows that a hazardous materials shipment does not comply with the HMR in any respect (*e.g.*, packaging, markings, labels, shipping paper) may not accept the shipment for transportation unless and until the problems are corrected and any discrepancies resolved.

B. Person Who Offers and Pre-Transportation Functions

A number of commenters express concern about the definition for "person who offers or offeror" proposed in the NPRM as it applies to carriers who may perform pre-transportation functions. These commenters support the specific language clarifying that a carrier that interlines a hazardous materials shipment is not an offeror when it performs no pre-transportation functions, but suggest that this provision of the NRPM does not "deliver the intended certainty." (International Vessel Operators Hazardous Materials Association (VOHMA) and World Shipping Council (WSC)) They assert that the determination of "when a carrier might become an 'offeror' * * * is further confused by the statement in [HM–223] that suggests that *who* performs a certain function (not what that function is) may determine whether that function is a 'transportation' function or a 'pre-transportation' function." Referring to statements in the preamble to the HM–223 final rule that "fill[ing] and clos[ing] a bulk or non-bulk packaging" may be a "pre-transportation function" when performed by a shipper or a "transportation" function when performed by a carrier, VOHMA and WSC state that "a carrier can never be an 'offeror' by virtue of performing a pre-transportation function, because such a function performed by a carrier is deemed to be a transportation function" and "the proposed language at 171.8(2) has no meaning." These commenters state that, because

> certain functions (such as verifying and creating documentation) are or may be performed at multiple states in the transportation chain by both shippers and carriers[,] * * * allocating responsibility for those functions on the basis of whether they are performed by a carrier or a shipper, or on the basis of whether they are performed before or after the initial carrier takes possession of the cargo, might simply provide no guidance at all with respect to certain functions.

Similarly, several commenters express concern that a carrier would be determined to be an "offeror" when performing pre-transportation functions. These commenters note that many pre-transportation functions are essential components of the transportation services carriers provide their customers, such as preparing shipping papers, providing and maintaining emergency response information, and reviewing shipping papers to verify compliance with the HMR. "When railroads perform these functions as a transporter (excluding the situation where a railroad is preparing its own hazardous materials for transportation), the hazardous materials are already in transportation. It is nonsensical to consider a carrier as performing pre-transportation functions after the hazardous materials are in transportation." (Association of American Railroads (AAR)) AAR suggests modifying the second paragraph of the proposed definition of "person who offers or offeror" to provide that a carrier is not an offeror whenever it performs "a task integral to the transportation of hazardous material that would otherwise be classified as a pre-transportation function."

Another commenter notes that reviewing shipping papers to verify their compliance with the HMR or their international equivalents, which is defined as a pre-transportation function, may be performed by a carrier as a "mandated function of 'acceptance' for transportation of hazardous materials." (Currie Associates) This commenter suggests that we add specific language to § 171.2 to indicate that the performance of a function required as a condition of acceptance of hazardous materials offered for transportation does not make a carrier an offeror if it performs no other pre-transportation functions.

These comments illustrate the difficulty of defining the status of a "person who offers or offeror" based solely on the performance of a specific function, as opposed to the proper focus of whether the function is part of "preparing" a shipment of hazardous material for transportation in commerce—including the functions performed by a carrier or freight forwarder preparing the shipment for continued transportation by a succeeding carrier. As explained in the preamble to the HM–223 final rule and recognized in comments to the NPRM, certain activities "may be considered both pre-transportation and transportation functions" and may be performed by a person who prepares a shipment for transportation or a person who accepts and transports the shipment. 68 FR at 61909. For example, "blocking and bracing and segregation of packages in a transport vehicle are functions frequently performed by carrier personnel. However, shipper personnel may also perform such functions, particularly when loading hazardous materials into freight containers. These are regulated functions under the HMR, whether performed by shipper or carrier personnel." *Id.* These functions are "pre-transportation functions" whenever they are performed in the course of preparing the shipment for transportation, by an original offeror who transports the shipment itself (as a private carrier) or who tenders the shipment to a common or private carrier for transportation—or by a carrier or freight forwarder who loads a freight container and then tenders the loaded container to another carrier for transportation. An initial carrier who loads a freight container is a "person who offers or offeror" when it tenders the loaded container to a succeeding carrier and, if the hazardous materials in the container are not properly blocked, braced, and segregated, the initial carrier has violated the requirement to "offer" hazardous materials in accordance with the HMR.

In a similar manner, a carrier or freight forwarder who prepares hazardous material shipping documentation that is transmitted to a succeeding carrier, in association with the hazardous material shipment, is a "person who offers or offeror" because it performed a pre-transportation function in the course of preparing the shipment for transportation by the succeeding carrier. In doing so, the carrier or freight forwarder may rely on the information it received from the

original offeror (or a prior carrier), unless it "knows or, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect." 49 CFR 171.2(b), (f).

From their comments, it appears that carriers are concerned, at least in part, with the responsibility for the shipment that is conferred by application of the term "person who offers or offeror." For example, MHF Logistical Solutions (MHF) states that the requirement for a "person who offers a hazardous material for transportation" to "comply with all applicable requirements of this subchapter" (§ 171.2(b)) should be clarified to make it "clear that an offeror is responsible only for correct performance of the function he performs or is contracted to perform. * * * [T]he responsibility of each offeror should not extend to functions for which he has no direct responsibility." MHF adds that an intermediate party such as a "transportation logistics provider * * * has limited direct knowledge of the material in the load, and accepts the manifest from the owner for delivery to the railroad without accepting any contractual obligation to verify the correctness of the manifest." Similarly, the Institute of Makers of Explosives (IME) recommends "a more simplified approach," suggesting that "DOT should expressly authorize those in the transportation stream receiving and transferring hazardous materials shipments to rely on the information certified and provided on shipping papers by the original offeror."

We are sympathetic to commenters' concerns that they not be held responsible for the performance of pre-transportation functions over which they have no control or direct responsibility. We are adopting in § 171.2 the language proposed in the NPRM to clarify that each offeror is responsible only for the specific pre-transportation functions it performs or is required to perform. At the same time, the "simplified approach" suggested by IME is not appropriate, as that would absolve everyone in the "transportation stream" who may receive and transfer hazardous materials shipments from the responsibility to make sure that the shipment conforms to all applicable HMR requirements. As noted above and discussed in detail in the preamble to the NPRM, offerors and carriers may rely on information provided by previous offerors or carriers, but that reliance is not absolute. An offeror or carrier that knows or should have known that the information is incorrect violates Federal hazmat law.

We agree with commenters that a carrier that performs functions as part of the process of accepting a hazardous material for transportation in commerce—functions that would, in other contexts, be considered pre-transportation functions—should not be considered a "person who offers or offeror" for purposes of the HMR. For example, a carrier who reviews a shipping paper accompanying a shipment of hazardous material that was tendered by an offeror before accepting that shipment for transportation in commerce, or who transfers without change information from a shipping paper to a shipping document for its own use, is not a "person who offers or offeror". Therefore, in this final rule, we are adding a sentence in the definition of "person who offers or offeror" in § 171.8 to indicate that a carrier that performs a function required by the HMR as a condition of acceptance of hazardous materials offered for transportation in commerce (*e.g.*, reviewing shipping papers, examining packages to identify any discrepancies or problems, or preparing shipping documents for its own use) is not an offeror when it performs no other pre-transportation functions. Of course, in performing its carrier functions, the carrier must also exercise reasonable care.

C. Joint and Several Liability

The Radiopharmaceutical Shippers and Carriers Conference asks us to "reject" that part of a formal interpretation published by RSPA in 1988 (55 FR 6761) that stated that, in the situation where more than one person is responsible for performing offeror functions, "each such person may be held jointly and severally liable for all or some of the 'offeror' responsibilities under the HMR." We note with respect to this comment that the concept of "joint and several liability" does not strictly apply to violations of the HMR when there are multiple persons; rather, each person is liable for its own violations that may involve noncompliance in: (1) Preparing a shipment of hazardous material for transportation (*i.e.*, improperly performing or failing to perform a pre-transportation function); (2) accepting for transportation a shipment of hazardous material that does not conform to the requirements in the HMR; or (3) failing to handle or transport a shipment of hazardous material in the manner required by the HMR. Thus, each person who knowingly violates an "offeror" requirement in the HMR may be assessed a civil penalty, and payment of a penalty by one violator does not satisfy a penalty assessed against another violator (unlike "joint and several liability," where payment by one party satisfies the obligations of all liable parties).

Further, we explicitly reject any notion, advanced by some commenters, that Federal agencies that enforce the HMR attempt to hold one party liable for another party's violation of the HMR. In other words, when a carrier accepts and transports a shipment of hazardous material that is not properly prepared for transportation in commerce, with actual or constructive knowledge of the noncompliance, the carrier's liability is based on its own improper acceptance and transportation of that shipment—not the violation of the person who improperly prepared the shipment. The application of "constructive knowledge"—when "a reasonable person acting in the circumstances and exercising reasonable care would have * * * actual knowledge of the facts giving rise to the violation" of the law or the HMR—is set forth in RSPA's prior interpretation published in the **Federal Register**, 63 FR 30411, 30412 (June 4, 1998), where we stated that:

> [A] carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material which has not been packaged, marked, labeled, or described on a shipping paper as required by the HMR. This means that a carrier may not ignore readily apparent facts that indicate that either (1) a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper, or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact that it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.
>
> * * * * *
>
> At the same time, an offeror who fails to properly declare (and prepare) a shipment of hazardous materials bears the primary responsibility for a hidden shipment. Whenever hazardous materials have not been shipped in compliance with the HMR, DOT generally will attempt to identify and bring an enforcement action against the person who first caused the transportation of a noncomplying shipment * * *.
>
> To the extent that any carrier, regardless of the mode of transportation, is truly "innocent" in accepting an undeclared or hidden shipment of hazardous materials, it lacks the knowledge required for assessment of a civil penalty.

The separate proceeding in Docket No. OST–01–10380 will consider the appropriateness of providing further discussion or examples of when a

carrier may be found to have sufficient knowledge for civil liability.

D. Definition of the Term "Shipper"

Several persons ask about our use of the word "shipper" in the HMR and letter interpretations. FPL Group states that RSPA has also used the term "shipper" in interpretation letters and that word is "printed on common straight bills of lading that can be purchased at truck stops and from hazmat supply companies." FPL concludes that "a 'shipper' and an 'offeror' are the same", and it recommends that the term "shipper" either be defined or added to the definition of "offeror" in order to avoid confusion. IME indicates that it assumes that we mean "offeror" when we use the word "shipper." The National Automobile Dealers Associate (NADA) states that the proposed definition of "person who offers or offeror" does not "clarify its relationship to the term 'shipper,' also currently undefined." NADA also states that there should be "only one 'person who offers or offeror' for any given shipment of hazardous materials, and that such person is the one who 'tenders or makes a hazardous material available to a carrier for transportation in commerce, notwithstanding the extent to which such person actually performs applicable pre-transportation functions.'"

Currie Associates complains that the practice of a railroad listing a prior (or successor) ocean carrier as the "shipper" on a train consist (because the railroads' "computerized systems are designed to list the 'billable party' as the shipper") has caused "unfounded charges being filed against the steamship line as the intermodal 'offeror'" when it carries forward "the emergency response telephone number" listed on the shipping papers prepared by the original shipper (offeror). VOHMA and WSC also state that "ocean carriers are placed in the impossible situation of having to choose between being cited for a violation of the HMR when they pass along the original emergency response telephone contact number to a connecting rail carrier on the one hand, or, on the other hand, providing their own telephone number—a number that will be essentially useless to a first responder," and they proposed that the "exclusion" language in subparagraph (2) of the proposed definition of "person who offers or offeror" be revised as follows:

> Notwithstanding anything to the contrary in subsection (1), no carrier shall be deemed to be an offeror by virtue of the fact that such carrier transfers, interlines, or interchanges (either between or within transportation modes) hazardous material to another carrier for transportation. No description of such a carrier in any commercial document as a "shipper," "customer," "tenderer," "offeror," or other similar description shall change the operation of the rule set forth in the immediately preceding sentence. Without limiting the generality of the foregoing, no transferring, interlining, or interchanging carrier shall be deemed to be the offeror of a hazardous material for transportation for the purposes of section 172.604 of this title (emergency response telephone number) or any successor section thereto.

Current Federal hazardous material transportation law has a history of almost 100 years, and the current HMR evolved over that period of time. When the word "shipper" is used, such as in the title of Part 173—"Shippers-General Requirements for Shipments and Packagings"—that word refers to a person who prepares a shipment for transportation. As already discussed, that person may also be a carrier, when it prepares the shipment for its own transportation (as a private carrier) or for transportation by a succeeding carrier. The word "shipper" is not used in the HMR in a commercial or contractual sense that denotes the economic arrangements of a shipment. We understand that, in certain circumstances, the consignee or recipient of a shipment may be listed as the "shipper" on a bill of lading, despite the fact that this person had nothing to do with preparing the shipment for transportation or the transportation itself. However, the designation of a person as a "shipper" on a bill of lading or other documents associated with a shipment of hazardous material is not determinative of whether that person is a "person who offers or offeror" for purposes of the HMR.

At this time, we do not believe it is necessary to modify the HMR to clarify the meaning of the term "shipper." Moreover, any such modification would be beyond the scope of this rulemaking. However, as we continue to assess the effectiveness of the revisions adopted in this final rule, we may decide to clarify the term "shipper" in a future rulemaking.

E. Emergency Response Telephone Number

As noted above, VOHMA and WSC express concern about enforcement issues associated with transferring an emergency response telephone number provided by the original offeror of a shipment to shipping documents prepared by a subsequent offeror or carrier to facilitate the continued movement of a hazardous material. In addition, IME asks DOT to clarify whether a freight forwarder or other carrier may legitimately transfer an emergency response telephone number "from that origin offeror's shipping paper to other shipping documents made necessary by intermodal transportation." IME states that "[e]mergency response telephone numbers and other essential information, such as the description of the hazardous material, from origin offeror's shipping papers are routinely transferred by entities in the transportation chain to forwarding shipping documents." Further, the American Chemistry Council commented that, in order for an organization such as CHEMTREC, which provides emergency response services, including a 24-hour telephone answering service, under contract to hazardous materials shippers and carriers, to be able to provide detailed emergency response information,

> the offeror identified on the shipping paper must in fact be registered. In other words, either the "preceding offeror" should be shown on the shipping paper, or the party that has taken on offeror functions (such as a freight forwarder) should itself be registered. The Council therefore requests that RSPA make clear to the regulated community the importance of retaining the linkage between an offeror and the organization that provides the offeror with emergency response telephone service.

As stated in the NPRM, a carrier or freight forwarder that prepares a new shipping paper must comply with all applicable requirements, but it may rely on information provided by the original offeror in preparing the new shipping paper. A carrier "may not accept for transportation or transport a shipment of hazardous material when the carrier is aware (or should be aware) of facts indicating that the emergency response telephone number is not operative and does not meet the requirements of [49 CFR] 172.604(b)." RSPA's February 10, 2004 letter to Hyundai America Shipping Agency, Inc. and June 27, 1996 letter to "K" Line America, Inc. in the docket. This principle was restated in the preamble to the NPRM, which reads:

> [A] carrier or freight forwarder may not rely on an emergency response telephone number provided by a preceding offeror when it is aware (or should be aware) of facts indicating the emergency response telephone number is not operative and does not meet the requirements of [49 CFR] 172.604(b).

69 FR at 57248 (internal quotations and citations omitted).

PHMSA agrees with the commenters that the original offeror is likely to have the most detailed information concerning the specific material and its

hazards and therefore is best situated "to provide specific information relative to the hazards of the materials being transported and provide immediate initial emergency response guidance until further specific information can be obtained* * *relative to long term mitigation actions." 54 FR 27138, 27142 (1989). Thus, a carrier or subsequent entity in the transportation chain may transfer the emergency response number provided on the original shipping paper by the original offeror to subsequent shipping documentation unless he or she knows (or should have known) that the number is not operative or does not meet the requirements in § 172.604 of the HMR.

The comments cited above and separate proceedings have made us aware of the potential problems that may arise when the original offeror contracts with an agency or organization that accepts responsibility for providing detailed emergency response information pursuant to § 172.604(b), but the identity of the original offeror is not set forth on the shipping paper in the possession of the carrier at the time of an incident during transportation. We plan to address this issue in greater detail in a separate rulemaking. In the meantime, the issue of the linkage between a third-party emergency response services provider, such as CHEMTREC, and the person who arranges to use such services to comply with § 172.604(b) of the HMR should be handled through the contract that governs the relationship. Thus, a person who arranges with a third-party to provide emergency response services required by the HMR should ensure that the shipping documentation that accompanies the shipment includes the information necessary to enable the third-party provider to identify the person who has contracted for emergency response services. This may necessitate special arrangements with subsequent offerors or carriers that will transfer the information provided by the original offeror to subsequent shipping documentation.

F. Transferring, Interlining, or Interchanging Hazardous Materials Shipments

In this final rule, we include in the definition of the term "person who offers or offeror" a provision that a carrier that transfers a hazardous material to another carrier for continued transportation is not an offeror when it performs no pre-transportation functions. We recognize that the terms "interline," and "interchange" have specific meanings within the context of the functions performed and that these meanings may not, in fact, be applicable to all modes of transportation. Therefore, in this final rule, we are revising the language proposed in the NPRM to indicate that a carrier who transfers a hazardous material to another carrier for continued transportation is not an offeror when it performs no pre-transportation functions. In this context, the term "transfer" means the shipment is physically passed or conveyed from one carrier to another for continued transportation in commerce.

We are aware that there also may be uncertainty over the use of the term "tender" in the definition for "person who offers or offeror" adopted in this final rule. The term "tender" is used to mean that the person who offers the hazardous material for transportation makes the hazardous material physically available to the originating carrier to begin its transportation in commerce.

G. Miscellaneous Issue

In response to a question from a commenter, we confirm that a "data entry person" who prepares a "carrier masterbill" is a hazmat employee who must be trained and tested in accordance with the requirements in 49 CFR 172.704—even if the shipment and its accompanying documentation are subsequently checked by a trained individual.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. As set forth in 49 U.S.C. 5103(b)(1)(A), the regulations are to apply to, among others, a person transporting a hazardous material in commerce or causing hazardous material to be transported in commerce. In this final rule, we are codifying in the HMR longstanding interpretations concerning the applicability of the HMR to persons who offer hazardous materials for transportation. The terms "offer" or "person who offers" are used throughout the HMR to describe the process of causing a hazardous materials to be transported in commerce. Codifying the applicability of the HMR to persons who offer hazardous materials for transportation will help the regulated community understand and comply with regulatory requirements applicable to specific situations and operations.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). No further regulatory evaluation is necessary because the definition of "person who offers or offeror" simply restates and codifies long-standing interpretations on the applicability of the HMR without making any substantive change and, thus, does not increase or decrease either the number of persons who must comply with the HMR or the costs of compliance with the HMR by those persons. No person who submitted comments on the NPRM provided any information to show that this final rule increases or decreases the costs of compliance with the HMR.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rule makes no change in the applicability of the HMR or, to the extent that the HMR have been adopted by a State and are being enforced as State requirements, the applicability of those State requirements. For this reason, PHMSA believes that nothing in this rule will preempt any State law or regulation or have any substantial direct effect or sufficient federalism implications that limit the policymaking discretion of the States. PHMSA did not receive any comment from a State or other interested party on whether it believed any State requirement is affected by the adoption of this rule.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to

have a significant economic impact on a substantial number of small entities.

Need and legal basis for the rule. This final restates and codifies prior interpretations on the applicability of the HMR to persons who offer a hazardous material for transportation in commerce. This rule is issued under the requirement in 49 U.S.C. 5103(b)(1)(A) for DOT to issue regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce that apply to a person causing hazardous material to be transported in commerce.

Identification of potentially affected small entities. Unless alternative definitions have been established by an agency in consultation with the Small Business Administration (SBA), the definition of "small business" has the same meaning under the Small Business Act. Because no special definition has been established, PHMSA employs the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms who are subject to the HMR are small businesses. These entities will incur no new costs to comply with the HMR, because this final rule makes no change in the applicability of the HMR.

Related Federal rules and regulations. The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor issues regulations related to safe operations, including containment and transfer operations, involving hazardous materials in the workplace. These regulations are codified at 29 CFR part 1910 and include requirements for process safety management of highly hazardous chemicals and for operations involving specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA regulations also address hazard communication requirements at fixed facilities, including container labeling and other forms of warning, material safety data sheets, and employee training.

The U.S. Environmental Protection Agency (EPA) issues regulations on the management of hazardous wastes, including the tracking of hazardous wastes transported from a generator to a treatment, storage, or disposal facility. These regulations are codified at 40 CFR parts 260–265. As provided by Section 3003(b) of the Resource Conservation and Recovery Act (42 U.S.C. 6923(b)), EPA's regulations applicable to transporters of hazardous waste are consistent with requirements in the HMR.

EPA also issues regulations designed to prevent accidental release into the environment of hazardous materials at fixed facilities, codified at 40 CFR part 68. These regulations include requirements for risk management plans that must include a hazard assessment, a program for preventing accidental releases, and an emergency response program to mitigate the consequences of accidental releases. EPA regulations on hazardous materials at fixed facilities also address community right-to-know requirements, hazardous waste generation, storage, disposal and treatment, and requirements to prevent the discharge of oil into or onto the navigable waters of the United States or adjoining shorelines.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) of the U.S. Department of Justice issues regulations on licensing, permitting and safe handling (including storage) of explosives, codified at 27 CFR part 555. These regulations do not apply to "any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety." 18 U.S.C. 845(a)(1).

The Nuclear Regulatory Commission issues regulations, codified in 10 CFR, governing its licensees who acquire, receive, possess, use, and transfer certain radioactive materials, including requirements on packagings used in transporting these materials and the physical protection of these materials at fixed facilities and during transportation.

Conclusion. This final rule makes no change in the applicability of the HMR and imposes no new costs of compliance with the HMR requirements. I hereby certify that the rule does not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose any mandate and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

H. Environmental Assessment

There are no environmental impacts associated with this final rule.

I. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78), or at *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous Waste, Imports, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR, subtitle B, chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701, 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.2, revise paragraphs (b) and (f), to read as follows:

§ 171.2 General requirements.

* * * * *

(b) Each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of this subchapter, or an exemption, approval, or registration issued under this subchapter or under subchapter A of this chapter. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of this subchapter, or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter, with respect to any pre-transportation function that it performs or is required to perform; however, each offeror is responsible only for the specific pre-transportation functions

that it performs or is required to perform, and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.

* * * * *

(f) No person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter, or an exemption, approval, or registration issued under this subchapter or subchapter A of this chapter. Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect.

* * * * *

■ 3. In § 171.8, add a definition for "person who offers or offeror" in appropriate alphabetical order, to read as follows:

§ 171.8 Definitions and abbreviations.

Person who offers or *offeror* means:

(1) Any person who does either or both of the following:

(i) Performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.

(ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.

(2) A carrier is not an offeror when it performs a function required by this subchapter as a condition of acceptance of a hazardous material for transportation in commerce (*e.g.*, reviewing shipping papers, examining packages to ensure that they are in conformance with this subchapter, or preparing shipping documentation for its own use) or when it transfers a hazardous material to another carrier for continued transportation in commerce without performing a pre-transportation function.

* * * * *

Issued in Washington, DC on July 21, 2005, under authority delegated in 49 CFR part 1.

Brigham A. McCown,

Deputy Administrator.

[FR Doc. 05–14912 Filed 7–27–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 072105A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the yellowfin sole initial total allowable catch (ITAC) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective July 28, 2005, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005. Comments must be received at the following address no later than 4:30 p.m., A.l.t., August 9, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- Fax to 907–586–7557;
- E-mail to *bsairelys@noaa.gov* and include in the subject line of the e-mail comment the document identifier: bsairelys; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the Instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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.

The 2005 ITAC of yellowfin sole in the BSAI was established as 77,083 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). The Administrator, Alaska Region, NMFS, has determined that the ITAC for yellowfin sole in the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 6,800 metric tons from the non-specified reserve of groundfish to the yellowfin sole ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specification of the acceptable biological catch (70 FR 8979, February 24, 2005).

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) and § 679.20(b)(3)(iii)(A) as such a 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 apportionment of the non-specified reserves of groundfish to the yellowfin sole fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 9, 2005.

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.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until August 9, 2005.

This action is required by 50 CFR 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 22, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–14950 Filed 7–25–05; 1:28 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 144
Thursday, July 28, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 32, and 150

RIN: 3150–AH48

National Source Tracking of Sealed Sources

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to implement a National Source Tracking System for certain sealed sources. The proposed amendments would require licensees to report certain transactions involving these sealed sources to the National Source Tracking System. These transactions would include manufacture, transfer, receipt, or disposal of the nationally tracked source. The proposed amendment would also require each licensee to provide its initial inventory of nationally tracked sources to the National Source Tracking System and annually verify and reconcile the information in the system with the licensee's actual inventory. In addition, the proposed amendment would require manufacturers to assign a unique serial number to each nationally tracked source.

DATES: Submit comments on the rule by October 11, 2005. Submit comments specific to the information collections aspects of this rule by August 29, 2005. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH48) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

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

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

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

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

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

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

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

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

As a result of the terrorist attacks in the United States on September 11, 2001, the NRC has undertaken a comprehensive review of nuclear material security requirements, with particular focus on radioactive material of concern. This material (which includes Cobalt-60, Cesium-137, Iridium-192, and Americium-241

isotopes, as well as other isotopes) has the potential to be used in a radiological dispersal device (RDD) or a radiological exposure device (RED) in the absence of proper security measures. The NRC's review takes into consideration the changing domestic and international threat environments and related U.S. Government-supported international initiatives in the nuclear security area, particularly activities conducted by the International Atomic Energy Agency (IAEA).

In June 2002, the Secretary of Energy and the NRC Chairman met to discuss the adequate protection of inventories of nuclear materials that could be used in a RDD. At the June meeting, the Secretary of Energy and the NRC Chairman agreed to convene an Interagency Working Group on Radiological Dispersal Devices to address security concerns. In May 2003, the joint U.S. Department of Energy (DOE)/NRC report was issued. The report, entitled, "Radiological Dispersal Devices: An Initial Study to Identify Radioactive Materials of Greatest Concern and Approaches to Their Tracking, Tagging, and Disposition" is available on the DOE Web site at: *http://www.energy.gov/engine/doe/files/dynamic/9620039919_RDDRPTF14MAY.pdf.* One of the recommendations contained in the report is that a national source tracking system be developed to better understand and monitor the location and movement of sources of interest. The full report contains a list of radionuclides and thresholds above which tracking of the sources is recommended. Note that in the public version the table of radionuclides has been redacted.

The NRC has also supported U.S. Government efforts to establish international guidance for the safety and security of radioactive materials of concern. This effort has resulted in a major revision of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct). The revised Code of Conduct was approved by the IAEA Board of Governors in September 2003, and is available on the IAEA Web site at *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004.pdf.* In particular, the Code of Conduct recommends that each IAEA member State develop a national source registry of radioactive sources that should include Category 1 and 2 radioactive sources as described in Annex 1 of the Code of Conduct. The recommendation covers 16 isotopes that should be included in the source registry.

The work on the DOE/NRC joint report was done in parallel with the work on the Code of Conduct and the development of IAEA TECDOC–1344, "Categorization of Radioactive Sources." TECDOC–1344 provides the underlying methodology for the development of the Code of Conduct thresholds. The quantities of concern identified in the DOE/NRC report are similar to the Code of Conduct Category 2 threshold values, so to allow alignment between the domestic and international efforts to increase the safety and security of radioactive sources, NRC has adopted the Category 2 values.

The U.S. Government has formally notified the Director General of the IAEA of its strong support for the current Code of Conduct. Although the Code of Conduct does not have the stature of an international treaty, and its provisions are non-binding on IAEA member States, the U.S. Government has endorsed the Code of Conduct and is working toward implementation of its various provisions. The Commission is conducting this rulemaking and an import/export rulemaking to reflect those Code of Conduct recommendations which are consistent with NRC responsibilities under the Atomic Energy Act, including promotion of the common defense and security. This is the second rulemaking that the Commission has undertaken to implement provisions of the Code of Conduct. A final rule addressing the import/export of Category 1 and 2 radioactive materials was published on July 1, 2005 (70 FR 37985).

Efforts to improve controls over sealed sources face significant challenges, especially balancing the need to secure the materials without discouraging their beneficial use in academic, medical, and industrial applications. Radioactive materials provide critical capabilities in the oil and gas, electrical power, construction, and food industries; are used to treat millions of patients each year in diagnostic and therapeutic procedures; are used in a variety of military applications; and are used in technology research and development involving academic, government, and private institutions. These materials are as diverse in geographical location as they are in functional use.

National source tracking is part of a comprehensive radioactive source control program for radioactive materials of greatest concern. Although neither a national source tracking system nor source registry can ensure the physical protection of sources, it will provide greater source accountability which will foster increased control by licensees. A national source tracking system in conjunction with controls such as those imposed by Orders on irradiator licensees, manufacturer and distributor licensees, and other material licensees will result in improved security for radioactive sources.

There is clearly broad U.S. Government and international interest in tracking radioactive sources to improve accountability and control. Currently, there is no single U.S. source of information to verify the licensed users, locations, quantities and movement of these materials. Separate NRC and Agreement State systems contain information on licensees and the maximum amounts of materials they are authorized to possess but do not record actual sources or their movements.

To address this lack of information on such issues as actual material possessed, the NRC, with the cooperation of the Agreement States, began working on an interim database of sources of concern. In November 2003, both NRC and Agreement State licensees were contacted and requested to voluntarily provide some basic information on the sealed sources located at their facilities. Of the approximately 2600 licensees contacted, over half of the licensees reported possessing Category 1 or Category 2 sealed sources. The interim database will be updated in 2005 and again in 2006 and will ultimately be replaced by the National Source Tracking System. While the interim database provides a snapshot in time, the National Source Tracking System will provide information on an ongoing basis.

Development of the National Source Tracking System is a two-part activity that includes both a rulemaking and information technology development. When completely operational, the National Source Tracking System will be a web-based system that would allow licensees to meet the proposed reporting requirements on-line with ease. The system will contain information on NRC licensees, Agreement State licensees, and DOE facilities. This proposed rulemaking would impose requirements on both NRC and Agreement State licensees and would establish the regulatory foundation for the National Source Tracking System recommended in the DOE/NRC report and implement the Code of Conduct recommendation to develop a source registry. National Source Tracking is being developed and would be implemented under the NRC's statutory authority to promote the common defense and security. To

inform the development of the National Source Tracking System, the NRC established an Interagency Coordinating Committee to provide guidance regarding interagency issues associated with the development, coordination, and implementation of the system and to prevent licensees from receiving similar requests from more than one agency. The Committee membership consists of representatives from various Federal Agencies with an interest in source security and a representative from the Agreement States. The views of the Committee were included in the development of the requirements for the National Source Tracking System and this rulemaking. NRC will be the database manager of the National Source Tracking System, however, the other agencies may become users of the system and have limited access.

II. Discussion

A. What Action Is the NRC Taking?

The NRC is proposing a rule that would implement a new program called the National Source Tracking System. The proposed rule would require licensees to report information on the manufacture, transfer, receipt, and disposal of nationally tracked sources. This information would capture the origin of each nationally tracked source (manufacture, recycling, or import), all transfers to other licensees, all receipts of nationally tracked sources, and endpoints of each nationally tracked source (disposal or export). Ultimately, the National Source Tracking System would be able to provide a life history account of all nationally tracked sources.

A system of this type would need prompt updating to be useful and accurate. In order to capture information as soon as possible, licensees would be required to report information on nationally tracked source transactions by the close of the next business day. To ease the burden on licensees, the NRC is planning to establish a secure Internet-based interface to the National Source Tracking System. This interface would permit licensees access to the system using an Internet browser. Licensees would log on to the system and enter the required information by filling out a form on-line. While on-line access should be fast, accurate, and convenient for licensees, the NRC would also allow licensees the option of completing and mailing or faxing paper forms. In addition, licensees would also be able to provide batch information using a computer readable format file. The format will be specified in a guidance document on implementation of the National Source Tracking System.

B. What Is a Nationally Tracked Source?

A sealed source consists of radioactive material that is permanently sealed in a capsule or closely bonded to a non-radioactive substrate designed to prevent leakage or escape of the radioactive material. In either case, it is effectively a solid form of radioactive material which is not exempt from regulatory control. A nationally tracked source is a sealed source containing a quantity of radioactive material equal to or greater than the Category 2 levels listed in the proposed new Appendix E to 10 CFR part 20. A nationally tracked source may be either a Category 1 source or a Category 2 source. For the purpose of this rulemaking, the term nationally tracked source does not include material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Material encapsulated solely for disposal refers to material that without the disposal packaging would not be considered encapsulated. For example, a licensee's bulk material that it plans to send for burial may be placed in a matrix (*e.g.* mixed in concrete), to meet burial requirements. The placement of the radioactive material in the matrix material may be considered encapsulating. This type of material would not be covered by the rule. However, if a nationally tracked source were to be placed in a matrix material, the sealed source would still be covered by the rule.

Category 1 nationally tracked sources are those containing a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold. This definition is based on the IAEA Code of Conduct and is consistent with the definition of sealed sources in other parts of the NRC regulations and with definitions contained in Agreement State regulations.

The specific radioactive material and amounts covered by this rule are listed in the proposed Appendix E to part 20. The isotopes and thresholds of 15 of the isotopes are identical to the Table I values from the Code of Conduct. The IAEA Code of Conduct includes a recommendation that these isotopes and thresholds be included in a national source registry. The U.S. Government has formally endorsed these values. The NRC has adopted the Category 2 values to allow alignment between domestic and international efforts to increase the safety and security of radioactive sources.

The Terabecquerel (TBq) values listed in Appendix E are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only and are rounded after conversion. The curie values are not intended to be the regulatory standard.

Table I of the IAEA Code of Conduct actually lists 16 isotopes that should be included in a national source registry. Included in this listing is radium (Ra)-226. Because NRC does not regulate Ra-226, it will not be subject to the proposed rule requirements. However, the National Source Tracking System will allow licensees to voluntarily enter transactions for Ra-226 sealed sources. Additionally, States may decide to develop regulations that require their licensees to report Ra-226 transactions to the State. The NRC could decide to allow such transaction reports to be recorded in the National Source Tracking System. The Category 2 threshold for Ra-226 is 0.4 TBq.

The Commission recognizes that by allowing voluntary reporting, the Ra-226 information in the National Source Tracking System will not be reliable. Some licensees might report their Ra-226 transactions and others might not. This could result in one-sided transactions in the system. For example, a licensee may report the transfer of a Ra-226 source but the recipient may not report its receipt of the Ra-226 source. However, there were no Ra-226 sealed sources reported to the interim database, and while this does not mean that there are no Ra-226 sealed sources (the interim database survey did not go to the entire population of facilities that could possess Ra-226), the Commission believes that the inclusion of voluntary reporting of Ra-226 sealed sources will allow the U.S. Government to more fully address the Code of Conduct recommendation for a source registry. The NRC specifically invites comment on whether States would be willing to develop regulations that would require their licenses to report Ra-226 to either the State or to the National Source Tracking System.

The Commission has expanded the National Source Tracking System list of isotopes to include 6 isotopes that are not on the Code of Conduct list and one isotope that is listed in the Code of Conduct but is not included in the recommendation for the source registry. The 7 additional isotopes to be included are actinium (Ac)-227, plutonium (Pu)-236, Pu-239, Pu-240, polonium-210, thorium (Th)-228, and Th-229. The

DOE/NRC RDD report recommendation for a National Source Tracking System included these 7 isotopes. The thresholds were developed using the same methodology as those listed in the Code of Conduct. These isotopes were included in the interim database. Based on information from the interim database, NRC and Agreement State licensees do not possess large numbers of nationally tracked sources containing these isotopes. However, this is a national system and will include information from DOE facilities. DOE facilities are more likely to possess these isotopes and DOE agreed that these isotopes should be included. Therefore, the Commission is including them in this rulemaking.

At this time, the NRC does not plan to include Category 3 sources (sources at 1/10th of the Category 2 threshold). However, we may consider the inclusion of Category 3 sources in the future because a licensee possessing a large number of Category 3 sources could present a security concern. An item level tracking system cannot include aggregation of sources because the sources may move in and out of the tracking system with changes in ownership. For example, a manufacturer could possess enough material that a Category 3 source would be reported, however, a licensee receiving the Category 3 source may not need to report the receipt because this is its only source. The tracking system would have information on the manufacture and transfer of the source, but not on its receipt. The data on Category 3 sources could quickly become unreliable. The best way to address the concern of aggregation within an item-level tracking system would be to the lower the threshold for tracking so that all parties would be required to report transactions.

The NRC specifically invites comment on the inclusion of Category 3 sources in the National Source Tracking System. We are interested in information concerning:

(1) The number of additional licensees that would be impacted;

(2) The number of Category 3 sources possessed by licensees; and

(3) How often those sources change hands.

This information will enable the NRC to make a more informed decision on the inclusion of Category 3 sources in the National Source Tracking System. Category 3 sources are typically used in fixed industrial gauges involving high activity sources (*e.g.*, level gauges, dredger gauges, conveyor gauges, and spinning pipe gauges) and in high dose rate remote afterloaders for medical therapy.

C. Who Would This Action Affect?

The proposed rule would apply to any person (entity or individual) in possession of a Category 1 or Category 2 source. It would apply to—

All licensees, both those with NRC licenses and those with Agreement State licenses;

Manufacturers and distributors of Category 1 and Category 2 sources;

Medical facilities, radiographers, irradiators, reactors, and any other licensees that are the end users of nationally tracked sources; and

Disposal facilities and waste brokers.

The proposed rule would apply whether the source is actively used or in long-term storage.

Nationally tracked sources are possessed by all types of licensees, but primarily by byproduct material licensees. Nationally tracked sources are used in the oil and gas, electrical power, construction, medical, and food industries. They are used in a variety of military applications and in technology research and development. Nationally tracked sources are classified either Category 1 or 2 based on the activity level of the radioactive material of concern. Category 1 sources are typically used in devices such as radiothermal generators and irradiators, and in practices such as radiation teletherapy. Category 2 sources are typically used in industrial gamma radiography, blood irradiators, and some well logging.

D. How Would Information Be Reported to the National Source Tracking System?

Licensees would have several options for reporting transaction information to the National Source Tracking System. These methods would include on-line, computer-readable format files, paper, fax, and telephone. For most licensees, the most convenient, least burdensome method will be to report the information on-line. To report information on-line, a licensee would need to establish an account with the National Source Tracking System. Once an account is established, the licensee would be provided with password information that would allow access to the on-line system. A licensee would have access only to information regarding its own material or facility; a licensee would not have access to information concerning other licensees or facilities. When logged on, the licensee could type the necessary information onto the on-line forms. Once a source is in the system, the licensee would be able to click on the source and report a transfer or other transaction. The identifying information would not need to be typed in a second time because information such as license number, facility name, and address would pop up automatically.

Many licensees conduct a large number of transactions, especially manufacturing and distribution licensees. We recognize that most licensees have a system in which information on sources is maintained. The National Source Tracking System would be able to accept batch load information using a computer-readable format. This should ease the reporting burden for a licensee with a large number of transactions. The licensee would be able to electronically send a batch load using a computer readable format file that contained all of the transactions that occurred that day. The format could also be used for reporting the initial inventory. The computer-readable format that would be used has not been developed yet. NRC and the company responsible for developing the National Source Tracking System will work with licensees to develop the mechanism to accept batch load information so that it is compatible with many of the existing systems in use by licensees.

Licensees would also be able to complete a paper version of the National Source Tracking Transaction form and submit the form by either mail or fax. Additionally, licensees would be able to provide transaction information by telephone and then follow-up with a paper copy. Additional guidance on submitting information will be provided when the final rule is published. The guidance would contain mailing addresses and telephone and fax numbers for providing information to the National Source Tracking System, as well as information on the computer-readable format to be used.

E. Would a Licensee Need To Report Its Current Inventory to the System?

Yes, licensees would be required to report their current inventory of nationally tracked sources by a specified date. There would be separate report dates for Category 1 and Category 2 level nationally tracked sources. Licensees would be required to report all Category 1 sources to the National Source Tracking System by December 31, 2006, and all Category 2 sources by March 31, 2007.

To ease the reporting process, information already in the interim database would be downloaded to the National Source Tracking System. Each licensee that reported information to the interim database would be provided a

copy of its information and asked to either verify the information or provide updated information. NRC staff and the company that will operate the National Source Tracking System will work with licensees to make sure the inventory information is correct. Licensees that did not provide information to the interim database would need to report the information on its nationally tracked source inventory by the specified dates. Disposal facilities would not need to report sources that have already been buried or otherwise disposed.

F. What Information Would Be Collected on Source Origin?

Each time a nationally tracked source is manufactured in the United States, the licensee would be required to report the source information to the National Source Tracking System. The information must be reported by the close of the next business day. The licensee would report the manufacturer (make), model number, serial number, radioactive material, activity at manufacture, and manufacture date for each source. The licensee must also provide its license number, facility name, as well as the name of the individual that prepared the report.

Some sources are recycled or reconfigured. For example, a source that has decayed below its usefulness is sometimes returned to the manufacturer for reconfiguration. The decayed source may be placed in a reactor and reactivated. The source retains its serial number, but now has a new activity. The new activity and date must be reported to the National Source Tracking System.

For every nationally tracked source that is imported, the facility obtaining the source would be required to report the source information to the National Source Tracking System by the close of the next business day after receipt of the imported source at the site. For the purposes of the National Source Tracking System, this would be considered the source origin unless the source had been previously possessed in the United States. The licensee would need to report the manufacturer (make), model number, serial number, radioactive material, activity at manufacture or import, and manufacture or import date for each source. The licensee must also provide its license number, facility name, as well as the name of the individual that prepared the report and the date of receipt. The licensee would also need to provide information on the facility (name and address) that sent the source and the import license number.

Under separate regulations on import/export of radioactive material, the NRC will be notified on imports of radioactive material at Category 2 levels or above (70 FR 37985; July 1, 2005). This notification should include source identification information. NRC staff would enter the notification information into the National Source Tracking System. Therefore, a licensee that is receiving imported nationally tracked sources may be able to report the transaction as a simple receipt, if using the on-line method. Much of the source information would already be in the National Source Tracking System; the licensee would be able to click on the pending import and then click on the source to indicate that the source had been received at the site.

G. What Information Would Be Collected on Source Transfer?

Each time a nationally tracked source is transferred to another authorized facility, the licensee would be required to report the transfer to the National Source Tracking System by the close of the next business day. The licensee must report the recipient name (facility the source is being transferred to) and license number, the shipping date, the estimated arrival date, and the identifying source information (manufacturer, model number, serial number, and radioactive material). If the source is being exported, the export license number would be reported for the recipient's license number. The licensee also would need to provide its name and license number as well as the name of the individual making the report. For nationally tracked sources that are transferred as waste under a Uniform Low-level Radioactive Waste Manifest, the licensee would also have to report the waste manifest number and the container identification number for the container with the nationally tracked source.

Source transfer transactions only cover transfers between different licensees and/or authorized facilities (DOE site or an export). They do not include transfer to a temporary job site. Transactions in which the nationally tracked source remains in the possession of the licensee would not require a report to the National Source Tracking System. For example, a radiographer conducting business would not need to report transfers between temporary job sites, even if the temporary job site is located in another state or if the work is conducted under a reciprocity agreement. The NRC specifically invites comment on whether licensees should be required to report as a transaction the use of a nationally tracked source at temporary job sites. Specifically should the NRC require reporting of:

(1) All transactions involving the use of a nationally tracked source at a temporary job site;

(2) Any transactions involving the use of a nationally tracked source at a temporary job site in another state either under the same license or a different license; or

(3) No transactions involving the use of a nationally tracked source at a temporary job site (as proposed in the rule)? If the NRC were to require reporting of transactions involving temporary job sites, how much additional burden would be imposed on licensees and what should the reporting timeframe be?

H. What Information Would Be Reported for Receipt of Sources?

A licensee would be required to report each receipt of a nationally tracked source by the close of the next business day. The licensee must report the identifying source information (manufacturer, model number, serial number, and radioactive material) and the date of receipt. The licensee must include its facility name and license number and the name of the individual that prepared the report. The licensee must also provide the name and license number of the facility that sent the source because this information is necessary to match the transactions. If the source is an import, the licensee would also need to report the source activity and associated activity date. The import license number would be reported as the license number of the sending facility. If a licensee receives a nationally tracked source as part of a waste shipment, the licensee must provide the Uniform Low-level Radioactive Waste Manifest number and the container identification for the container that contains the nationally tracked source. A waste broker or disposal facility are examples of licensees that might receive a nationally tracked source as part of a waste shipment. These licensees would not be expected to open the waste container and verify the presence of the nationally tracked source; they may rely on the licensee who shipped the source. Because there is no verification that the source is in the waste container, should the facility be required, at a minimum, to investigate the container for any indication of tampering? The NRC specifically invites comment on whether a waste broker or disposal facility should be required to inspect the waste container for an indication of tampering to provide additional

assurance the source is still in the container.

I. What Information Would Be Reported on Source Endpoints?

Endpoints for a source include export, disposal, decay, and destruction of the source. Exports would be treated as a transfer. (See Section G for more information on source transfer.) An export is considered a reversible endpoint because the source can be imported back into the country. The export license number would be reported as the license number of the receiving facility.

Disposal of a source would be reported by the licensee conducting the actual burial in a low-level disposal facility or other authorized disposal mechanism. Licensees sending a source to a low-level burial ground for disposal would treat the transaction as a transfer, and would report the types of information to be reported for a transfer, including the waste manifest number and the container identification number. The disposal facility may rely on the information from the licensee that sent the waste for disposal and is not expected to open the waste container to verify contents. The disposal facility must report to the National Source Tracking System the date and method of disposal, the waste manifest number, and the container identification number for the container with the nationally tracked source. The disposal facility must also provide its facility name and license number, as well as the name of the individual that prepared the report. The report must be made by the close of the next business day.

One feature of the National Source Tracking System would be that the decay of a source would be automatically calculated so a licensee would not need to report an endpoint of decay. Once a source has decayed below Category 2 levels, the source would be automatically removed from a licensee's active inventory in the National Source Tracking System. The licensee would receive a notification that the source has decayed below the tracking level and that transactions for this source no longer need to be reported.

Licensees currently report accidental destruction of sources to the NRC Operations Center or to the Agreement States. NRC staff would enter the information from the event report into the National Source Tracking System. Because sealed sources are designed to be robust, accidental destruction is rare. Examples of accidental destruction include sources destroyed during attempts to remove them from devices, and well logging sources that become disconnected downhole and destroyed during retrieval attempts.

Other endpoints that would be captured by the National Source Tracking System include a lost or stolen source or a source abandoned in a well. These events are already reported to either NRC or to the Agreement State. Licensees would not be required to report this information a second time to the National Source Tracking System. Agreement State licensees would continue to report to the Agreement State. NRC staff would obtain the information on these events from the event reports or the Nuclear Medical Event Database and enter the information into the National Source Tracking System.

J. How Would the National Source Tracking System Information Be Kept Current?

Data integrity for the National Source Tracking System is extremely important and necessary to keep the information correct and up-to-date. Licensees are expected to provide correct information to the National Source Tracking System and should double-check the accuracy of information before submission. To address quality assurance concerns on the data, the NRC is considering adding a requirement that would require licensees to double-check the accuracy of the data by using two independent checkers before submission of the transaction report. The NRC specifically invites comment on the inclusion of a requirement for a quality assurance check of the data before submission. We are interested in information concerning:

(1) Whether these are the appropriate requirements for quality assurance;

(2) What are the appropriate requirements for quality assurance; and

(3) The additional burden such a requirement would impose on licensees.

If licensees accurately report their transactions in a timely manner, the National Source Tracking System would contain correct, up-to-date information. However, we recognize that some transactions may be missed and that errors may be introduced into the system over time. Typical reasons for discrepancies, which might nevertheless occur, could be failure to report the receipt of a source, failure to report the transfer of a source to another licensee, missing a source during the reporting of the initial inventory, selection of the wrong model number, or incorrectly typing the serial number. Each licensee would be required to correct any errors or missed transactions that it discovers within 5 business days of the discovery. In addition, licensees would be required to reconcile their on-site inventory of nationally tracked sources with the information previously reported to the National Source Tracking System. This reconciliation would occur during the month of June of each year. This reconciliation would be necessary to maintain the accuracy and reliability of the National Source Tracking database. The licensee would be able to print a copy of the inventory information from the National Source Tracking System. Licensees without on-line access would receive a paper copy of the information in the National Source Tracking System. The licensee would compare the information in the system to the actual inventory at the licensee's facility, including a check of the model and serial number of each source. This reconciliation would not require the licensee to conduct an additional physical inventory of its sources. Licensees are currently required to conduct physical inventories either annually, semi-annually, or quarterly depending on the type of license. The licensee would be required to reconcile any differences by reporting the appropriate transaction(s) or corrections to the National Source Tracking System. The licensee would be required to verify by the end of June of each year that the inventory in the National Source Tracking System is correct. The first reconciliation would occur in June 2007.

K. How Would Incorrect Information Be Changed in the National Source Tracking System?

Each licensee would be responsible for correcting any incorrect information in the National Source Tracking System, regardless of the source of the error, within 5 business days of the discovery. Typing errors and errors such as inadvertent selection of the wrong model number need to be corrected in the system so that the information in the National Source Tracking System is correct. A licensee would be able to submit a corrected form that contains the correct information online or through any other permitted reporting mechanism at any time.

L. Some Licensees Now Must Report Similar Information to the Nuclear Materials Management Safeguards System. Would This Rule Result in a Duplication in Reporting?

Yes, some information on plutonium (Pu) and thorium (Th) would be collected by both the Nuclear Materials Management Safeguards System (NMMSS) and the National Source Tracking System. The current regulations require reporting transfers,

receipts, and inventory to NMMSS for one gram or more of plutonium and any thorium that has foreign obligations. However, NMMSS does not collect information at the source level; therefore, the detailed information (make, model, serial number) on sealed sources could not be extracted from NMMSS to provide input into the National Source Tracking System. The National Source Tracking System would only have information on sealed sources and would not contain information on sources that are not considered sealed or on any bulk material that a licensee may possess. The thresholds are also different for the two systems. Therefore, we would not be able to extract information from the National Source Tracking System to support NMMSS. Neither system would be able to collect the needed information for the other system without modifications to the database and additional changes to the regulations. The two system also have different purposes.

In practice, NRC finds that these Pu and Th sources are typically held by licensees for long time periods and not routinely transferred to other licensees, so incidences of double-reporting are expected to be rare. No licensee reported Th sources to the interim database, and there were only 21 Pu sealed sources reported that were above the Category 2 threshold. The NRC does not believe that the limited number of licensees and transactions likely to be affected by this dual reporting requirement would impose an unnecessary burden. The NMMSS and the National Source Tracking System would collect information on these isotopes for different purposes and in different formats and with different levels of detail and thresholds as needed by each system. Therefore, the Commission believes that NMMSS and the National Source Tracking System should remain separate.

M. Are the Proposed Actions Consistent With International Obligations?

Yes, the National Source Tracking System will be consistent with international obligations. The system is intended to respond to the recommendation in the IAEA Code of Conduct for development of a national source registry.

N. When Do These Actions Become Effective?

The rule would become effective 60 days after the final rule is published in the **Federal Register**. The requirements for Category 1 nationally tracked sources would be implemented by December 31, 2006. This means that by this date any licensee that possesses a Category 1 level source must have reported its initial inventory and report thereafter all transactions involving Category 1 sources to the National Source Tracking System. The requirements for Category 2 nationally tracked sources would be implemented by March 31, 2007. By this date, all licensees must have reported their initial inventory of nationally tracked sources and report thereafter all transactions to the National Source Tracking System.

O. Who Would Have Access to the Information and What Would It be Used for?

Information in the National Source Tracking System will be considered Official Use Only; the information will not be considered to be Safeguards Information or Safeguards Information—Modified Handling. A licensee would be able to view the data on its facility, but not data on other licensees. Agreement State staff would be able to view information on the licensees in their state, but would not be able to view information on licensees in other states. The one exception is information related to lost or stolen sources. Agreement State staff would be able to view the information on lost or stolen sources from all licensees. This will enable better coordination of recovery efforts. Other Federal and State agencies will also be able to view the information on lost or stolen sources and other information on a need-to-know basis.

Licensees are not required to protect Official Use Only information, it is the equivalent of company proprietary information and licensees may share the information at their discretion. The NRC specifically invites comment on whether this provides adequate protection of the information or whether licensees should be required to protect the information that is reported to the National Source Tracking System. If additional protection should be necessary, what level of protection is viewed to be necessary?

Once fully operational, the National Source Tracking System would be used for a variety of purposes. This standardized, centralized information will help NRC and Agreement States to monitor the location and use of nationally tracked sources; conduct inspections and investigations; communicate nationally tracked source information to other government agencies; verify legitimate ownership and use of nationally tracked sources; and further analyze hazards attributable to the possession and use of these sources.

P. What Other Things Would Be Required by the Proposed Action?

The proposed rule would also require manufacturers of nationally tracked sources to use a unique serial number for each source. The combination of manufacturer, model, and serial number will be used in the National Source Tracking System to track the history of each source.

Q. What Should I Consider As I Prepare My Comments to NRC?

Tips for preparing your comments. When submitting your comments, remember to:

i. Identify the rulemaking (RIN 3150–AH48).

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

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

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

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

vi. Explain your views as clearly as possible.

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

viii. See item B of the Discussion portion of this notice for NRC's specific request for comments regarding State development of regulations on R-226 and the future inclusion of Category 3 sources in the National Source Tracking System. See item G of the Discussion portion of this notice for the request for comments on requiring licensees to report use of nationally tracked sources at temporary job sites. See item H of the Discussion portion of this notice for the request for comment on requiring waste brokers and disposal facilities to inspect waste containers for an indication of tampering. See item J of the Discussion portion of this notice for the request for comments regarding the inclusion of a quality assurance provision on data submission. See item O of the Discussion portion of this notice for the request for comments on licensee protection of the information reported to the National Source Tracking System. See section IX for the request for comments on the information collection aspects and section XII for the request for comments on the impacts to small businesses.

III. Discussion of Proposed Amendments by Section

Section 20.1003 Definitions

A definition of nationally tracked sources would be added to the regulations.

Section 20.2207 Reports of Transactions Involving Nationally Tracked Sources

A new section would be added to the regulations to require licensees to report to the National Source Tracking System transactions involving nationally tracked sources. New paragraph (a) Would require the reporting of the manufacture of a nationally tracked source. New paragraph (b) would require the reporting of all transfers of nationally tracked sources to another authorized facility. New paragraph (c) would require the reporting of all receipts of a nationally tracked source. New paragraph (d) would require the reporting of the disposal of any nationally tracked source. Each of these paragraphs would require the licensee to report specific information for the transaction, which would include for each source information such as the manufacturer, model, serial number, radioactive material, activity and activity date, and the transaction date. The licensee would also need to provide the facility name, license number, address, and name of the individual that prepared the report. If the transaction involves the use of the Uniform Low-Level Radioactive Waste Manifest, the licensee would need to report the waste manifest number and the container identification for the container with the source.

New paragraph (e) would require licensees to report these transactions to the National Source Tracking System by the close of the next business day. The regulations would allow the licensee to report the transactions either on-line, electronically using a computer-readable format, by facsimile, by mail, or by telephone.

New paragraph (f) would require each licensee to correct any error in a previously filed report or file a new report for a missed transaction within 5 business days of the discovery of the error or missed transaction. Each licensee would also be required to reconcile and verify the information in the National Source Tracking System during the month of June each year. This process would involve comparing the inventory information in the National Source Tracking System and the actual inventory possessed by the licensee. The proposed amendment would require any discrepancies to be resolved by filing the reports identified by paragraphs (a) through (d) described above.

New paragraph (g) would require a licensee to report its initial inventory of Category 1 nationally tracked sources by December 31, 2006, and the inventory of Category 2 nationally tracked sources by March 31, 2007.

Appendix E Nationally Tracked Source Thresholds

A new appendix would be added to part 20 that provides the thresholds for nationally tracked sources at the Category 1 and Category 2 levels. The Terabecquerel (TBq) values listed in Appendix E are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only and are rounded after conversion. The curie values are not intended to be the regulatory standard.

Section 32.2 Definitions

A definition of nationally tracked sources would be added to the regulations.

Section 32.201 Serialization of Nationally Tracked Sources

A new section would be added that requires manufacturers of nationally tracked sources to assign a unique serial number to each nationally tracked source that is manufactured after the effective date of the rule.

Section 150.3 Definitions

A definition of nationally tracked sources would be added to the regulations.

Section 150.15 Persons Not Exempt

A new section is added that would require source manufacturers licensed by Agreement States to assign a unique serial number for each nationally tracked source that is manufactured after the effective date of the rule.

Section 150.18 Submission to Commission of Nationally Tracked Source Transaction Reports

A new section would be added to the regulations to require Agreement State licensees to report to the National Source Tracking System all transactions involving nationally tracked sources. New paragraph (a) would require the reporting of the manufacture of a nationally tracked source. New paragraph (b) would require the reporting of all transfers of nationally tracked sources to another authorized facility. New paragraph (c) would require the reporting of all receipts of a nationally tracked source. New paragraph (d) would require the reporting of the disposal of any nationally tracked source. Each of these paragraphs would require the licensee to report specific information for the transaction, which would include for each source information such as the manufacturer, model, serial number, radioactive material, activity and activity date, and the transaction date. The licensee would also need to provide the facility name, license number, address, and name of the individual that prepared the report. If the transaction involves the use of the Uniform Low-Level Radioactive Waste Manifest, the licensee would need to report the waste manifest number and the container identification for the container with the source.

New paragraph (e) would require licensees to report these transactions to the National Source Tracking System by the close of the next business day. The regulations would allow the licensee to report the transactions either on-line, electronically using a computer-readable format, by facsimile, by mail, or by telephone.

New paragraph (f) would require each licensee to correct any error in a previously filed report or file a new report for a missed transaction within 5 business days of the discovery of the error or missed transaction. Each licensee would also be required to reconcile and verify the information in the National Source Tracking System during the month of June each year. This process would involve comparing the inventory information in the National Source Tracking System and the actual inventory possessed by the licensee. The proposed amendment would require any discrepancies to be resolved by filing the reports identified by paragraphs (a) through (d) described above.

New paragraph (g) would require a licensee to report its initial inventory of Category 1 nationally tracked sources by December 31, 2006, and the inventory of Category 2 nationally tracked sources by March 31, 2007.

IV. Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 20, 32, and 150 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

V. 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), § 20.2207, the proposed rule is classified as Compatibility Category "NRC." The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

VI. Plain Language

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

VII. 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 proposed rule, the NRC would require licensees that possess, manufacture, transfer, receive, or dispose of nationally tracked sources to report the information relating to such transactions to the National Source Tracking System. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) for the proposed changes to part 150 and as described in 10 CFR 51.22(c)(3)(iii) for the changes to parts 20 and 32. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act Statement

This proposed 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.*). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: Revision; NRC Form 748—New.

The title of the information collection: 10 CFR 20, 32, and 150, "National Source Tracking of Sealed Sources."

The form number if applicable: NRC Form 748, "National Source Tracking Transaction Report."

How often the collection is required: Initially, at completion of a transaction, and at inventory reconciliation.

Who will be required or asked to report: Licensees that manufacture, receive, transfer, or dispose of nationally tracked sources.

An estimate of the number of annual responses: 4,423 (NRC Form 748—2613 responses; 10 CFR 20—467 responses; 10 CFR 32—10 recordkeepers; 10 CFR 150—1333 responses).

The estimated number of annual respondents: 1,350.

An estimate of the total number of hours needed annually to complete the requirement or request: 2,662 (NRC Form 748—412 hours [an average of 10 minutes per response]; 10 CFR 20—467 [1 hour per response]; 10 CFR 32—450 hours [45 hours per recordkeeper]; 10 CFR 150—1333 hours [1 hour per response]).

Abstract: The NRC is proposing to amend its regulations to implement a National Source Tracking System for certain sealed sources. The proposed amendments would require licensees to report certain transactions involving nationally tracked sources to the National Source Tracking System. These transactions would include manufacture, transfer, receipt, or disposal of the nationally tracked source. The proposed amendment would require each licensee to provide its initial inventory of nationally tracked sources to the National Source Tracking System and annually verify and reconcile the information in the system with the licensee's actual inventory. The proposed rule would also require manufacturers of nationally tracked sources to assign a unique serial number of each source. This information collection is mandatory and will be used to populate the National Source Tracking System.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the NRC rulemaking Web site, *http://ruleforum.llnl.gov.*

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by August 29, 2005, to the Records and FOIA/Privacy Services Branch (T–5 F53), 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, (3150–0001, 3150–0014, 3150–0032, and 3150–xxxx), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also comment by telephone at (202) 395–3087.

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

The largest burden would likely fall on the manufacturers and distributors of

nationally tracked sources because they will have the most transactions to report. The NRC believes that by allowing batch loading of information using a computer readable format, the burden on the high transaction licensees will be lessened. The present value of the costs of the National Source Tracking System to NRC is estimated to be $21.8 million and to industry is estimated to be $1.7 million in 2005 dollars using a 3 percent discount rate. These estimated costs include the cost of development of the system and operation and maintenance thru the year 2016.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Merri Horn, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov* of the Office of Nuclear Material Safety and Safeguards.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would affect about 350 NRC licensees and an additional 1,000 Agreement State licensees. Affected licensees include laboratories, reactors, universities, colleges, medical clinics, hospitals, irradiators, and radiographers, some of which may qualify as small business entities as defined by 10 CFR 2.810. However, the proposed rule is not expected to have a significant economic impact on these licensees.

The total time required by a licensee to complete each National Source Tracking Transaction report is estimated to be approximately 15 minutes, depending on the number of sources involved in the transaction and the method of reporting. This is time needed to complete the report. No research or compilation is necessary as all information is transcribed from bills of lading, in-house records kept for other purposes, sales agreements, etc. Each licensee would also spend on average 1 hour on the annual reconciliation. The total annual burden to perform the proposed reporting is approximately 2,662 hours. Based on the draft regulatory analysis conducted for this action, the costs of the proposed amendments for affected licensees are estimated to be $232,000 total or on average about $172 per affected licensee. The NRC believes that the selected alternative reflected in the proposed amendment is the least burdensome, most flexible alternative that would accomplish the NRC's regulatory objective.

Because of the widely differing conditions under which impacted licensees operate, the NRC is specifically requesting public comment from licensees concerning the impact of the proposed regulation. The NRC particularly desires comment from licensees who qualify as small businesses, specifically as to how the proposed regulation will affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety and common defense and security. Comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss—

(a) The size of the business and how the proposed regulation would result in a significant economic burden upon it as compared to a larger organization in the same business community;

(b) How the proposed regulation could be further modified to take into account the business's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety and common defense and security.

Comments should be submitted as indicated under the **ADDRESSEES** heading.

XIII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 32

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

10 CFR Part 150

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 20, 32, and 150.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

2. In § 20.1003, a new definition *Nationally tracked source* is added in alphabetical order to read as follows:

§ 20.1003 Definitions.

* * * * *

Nationally tracked source is a sealed source containing a quantity equal to or greater than Category 1 or 2 levels of any radioactive material listed in Appendix E of this Part. In this context a sealed source is defined as radioactive material that is permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the

Category 2 threshold but less than the Category 1 threshold.

* * * * *

3. In § 20.1009 paragraph (b) is revised and paragraph (c)(6) is added to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2005, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2207, 20.2301, and appendix G to this part.

(c) * * *

(6) In § 20.2207, NRC Form 748 is approved under control number 3150–xxxx.

4. Section 20.2207 is added to subpart M to read as follows:

§ 20.2207 Reports of transactions involving nationally tracked sources.

Each licensee who manufactures, transfers, receives, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748) as specified in paragraphs (a) through (d) of this section for each type of transaction.

(a) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of the source;

(4) The radioactive material in the source;

(5) The initial source strength in becquerels (curies) at the time of manufacture; and

(6) The manufacture date of the source.

(b) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The name and license number of the recipient facility and the shipping address;

(4) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(5) The radioactive material in the source;

(6) The initial or current source strength in becquerels (curies);

(7) The date for which the source strength is reported;

(8) The shipping date;

(9) The estimated arrival date; and

(10) For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(c) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The name and license number of the person that provided the source;

(4) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(5) The radioactive material in the source;

(6) The initial or current source strength in becquerels (curies);

(7) The date for which the source strength is reported;

(8) The date of receipt; and

(9) For material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(d) Each licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The waste manifest number;

(4) The container identification with the nationally tracked source;

(5) The date of disposal; and

(6) The method of disposal.

(e) The reports discussed in paragraphs (a) through (d) of this section must be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports must be submitted to the National Source Tracking System by using:

(1) The on-line National Source Tracking System;

(2) Electronically using a computer-readable format;

(3) By facsimile;

(4) By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(5) By telephone with followup by facsimile or mail.

(f) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Each licensee shall reconcile and verify the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The verification must be conducted during the month of June in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (a) through (d) of this section.

(g) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by December 31, 2006. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by March 31, 2007. The information may be submitted by using any of the methods identified by paragraph (e)(1) through (e)(4) of this section. The initial inventory report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(4) The radioactive material in the sealed source;

(5) The initial or current source strength in becquerels (curies); and

(6) The date for which the source strength is reported.

5. In Part 20, new Appendix E is added to read as follows:

Appendix E To Part 20—Nationally Tracked Source Thresholds

The Terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values

specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion.

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16
Americium-241/Be	60	1,600	0.6	16
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14
Cesium-137	100	2,700	1	27
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,200	0.8	22
Plutonium-236	60	1,600	0.6	16
Plutonium-238	60	1,600	0.6	16
Plutonium-239	60	1,600	0.6	16
Plutonium-239/Be	60	1,600	0.6	16
Plutonium-240	60	1,600	0.6	16
Polonium-210	60	1,600	0.6	16
Promethium-147	40,000	1,100,000	400	11,000
Selenium-75	200	5,400	2	54
Strontium-90	1,000	27,000	10	270
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81

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

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

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

7. In § 32.2, the paragraph designations are removed and a new definition *Nationally tracked source* is added in alphabetical order to read as follows:

§ 32.2 Definitions.

* * * * *

Nationally tracked source is a sealed source containing a quantity equal to or greater than Category 1 or 2 levels of any radioactive material listed in Appendix E to Part 20 of this Chapter. In this context a sealed source is defined as radioactive material that is permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

8. Section 32.8 paragraph (b) is revised to read as follows:

§ 32.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.17, 32.18, 32.19, 32.20, 32.21, 32.21a, 32.22, 32.23, 32.25, 32.26, 32.27, 32.29, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.61, 32.62, 32.71, 32.72, 32.74, 32.201, and 32.210.

* * * * *

9. Section 32.201 is added under subpart D to read as follows:

§ 32.201 Serialization of nationally tracked sources.

Each licensee who manufactures a nationally tracked source after [the effective date of final rule] shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

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

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

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

11. In § 150.3, a new definition *Nationally tracked source* is added in alphabetical order to read as follows:

§ 150.3 Definitions.

* * * * *

Nationally tracked source is a sealed source containing a quantity equal to or greater than Category 1 or 2 levels of any radioactive material listed in Appendix E to Part 20 of this Chapter. In this context a sealed source is defined as radioactive material that is permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater

than the Category 2 threshold but less than the Category 1 threshold.

* * * * *

12. Section 150.8 paragraph (b) is revised and paragraph (c)(3) is added to read as follows:

§ 150.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 150.16, 150.17, 150.17a, 150.18, 150.19, 150.20, and 150.31.

(c) * * *

(3) In § 150.18, NRC Form 748 is approved under control number 3150–xxxx.

13. In 150.15 paragraph (a)(10) is added to read as follows:

§ 150.15 Persons not exempt.

(a) * * *

(10) The assignment of unique serial numbers to each newly manufactured nationally tracked source as required by § 32.201 of this chapter.

* * * * *

14. Section 150.18 is added to read as follows:

§ 150.18 Submission to Commission of National Source Tracking Transaction Reports.

Each person who, pursuant to an Agreement State specific license, manufactures, transfers, receives, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748) as specified in paragraphs (a) through (d) of this section for each type of transaction.

(a) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of the source;

(4) The radioactive material in the source;

(5) The initial source strength in becquerels (curies) at the time of manufacture; and

(6) The manufacture date of the source.

(b) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The name and license number of the recipient facility and the shipping address;

(4) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(5) The radioactive material in the source;

(6) The initial or current source strength in becquerels (curies);

(7) The date for which the source strength is reported;

(8) The shipping date;

(9) The estimated arrival date; and

(10) For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(c) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The name and license number of the person that provided the source;

(4) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(5) The radioactive material in the source;

(6) The initial or current source strength in becquerels (curies);

(7) The date for which the source strength is reported;

(8) The date of receipt; and

(9) For material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(d) Each licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report (NRC Form 748). The report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The waste manifest number;

(4) The container identification with the nationally tracked source.

(5) The date of disposal; and

(6) The method of disposal.

(e) The reports discussed in paragraphs (a) through (d) of this section must be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports must be submitted to the National Source Tracking System by using:

(1) The on-line National Source Tracking System;

(2) Electronically using a computer-readable format;

(3) By facsimile;

(4) By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(5) By telephone with followup by facsimile or mail.

(f) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Each licensee shall reconcile and verify the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The verification must be conducted during the month of June in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (a) through (d) of this section.

(g) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by December 31, 2006. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by March 31, 2007. The information may be submitted by using any of the methods identified by paragraph (e)(1) through (e)(4) of this section. The initial inventory report must include the following information:

(1) The name and license number of the reporting licensee;

(2) The name of the individual preparing the report;

(3) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(4) The radioactive material in the sealed source;

(5) The initial or current source strength in becquerels (curies); and

(6) The date for which the source strength is reported.

Dated in Rockville, Maryland, this 22nd day of July, 2005.

For the Nuclear Regulatory Commission.
Annette Vietti-Cook,
Secretary of the Commission.
[FR Doc. 05–14919 Filed 7–27–05; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. That AD requires removing from service certain disc assemblies before they reach their full life if not modified with anticorrosion protection. This proposed AD would require the same actions as AD 2004–01–20, but would shorten the compliance time for disks that entered service before 1990. This proposed AD results from the manufacturer's reassessment of the corrosion risk on HPC stage 3 disc assemblies not modified with sufficient application of anticorrosion protection. We are issuing this AD to prevent corrosion-induced uncontained disc failure, resulting in damage to the airplane.

DATES: We must receive comments on this proposed AD by September 26, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245–418.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–12–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On January 8, 2004, we issued AD 2004–01–20, Amendment 39–13434 (69 FR 2661, January 20, 2004). That AD allows certain disc assemblies to reach their full life only after modifying the disc assemblies with anticorrosion protection. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on RR RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with HPC stage 3 disc assemblies, P/Ns LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. The CAA advises that inspections at overhaul found many disc assemblies with corrosion-induced pitting. RR reassessed the risk of corrosion-induced pitting of disc assemblies that have not incorporated any revision of RR service bulletin (SB) No. RB.211–72–9434, or any revision of RR SB No. RB.211–72–5420, which rework the discs and apply anticorrosion protection, lowered the disc lives from those published in the Time Limits Manuals. These SBs rework the discs and apply anticorrosion protection, and lower the disc lives accordingly in the Time Limits Manuals.

Actions Since AD 04–01–20 Was Issued

Since we issued that AD, we found that we made an oversight in the rule regarding the compliance time for disks that entered into service before 1990. We allowed operators to remove and rework these disks within five years after the effective date of that AD, but we intended to set a fixed calendar date based on inspection findings and metallurgical results. This proposed AD corrects that oversight. Also, we omitted paragraph (f)(5) from the original rule. We issued a correction to AD 04–01–20 on July 29, 2004, to include paragraph (f)(5). This proposed rule includes that paragraph.

Relevant Service Information

We have reviewed and approved the technical contents of Rolls-Royce plc SB No. RB.211–72–9434, Revision 4, dated January 12, 2000, and SB No. RB.211–72–5420, Revision 4, dated February 29, 1980, which describe procedures for reworking of HPC stage 3 rotor disc assemblies by machining, and application of anticorrosion protection. The CAA, which is the airworthiness authority for the U.K., classified these SBs as mandatory and issued airworthiness directive 004–01–94, dated January 4, 2002.

Bilateral Agreement Information

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products

of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require the following for affected HPC stage 3 rotor disc assemblies:

- Removing affected disc assemblies from service.
- Re-machining, inspecting, and applying anticorrosion protection.
- Re-marking, and returning disc assemblies into service.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

There are about 2,000 RR RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines of the affected design in the worldwide fleet. We estimate that this proposed AD would affect 1,000 engines installed on airplanes of U.S. registry. We also estimate that it would take about 31 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $38,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $40,015,000.

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–12–AD" in your request.

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 Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13434 (69 FR 2661, January 20, 2004) and by adding a new airworthiness directive, to read as follows:

Rolls-Royce plc: Docket No. 2003–NE–12–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 26, 2005.

Affected ADs

(b) This AD supersedes AD 2004–01–20, Amendment 39–13434.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–22B series, RB211–524B, –4C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. These engines are installed on, but not limited to, Boeing 747, Boeing 757, Boeing 767, Lockheed L–1011, and Tupolev Tu204 series airplanes.

Unsafe Condition

(d) This AD results from the manufacturer's reassessment of the corrosion risk on HPC stage 3 disc assemblies that have not yet been modified with sufficient application of anticorrosion protection. The actions specified in this AD are intended to prevent corrosion-induced uncontained disc failure, resulting in damage to the airplane.

Compliance

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

Removal of HPC Stage 3 Discs

(f) Remove from service affected HPC stage 3 disc assemblies identified in the following Table 1, using one of the following criteria:

TABLE 1.—AFFECTED HPC STAGE 3 DISC ASSEMBLIES

Engine model	Rework band for cyclic life accumulated on disc assemblies P/Ns LK46210 and LK58278 (Pre RR service bulletin (SB) No. RB.211–72–5420)	Rework band for cyclic life accumulated on disc assembly P/N LK67634 (Pre RR SB No. RB.211–72–5420)	Rework band for cyclic life accumulated on P/Ns LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 disc assemblies (Pre RR SB No. RB.211–72–9434)
–22B series	4,000–6,200	7,000–10,000	11,500–14,000
–535E4 series	N/A	N/A	9,000–15,000
–524B–02, B–B–02, B3–02, and B4 series, Pre and SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524B2 and C2 series, Pre SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524B2–B–19 and C2–B–19, SB No. 72–7730	4,000–6,000	7,000–9,000	8,500–11,000
–524D4 series, Pre SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524D4–B series, SB No. 72–7730	4,000–6,000	7,000–9,000	8,500–11,000
–524G2, G3, H, and H2 series	4,000–6,000	7,000–9,000	8,500–11,000

(1) For discs that entered into service before 1990, remove disc and rework as specified in paragraph (g)(2) of this AD, on or before January 4, 2007, but not to exceed the upper cyclic limit in Table 1 of this AD before rework. Discs reworked may not exceed the manufacturer's published cyclic limit in the time limits section of the manual.

(2) For discs that entered into service in 1990 or later, remove disc within the cyclic life rework bands in Table 1 of this AD, or within 17 years after the date of the disc assembly entering into service, whichever is sooner, but not to exceed the upper cyclic limit of Table 1 of this AD before rework. Discs reworked may not exceed the manufacturer's published cyclic limit in the time limits section of the manual.

(3) For disc assemblies that when new, were modified with an application of anticorrosion protection and re-marked to P/N LK76036 (not previously machined) as specified by Part 1 of the original issue of RR service bulletin (SB) No. RB.211–72–5420, dated April 20, 1979, remove RB211–22B disc assemblies before accumulating 10,000 cycles-in-service (CIS), and remove RB211–524 disc assemblies before accumulating 9,000 CIS.

(4) If the disc assembly date of entry into service cannot be determined, the date of disc manufacture may be obtained from RR and used instead.

(5) Discs in RB211–535C operation are unaffected by the interim rework cyclic band limits in Table 1 of this AD, but must meet the calendar life requirements of either paragraph (f)(1) or (f)(2) of this AD, as applicable.

Optional Rework of HPC Stage 3 Discs

(g) Rework HPC stage 3 disc assemblies that were removed in paragraph (f) of this AD as follows:

(1) For disc assemblies that when new, were modified with an application of anticorrosion protection and re-marked to P/N LK76036 (not previously machined) as specified by Part 1 of the original issue of RR SB RB.211–72–5420, dated April 20, 1979, rework disc assemblies and re-mark to either LK76034 or LK78814 using paragraph 2.B. of the Accomplishment Instructions of RR SB No. RB.211–72–5420, Revision 4, dated February 29, 1980. This rework constitutes terminating action to the removal requirements in paragraph (f) of this AD.

(2) For all other disc assemblies, rework using Paragraph 3.B. of the Accomplishment Instructions of RR SB No. RB.211–72–9434, Revision 4, dated January 12, 2000. This rework constitutes terminating action to the removal requirements in paragraph (f) of this AD.

Note 1: If rework is done on disc assemblies that are removed before the disc assembly reaches the lower life of the cyclic life rework band in Table 1 of this AD, artificial aging of the disc to the lower life of the rework band, at time of rework, is required.

Alternative Methods of Compliance

(h) 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

(i) Civil Aviation Authority airworthiness directive 004–01–94, dated January 4, 2002, and RR Mandatory Service Bulletin No. RB.211–72–9661, Revision 4, dated January 4, 2002, pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on July 21, 2005.

Francis A. Favara,

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

[FR Doc. 05–14803 Filed 7–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 16

[AAG/A Order No. 006–2005]

Privacy Act of 1974: Implementation

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), proposes to exempt a new system of records entitled the Terrorist Screening Records System (TSRS) (JUSTICE/FBI—019) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). As explained in the proposed rule, the exemption is necessary to avoid interference with the law enforcement, intelligence, and counterterrorism functions and responsibilities of the FBI and its Terrorist Screening Center (TSC). Public comment is invited.

DATES: Comments must be received by September 6, 2005.

ADDRESSES: Address all comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), Facsimile Number (202) 307–1853. To ensure proper handling, please reference the AAG/A Order No. on your correspondence. You may review an electronic version of this proposed rule at *http://www.regulations.gov*. You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: *DOJ*

PrivacyACTProposedRegulations @usdoj.gov; or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the FBI provides a description of the "Terrorist Screening Records System, JUSTICE/FBI–019" in compliance with the Privacy Act, 5 U.S.C. 552a(e)(4). The Terrorist Screening Records System is a system of records established pursuant to Homeland Security Presidential Directive 6 to support the mission of the FBI's TSC to consolidate the government's approach to terrorist screening. The TSC maintains the government's consolidated watchlist of known and suspected terrorists and supports agencies that engage in terrorist screening of individuals. Additional information about the TSC and its operations is provided in the **Federal Register** notice referenced above.

Regulatory Flexibility Act

This proposed rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule.

Analysis of Regulatory Impacts

This proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12886. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Attorney General certifies that this rule would not have a significant economic impact on a substantial number of small entities, because the reporting requirements themselves are not changed and because it applies only to information on individuals.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

Executive Order 13132, Federalism

The FBI has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. This action 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, and therefore will not have federalism implications.

Environmental Analysis

The FBI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems under the Privacy Act

2. Section 16.96 is amended to add new paragraphs (r) and (s) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

* * * * *

(r) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g):

(1) Terrorist Screening Records System (TSRS) (JUSTICE/FBI–019).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the counterterrorism purposes of this system, and the overall law enforcement process, the applicable exemption may be waived by the FBI in its sole discretion.

(s) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected terrorist by notifying the record subject that he/she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of records contained in this system, which consists of counterterrorism, investigatory and intelligence records. Compliance with these provisions could alert the subject of an investigation pertaining to terrorism of the fact and nature of the investigation, and/or the investigative interest of the FBI and/or other intelligence or law enforcement agencies; compromise sensitive information classified in the interest of national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(4) From subsection (e)(1) because it is not always possible for TSC to know in advance what information is relevant and necessary for it to complete an identity comparison between the individual being screened and a known or suspected terrorist. Also, because TSC and the FBI may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3), to the extent that this subsection is interpreted to require TSC to provide notice to an individual if TSC receives information about that individual from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsection (e)(5) because many of the records in this system are derived from other domestic and foreign agency record systems and therefore it is not possible for the FBI and the TSC to vouch for their compliance with this provision, however, the TSC has implemented internal quality assurance procedures to ensure that TSC terrorist screening data is as thorough, accurate, and current as possible. In addition, TSC supports but does not conduct investigations; therefore, it must be able to collect information related to terrorist identities and encounters for distribution to law enforcement and intelligence agencies that do conduct terrorism investigations. In the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. The TSC has, however, implemented internal quality assurance procedures to ensure that TSC terrorist screening data is as thorough, accurate, and current as possible.

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the FBI and the TSC and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 22, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 05–14850 Filed 7–27–05; 8:45 am]

BILLING CODE 4410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–314–0483; FRL–7945–4]

Approval and Promulgation of State Implementation Plans for Air Quality Planning Purposes; California—South Coast and Coachella

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin and the Coachella Valley Area, and to establish emissions budgets for these areas for purposes of transportation conformity. EPA is also proposing to approve revisions to fugitive dust regulations and ordinances for the areas. EPA is proposing to approve these SIP revisions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by August 29, 2005.

ADDRESSES: Please mail comments to: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *jesson.david@epa.gov*. The rulemaking docket for this proposal is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, California 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765.

The 2003 Air Quality Management Plan, which includes the South Coast PM10 plan, is electronically available at:

http://www.aqmd.gov/aqmp/AQMD03AQMP.htm.

The 2003 Coachella Valley PM10 State Implementation Plan is at: *http://www.aqmd.gov/aqmp/docs/f2003cvsip.pdf.*

The fugitive dust rules are electronically available at: *http://www.aqmd.gov/rules/rulesreg.html.*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, at (415) 972–3957, or *jesson.david@epa.gov.*

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

Table of Contents

I. Background

A. Summary

We are proposing to approve 2003 plan amendments for the South Coast Air Basin (or "South Coast"), as the plan amendments pertain to attainment of the 24-hour and annual PM–10 NAAQS.[1] We are proposing to approve revisions to the PM–10 plan for the Coachella Valley Planning Area ("Coachella Valley").[2] We are also proposing to approve the plans' PM–10 motor vehicle emissions budgets for purposes of transportation conformity. Finally, we are proposing to approve revisions to Rules 403, 403.1, and 1186 of the South Coast Air Quality Management District (SCAQMD) regulating fugitive dust emissions, and revisions to fugitive dust ordinances for Coachella Valley jurisdictions. These revisions update, improve, strengthen, and supplement the approved SIP provisions for control of PM–10 and PM–10 precursors in the two areas.

B. PM–10 Problem in the South Coast and Coachella Valley

Although great progress has been made in reducing PM–10 concentrations, the South Coast and Coachella Valley continue to violate the PM–10 NAAQS, and the State must therefore adopt, submit, and implement measures and other provisions sufficient to make expeditious progress and attain the NAAQS by the applicable deadline.[3]

The SCAQMD has adopted and the State has submitted PM–10 attainment plans and regulations for these two areas in past years. In 2003, we fully approved PM–10 progress and attainment plans for the South Coast and Coachella Valley as meeting all CAA requirements for serious PM–10 areas, and as part of those actions we also granted attainment date extensions for the areas for both the 24-hour and annual PM–10 NAAQS, from December 31, 2001 to December 31, 2006, pursuant to CAA section 188(e). For more information on the currently approved South Coast and Coachella Valley PM–10 plans ("2002 SIPs"), please see our proposed and final rulemaking notices. The proposals were issued on December 17, 2002 (67 FR 77212 and 67 FR 77204) and the final approvals were issued on April 18, 2003 (68 FR 19316 and 68 FR 19318). We have also previously approved SCAQMD fugitive dust regulations and Coachella Valley local ordinances for the control of fugitive dust. See approvals of SCAQMD Rules 403, 403.1, and 1186, and 10 Coachella Valley ordinances published on December 9, 1998 (63 FR 67784), and again on February 17, 2000 (65 FR 8057), following SCAQMD adoption of amendments strengthening Rules 403 and 1186. This proposed action simply addresses updates and improvements to the 2002 SIPs for the South Coast and Coachella Valley, the SCAQMD fugitive dust regulations, and the Coachella Valley ordinances, adopted as part of the attainment plans for the South Coast and Coachella Valley.

C. CAA Planning Provisions

The Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. The most fundamental of these nonattainment area provisions applicable to the South Coast and Coachella Valley is the requirement that the State submit a SIP demonstrating attainment of the PM–10 NAAQS. This demonstration must be based upon enforceable measures to achieve emission reductions leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area. The measures must meet the standard for Best Available Control Measures (BACM), and the measures must be implemented expeditiously and ensure attainment no later than the applicable CAA deadline. CAA section 189(b). Because the State requested an extension of the attainment date for the South Coast and Coachella Valley beyond the applicable deadline of December 31, 2001, under CAA section 188(e) the State must demonstrate that

[1] The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties. For a description of the boundaries of the Los Angeles-South Coast Air Basin Area, see 40 CFR 81.305.

[2] The Coachella Valley Planning Area is in central Riverside County in the Salton Sea Basin. The boundary is defined at 40 CFR 81.305.

[3] The health effects from elevated PM–10 concentrations include lung damage, respiratory and cardio-vascular disease, and premature death. Children, the elderly, and people suffering from heart and lung diseases, such as asthma, are especially at risk.

EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic mean of the 24-hour samples averaged over a 3-year period does not exceed 50 micrograms per cubic meter ($\mu g/m^3$). The 24-hour PM–10 standard of 150 $\mu g/m^3$ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA reaffirmed the annual PM–10 standard, and slightly revised the 24-hour PM–10 standard (652 FR 38651). In the same action, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

This SIP submittal addresses the 24-hour and annual PM–10 standards as originally promulgated. An opinion issued by the U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc.*, et al. v. *USEPA*, No. 97–1440 (May 14, 1999), among other things, vacated the 1997 standards for PM–10. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in the South Coast and Coachella Valley areas. Codification of those standards continues to be recorded at 40 CFR 50.6. See also 69 FR 45592, July 30, 2004.

the plans include the most stringent measures (MSM) that are included in any implementation plan or are achieved in practice, and can feasibly be implemented in the area.

EPA has issued a "General Preamble" describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992). EPA later issued an Addendum to the General Preamble providing guidance on SIP requirements for serious PM–10 areas. 59 FR 41998 (August 16, 1994). The reader should refer to these documents for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA applies these policies to the South Coast and Coachella Valley PM–10 SIP submittals, taking into consideration the specific factual issues presented.

D. Designation and Classification

On the date of enactment of the 1990 CAA Amendments, PM–10 areas, including the South Coast and Coachella Valley, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991).

Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the South Coast and Coachella Valley, were initially classified as moderate by operation of law. Section 188(b)(1) of the Act further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM–10 NAAQS by this attainment date.

EPA determined on January 8, 1993, that the South Coast and Coachella Valley could not practicably attain the PM–10 NAAQS by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified the area as serious (58 FR 3334). In accordance with section 189(b)(2) of the Act, the State was required to make the following SIP submittals. First, the State had to submit by August 8, 1994, a SIP to ensure the implementation of BACM no later than 4 years after reclassification, as required by CAA section 189(b)(1)(B). Second, the State had to submit a SIP by February 8, 1997, providing for progress and expeditious attainment, as required by CAA section 189(b)(1)(A).

E. Adoption and Submittal of These Revisions

For a description of the history and content of the 2002 SIPs, rules, and ordinances for the South Coast and Coachella Valley, please see our proposed and final rules cited above. On August 1, 2003, the SCAQMD adopted the *2003 South Coast Air Quality Management Plan* ("2003 South Coast AQMP") and the *2003 Coachella Valley PM10 State Implementation Plan* ("2003 Coachella Valley Plan"), including the motor vehicle emissions budgets for the areas.[4] The California Air Resources Board (CARB) approved the plans on October 23, 2003, and submitted the plans to us on January 9, 2004. We determined that these submittals were complete on February 18, 2004, pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, Appendix V.

On April 2, 2004, the SCAQMD adopted revisions to Rules 403, 403.1, and 1186, and CARB submitted the revisions on July 29, 2004. On August 10, 2004, we determined the submittal to be complete. On November 16, 2004, CARB submitted revised Coachella Valley ordinances, which were adopted by the local jurisdictions on various dates in 2003 and 2004, and the implementation handbooks for Rules 403 and 403.1, which were inadvertently omitted from the April 2, 2004 SIP submittal. On April 6, 2005, we determined the submittal to be complete.

Both the SCAQMD and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the SIP revisions. The SCAQMD conducted numerous public workshops, and properly noticed the public hearings at which the plans and rules were adopted. The SIP submittals include proof of publication for notices of the public hearings. The local Coachella Valley jurisdictions properly noticed and adopted the fugitive dust ordinances. Therefore, we conclude that the SIP submittals have met the public notice and involvement requirements of section 110(a)(1) of the CAA.

[4] In addition to PM–10, the 2003 South Coast AQMP addressed the NAAQS for carbon monoxide (CO), ozone, and nitrogen dioxide (NO_2). We will take separate action on the plan with respect to these standards.

II. Evaluation of the SIP Submittals

A. Emission Inventories

CAA section 172(c)(3) requires that all nonattainment area plan submittals include a comprehensive, accurate, and current inventory of actual emissions from all sources in the area.

The emission inventories in the 2003 South Coast AQMP and the 2003 Coachella Valley Plan supersede those in the 2002 SIPs for these areas. The revised 2003 South Coast AQMP includes summary emission inventories for major source categories in tons per annual average day for VOC, NO_X, CO, SO_X, TSP, PM–10, and PM–2.5 for the 1997 base year (Table 3–1A) and the 2006 attainment year (Table 3–3A). Appendix III (Base and Future Year Emission Inventories) to the 2003 South Coast AQMP provides more detailed emissions inventories for 1995, 1997, 2000, 2002, 2003, 2005, 2006, and various later years. Appendix IV–A also includes additional emissions data, including control category baseline emissions for 1997, 2006, and 2010, and estimates of baseline emissions and emission reductions from each of the 2003 South Coast AQMP control measures for 2006 and 2010 for primary PM–10 or PM–10 precursors (NO_X, SO_X, VOC, and ammonia), as applicable to the measure. Appendix III documents the source of the data and references SCAQMD and CARB reports that provide detailed information on the methodologies used to estimate emissions from area sources. Finally, Appendix V (*Modeling and Attainment Demonstrations*) includes estimated average annual day emission reductions by control measure for PM–10, VOC, NO_X, and SO_X in 2006 in the South Coast.

The 2003 Coachella Valley Plan includes annual average and maximum 24-hour emission inventories for 1995 (Table 2–2), 2000 (Table 2–3), 2003 (Table 2–4), and 2006 (Table 2–5).

The principal emissions inventory enhancements of the revised plans are the use of more accurate emissions factors and models and updated activity levels for emissions associated with mobile sources, including: (1) The use of the latest EPA-approved California motor vehicle emissions factor model (EMFAC2002)[5] and the most recent motor vehicle activity data from the Southern California Association of Governments (SCAG); (2) an improved methodology for estimating paved road

[5] We approved use of EMFAC2002 on April 1, 2003 (68 FR 15722) for use in SIPs and conformity analyses. EMFAC2002 produces California-specific emissions for the full range of motor vehicles.

dust emissions[6]; and (3) CARB's new nonroad mobile source model (the OFFROAD model). The emission inventories for the South Coast Air Basin also use the results of special studies of aircraft, marine vessels, composting, and ammonia emissions (see Appendix III of the 2003 South Coast AQMP, pages III–1–13 to III–1–14), and more accurate emissions factors for the windblown dust category, based on use of climate, wind speed, and soil data representative of Southern California.

The emission inventories in the 2003 South Coast AQMP and 2003 Coachella Valley Plan are complete with respect to sources that have been found to contribute to PM–10 violations. The inventories employ activity levels, emission factors, and growth projections that are current and reflective of the best available emissions information.

Because they are current, accurate, and complete, we propose to approve as meeting the provisions of CAA section 172(c)(3) the South Coast emission inventories in Chapter 3 (Tables 3–1A and 3–3A), Appendix III (Tables A–1, A–2, A–3, A–5, and A–7), and Appendix V of the 2003 South Coast AQMP (Attachment 4), and the Coachella Valley emission inventories in Tables 2–2, 2–3, 2–4, and 2–5 of the 2003 Coachella Valley Plan.

B. Control Measures

We recently approved the control measure portions of the 2002 SIPs for the South Coast and Coachella Valley. The 2003 South Coast AQMP makes minor modifications to the previously approved SCAQMD commitments to adopt control measures. Although the 2003 South Coast AQMP includes changes to the control measure commitments by CARB and SCAG, these new and amended commitments apply only to the ozone portion of the plan, and therefore are not part of this proposed action. The 2003 Coachella Valley Plan includes no changes to the control measure commitments in the 2002 SIP.

1. Applicable Requirements

Because the South Coast Air Basin and Coachella Valley are classified as serious for PM–10, the nonattainment plans for these areas must include measures that reflect a BACM level of control for each source category that contributes significantly to a violation of the 24-hour or annual PM–10 NAAQS.[7] For a discussion of the BACM and MSM provisions applicable to these areas and our determination that the 2002 SIPs for the South Coast and Coachella Valley fully met these requirements, see the discussion in the proposed approval of the plans at 67 FR 77215 and 67 FR 77207 (December 17, 2002).[8]

In the 2002 SIPs for the South Coast and Coachella Valley, SCAQMD determined which source categories are "significant," as part of the BACM analysis.[9] Please refer to 67 FR 77215–6 and 67 FR 77207–9 (December 17, 2002) for a summary of the BACM determinations of significant categories in the 2002 SIPs for South Coast and Coachella Valley. Updates to the emissions inventories in the 2003 South Coast AQMP and the 2003 Coachella Valley Plan did not change the determinations of significant source categories in the 2002 SIPs. As a result, the revised plans continue the prior determinations of applicable BACM, which we approved in our April 18, 2003 final rule (see 68 FR 19316, and 68 FR 19318). The revised plans, rules, and ordinances strengthen the 2002 SIPs' control requirements for primary PM and (in the case of the South Coast) the applicable secondary precursors. Therefore, these plan updates also do not recreate the 2002 SIPs' demonstrations, pursuant to CAA section 188(e), that the plans include the most stringent measures.[10]

Finally, the control measures in the serious area plans must be sufficient to achieve expeditious attainment by the applicable deadline. As discussed below, the revised SIPs update and improve the progress and attainment provisions in the 2002 SIPs, and we propose to conclude that the plans, as revised, continue to meet the requirements of CAA sections 189(c) and 189(b)(1)(A) for reasonable further progress and expeditious attainment of the PM–10 NAAQS.

2. Description of South Coast Control Measure Commitments

The South Coast 2003 AQMP relies heavily on existing, fully adopted SCAQMD regulations to reduce primary PM–10 and secondary precursors as needed to bring the area into attainment of the 24-hour and annual PM–10 NAAQS. The secondary precursors in the South Coast are NO_X and, to a lesser extent, SO_X, VOC, and ammonia (NH3). The majority of these control measures have been approved in prior actions on SCAQMD regulations submitted over the years.[11]

Although existing controls on primary PM–10 and secondary PM–10 precursors achieve the overwhelming majority of reductions necessary for attainment, it is still necessary to adopt new regulations or strengthen existing regulations in order to deliver the small additional amount of reductions needed for attainment of the PM–10 NAAQS in

[6] We recently approved this methodology as part of our adequacy determination for the motor vehicle emissions budgets in the revised South Coast and Coachella Valley PM–10 plans. See 58 FR 15326, March 25, 2004. The methodologies are discussed on page III–1–12 of Appendix III of the 2003 South Coast AQMP.

[7] The plans must also satisfy lesser control measure provisions applicable to moderate areas, Reasonably Available Control Measures (RACM) for areas sources such as fugitive dust, and Reasonably Available Control Technology (RACT) for stationary sources such as commercial and industrial operations. In approving the 2002 SIPs, we did not make an independent assessment of the plans' control measures against the RACM and RACT requirements, since the plans would meet RACM and RACT requirements if they were found to meet the BACM requirement.

[8] Our final rules on the 2002 SIPs included our determination that the CAA provisions relating to BACM (section 189(b)(1)(B)) and MSM (section 188(e)) were fully met by the South Coast and Coachella Valley control measures, which consisted of: (1) Enforceable commitments to adopt and implement regulations; and (2) fully adopted regulations and ordinances, including those fugitive dust rules and ordinances we had previously approved (SCAQMD Rules 403, 403.1, and 1186, and Coachella Valley fugitive dust ordinances). See 68 FR 19316 and 68 FR 19318 in the final rules.

[9] By analogy to Title I Part C of the Clean Air Act relating to Prevention of Significant Deterioration (PSD), EPA interprets BACM for serious PM–10 areas as generally similar to the definition of Best Available Control Technology (BACT) for the PSD program. PM–10 BACM is therefore defined as "the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant." General Preamble Addendum, 59 FR 42010 (August 16, 1994).

EPA exempts from the BACM requirement *de minimis* source categories, which do not contribute significantly to nonattainment. EPA has generally relied on the criteria applied under the new source permit programs (40 CFR 51.165(b)) and has therefore presumed that a source category contributes significantly to a violation of the 24-hour NAAQS if its impact at the location of expected violation would exceed 5 $\mu g/m^3$, and would contribute significantly to a violation of the annual NAAQS if its impact at the time and location of the expected violation would exceed 1 $\mu g/m^3$. 59 FR 42011. However, states must also review the potential to attain earlier through application of controls on anthropogenic sources below these general levels.

[10] SCAQMD did, as part of the plan update, review control measures to confirm that the District's measures and commitments continue to reflect the best and most stringent control level. See discussions of each control measure in Appendix IV–A, which summarizes the results of the District's survey of available control technologies and techniques, and provides extensive documentation and references to support the proposed control.

[11] See, for example, our approval of the 1997 ozone plan and that plan's NO_X and VOC control measure commitments, as amended in 1999 (65 FR 6091, February 8, 2000; 65 FR 18903, April 10, 2000). We have approved the District's NO_X and VOC regulations in separate rulemaking over the years. You may see copies of the approved rules at: *http://www.epa.gov/region09/air/sips/*.

the South Coast. The SCAQMD's commitment to adopt new or strengthened regulations in the 2003 South Coast AQMP is described at length in Chapter 4 and in Appendix IV–A (*District's Stationary and Mobile Source Control Measures*).

Table 1 below, entitled "South Coast PM–10 Control Measures," lists the target primary PM–10, NH3, VOC, and SO_X emission reductions from each control measure commitment included in the plan. Certain new SCAQMD control measures in the South Coast 2003 AQMP are intended to reduce NO_X emissions, but the NO_X emission reductions from these measures by 2006 are relatively small and therefore the new NO_X measures and reductions are not included in Table 1.

Appendix IV–A provides extensive history of the control measures, including evolution of the measures over time and progress on the measures since the 2002 SIP. Appendix IV–A also documents the costs of implementation, discusses technological feasibility issues, explains the schedule for expeditious implementation, and examines other factors as part of a comprehensive rationale for the measures.[12]

TABLE 1.—SOUTH COAST PM–10 CONTROL MEASURES

[Source: South Coast 2003 AQMP, Appendix IV–A]

Control measure number	Control measure title	2006 reduction target in tons per day
Remaining 2002 SIP Control Measures		
CMB–07	Emission Reductions from Petroleum Refinery Flares (SO_X)	2.1
CMB–09 [1]	Petroleum Refinery Fluid Catalytic Cracking Units (PM–10, NH3)	0.1, 0
WST–01 [1]	Emission Reductions from Livestock Waste (VOC, NH3)	4.2, 8.7
WST–02 [1]	Emission Reductions from Composting (VOC, NH3)	1.2, 1.9
PRC–03 (P2)	Emission Reductions from Restaurant Operations (PM–10)	0.2
New Control Measures		
BCM–07 [1]	Further PM10 Reductions from Fugitive Dust Sources (PM–10)	TBD
BCM–08 [1]	Further Emission Reductions from Aggregate and Cement Manufacturing Operations (PM–10)	0.6
MSC–04	Miscellaneous Ammonia Sources (NH3)	TBD
MSC–06	Wood-Burning Fireplaces and Wood Stoves (PM–10)	TBD
TCB–01 [2]	Transportation Conformity Backstop Measure (PM–10)	0

[1] These measures have already been adopted by SCAQMD. Revisions to Rules 403 and 1186 fulfill BCM–07; new Rule 1127 (Emission Reductions from Livestock Waste, adopted 8/6/04) addresses WST–01; new Rule 1133.2 (Emission Reductions from Co-Composting Operations, adopted 1/10/03) responds to WST–02 commitments; new Rule 1105.1 (Reduction of PM10 and Ammonia Emissions from Fluid Catalytic Cracking Units, adopted 11/7/03) meets the CMB–09 commitment; and new Rule 1157 (PM10 Emissions Reductions from Aggregate and Related Operations, adopted 1/07/05) fulfills the BCM-08 commitment.

[2] This measure, which is intended to achieve reductions in PM–10 after the 2006 attainment date, is discussed below and in Section II.G., Motor Vehicle Emission Budgets.

Table 2 below, entitled "South Coast Emission Reduction Commitments," presents the enforceable SCAQMD commitments to adopt and implement measures by specific dates to achieve particular emission reductions. This table is derived from Table 4–8A in the South Coast 2003 AQMP, and includes the commitments for the remaining 3 years of the South Coast PM–10 attainment demonstration.

TABLE 2.—SOUTH COAST EMISSION REDUCTION COMMITMENTS COMMITMENTS TO ADOPT AND IMPLEMENT NEW MEASURES TO ACHIEVE EMISSION REDUCTIONS IN TONS PER DAY FROM 2010 PLANNING INVENTORY

[Source: South Coast 2003 AQMP, Table 4–8A]

Year	VOC		PM–10		NO_X		SO_X	
	Adopt	Impl	Adopt	Impl	Adopt	Impl	Adopt	Impl
2004	2.0	0	1.7	0	3.0	0	2.1	0
2005	2.0	0	0	0.16	2.1	0	0	2.1
2006	0	4.8	0	0.86	0	0	0	0

[12] Although the 2003 South Coast AQMP includes new and revised State control measures in Appendix IV–B (*Proposed 2003 State and Federal Strategy for the California State Implementation Plan*) and new regional transportation strategies in Appendix IV–C (*Regional Transportation Strategy & Control Measures*), these control measures are not part of the revised PM–10 portion of the plan since they are primarily designed to contribute emission reductions needed for attainment of the 1-hour ozone NAAQS by 2010. We intend to rule on these measures when we act on the ozone portion of the South Coast 2003 AQMP.

The emission reduction targets shown in Table 1 and the emission reduction commitments shown in Table 2 are intended to update and replace those in the 2002 SIP, reflecting recent progress in the development of the measures.[13]

The 2003 South Coast AQMP includes one measure applicable to the post-2006 period. In order to ensure that growth in transportation related emissions in future years does not jeopardize continued attainment of the PM–10 NAAQS, SCAQMD adopted TCB–01—Transportation Conformity Budget Backstop Measure. This measure consists of a commitment to adopt further PM–10 controls no later than 2019 to achieve as much as 9 tons per day of additional PM–10 emission reductions by 2020, and to adopt still more PM–10 controls no later than 2029 to achieve as much as 16 tons per day of additional PM–10 emission reductions by 2030. Under the measure, SCAQMD will be responsible for implementing further fugitive dust rules and SCAG will be responsible for developing and achieving additional emission reductions from the Regional Transportation Plan and Transportation Control Measures. Further details on this committal measure may be found in Appendix IV–A, pages IV–119 through IV–121.

3. Proposed Action on South Coast Control Measures

Inasmuch as the South Coast 2003 AQMP presents minor updates, refinements, and enhancements of the South Coast control measures in the 2002 SIP, we propose to approve them under CAA section 110(k)(3), as meeting the requirements of CAA sections 110(a), 188(e), and 189(b)(1)(B), and remaining consistent with attainment as expeditiously as practicable. We are proposing to approve each of the control measure commitments in Table 1 and the overall SCAQMD commitment in Table 2 to adopt and implement rules by specified dates to achieve particular emission reductions. We propose that these updated commitments supersede and replace the commitments for the same measures in the 2002 SIP for the South Coast.[14]

As noted above, the 2003 Coachella Valley Plan contains no new control measure commitments, but relies on the adopted revisions to Rules 403 and 403.1 and the local ordinances.

C. Regulations and Ordinances

The principal fugitive dust regulations in the South Coast and Coachella Valley are two SCAQMD rules: Rule 403—"Fugitive Dust" and Rule 1186—"PM10 Emissions from Paved and Unpaved Roads and Livestock Operations." Attainment of the PM–10 NAAQS in Coachella Valley also depends on emission reductions from SCAQMD Rule 403.1—"Supplemental Fugitive Dust Control Requirements for Coachella Valley Sources" and fugitive dust control ordinances adopted by Riverside County and 9 cities within the Coachella Valley. Attainment of the PM–10 NAAQS in the South Coast also requires NH3 and VOC reductions from livestock waste operations, and SCAQMD adopted on August 6, 2004, a new SCAQMD Rule 1127—"Emission Reductions from Livestock Waste" to accomplish these reductions.[15]

In this action, we are proposing to approve recently adopted amendments strengthening Rules 403, 403.1, and 1186, and more stringent fugitive dust control ordinances adopted by the 10 Coachella Valley jurisdictions. These regulations and ordinances were adopted in fulfillment of emission reduction commitments in the 2002 SIPs for the South Coast and Coachella, and in the 2003 South Coast AQMP.

The docket for this rulemaking includes the complete SIP submittal package, including the current rule text, strike-out/underline rule text highlighting rule amendments, and the SCAQMD Staff Report, which provides information on the regulatory background, rule purpose and applicability, affected sources, legal authority, changes in the rules and implementation handbooks, estimation of emissions and emission reductions, cost and cost-effectiveness estimates, and summary of public comments and SCAQMD response. The Staff Report and supplementary materials on revised Rules 403, 403.1, and 1186 may also be found at: *http://www.aqmd.gov/hb/2004/040438a.html.*

1. Description of Regulations and Ordinances

a. SCAQMD Rule 403—*Fugitive Dust*

Rule 403 applies to any land use or activity that has the potential to generate fugitive dust, including construction and agricultural activities. SCAQMD originally adopted Rule 403 in 1976, and amended the rule in 1992, 1993, 1997, and 1998. On February 17, 2000 (65 FR 8057), we approved Rule 403, including its two handbooks ("Rule 403 Implementation Handbook" and "Rule 403 Agricultural Handbook"), as the rule was last amended in 1998.

On April 2, 2004, the SCAQMD again adopted strengthening and clarifying amendments to the rule and handbooks, and adopted an additional handbook—"Rule 403 Coachella Valley Agricultural

[13] SCAQMD has now adopted regulations fulfilling the following commitments in the 2002 SIP: BCM–01, BCM–03, BCM–04, BCM–06, BCM–08, CMB–09, PRC–01, WST–01, and WST–02. It should be noted that the NO_X reductions from the committal measures in the South Coast 2003 AQMP, as displayed in Table 2, are not relied on for progress or attainment, but will contribute to maintenance of the PM–10 NAAQS in the period after 2006.

[14] The previously approved commitments for these measures are shown in Table 1 of our proposed action on the 2002 SIP for PM–10 (67 FR 77216, December 17, 2002) and, for secondary precursors to PM–10, in Table 2 of our proposed action on the ozone SIP (65 FR 6096, February 8, 2000; final rule 65 FR 18903, April 10, 2000). It should be noted that the 2003 South Coast AQMP uses updated baseline and projected emissions inventories and control factors, and so the emission reductions targets in this new plan are calculated using different currencies from the approved ozone and PM–10 SIPs. Moreover, the 2003 South Coast AQMP committal measures reflect in the baseline and projected emissions inventories all reductions that have already been accomplished by SCAQMD regulations adopted subsequent to the submittal of the earlier SIPs.

Commitments approved by EPA under CAA section 110(k)(3) are enforceable by EPA and citizens under CAA sections 113 and 304, respectively. In the past, we have approved enforceable commitments and courts have enforced those actions against states that failed to comply with their commitments. For further discussion and citation, please see 69 FR 5427 (February 4, 2004) and 69 FR 30029 (May 26, 2004).

We consider 3 factors in determining whether to approve enforceable commitments: (a) Whether the commitment addresses a limited portion of the statutorily-required program; (b) whether the state is capable of fulfilling its commitment; and (c) whether the commitment is for a reasonable and appropriate period of time. In the case of this update to the 2002 SIP for the South Coast, the number of commitments and the associated emission reductions are considerably reduced, because of continued successful SCAQMD rule adoption, leaving relatively few reductions to be accomplished in future, as shown in Table 2. The commitments represent a small percent of the required emission reductions from the 1997 base year. For example, the NO_X commitments are not required for attainment but rather contribute toward post-2006 maintenance of the PM–10 NAAQS, and the VOC commitments are 1.0% of the VOC emission reductions achieved from the 1997 base year through the 2006 attainment year. The SCAQMD has demonstrated its diligence in fulfilling commitments generally and, in the case of the commitments in this plan, the SCAQMD had adopted in regulatory form 5 of the 10 commitments by August 2004, including all the most significant PM–10 measures. We believe that the schedule for adopting and implementing the measures is for a reasonable and appropriate period of time, given the complex and challenging nature of the control measures. Finally, the adoption and implementation schedule in the commitments is consistent with the SCAQMD's ability to make expeditious progress toward attainment of the standards.

[15] On July 21, 2004 (69 FR 43518), we approved new SCAQMD Rules 1133, 1133.1, and 1133.2, adopted on January 10, 2003, establishing VOC and NH3 controls on composting operations. We intend to act on Rule 1127 in separate rulemaking, once the rule is submitted. These rules contribute reductions required as part of the South Coast PM–10 NAAQS attainment demonstration.

Handbook." The more significant changes include: Lowering the threshold for construction projects subject to additional requirements for large operations and strengthening those notification and control requirements; requiring construction sites greater than 5 acres to install track-out control devices; identifying conservation practices for Coachella Valley crop producers seeking a Rule 403 exemption; tightening provisions relating to weed abatement; and adding numerous provisions to clarify the rule and improve its enforceability.

CARB and SCAQMD requested that we not approve into the SIP the revised rule provision (h), relating to Ambient Air Analysis Fees.[16] In the same correspondence, CARB and SCAQMD asked that we approve only the following sections of the revised 403 Implementation Handbook, which is incorporated into the rule: (1) Chapter 5—Guidance for Large Operations; (2) Chapter 7—Test Methods; and (3) Chapter 8—On-Site Monitoring. SCAQMD asked that we approve the entire Rule 403 Coachella Valley Agricultural Handbook, just as we have previously approved the entire 403 Agricultural Handbook applicable to the South Coast area (65 FR 8057).[17]

b. SCAQMD Rule 403.1—Supplemental Fugitive Dust Control Requirements for Coachella Valley

SCAQMD Rule 403.1 applies to any land use or activity within the Coachella Valley that has the potential to generate fugitive dust, including construction activities.[18] The rule includes especially stringent provisions for implementation when wind speeds exceed 25 miles per hour, and the rule also serves as a backstop for local jurisdictions' enforcement of their fugitive dust ordinances. SCAQMD originally adopted Rule 403.1 in 1993, and amended the rule in 2000. On December 9, 1998 (63 FR 67784), we approved Rule 403.1, including the "403.1 Implementation Handbook," as originally adopted in 1993.

On April 2, 2004, the SCAQMD adopted strengthening and clarifying amendments to the rule and "Rule 403.1 Implementation Handbook." The more significant changes include: more stringent soil stabilization requirements for inactive construction sites; addition of a requirement that sources not subject to a local dust control ordinance submit a fugitive dust control plan to SCAQMD; and numerous provisions clarifying the rule and improving its enforceability.

CARB and SCAQMD requested that we not approve into the SIP the revised rule provision (j), relating to Fees.[19] SCAQMD also asked that we approve only the following sections of the revised "Rule 403.1 Implementation Handbook," which is incorporated into the rule: (1) Chapter 2—Coachella Valley Wind Monitoring; (2) Chapter 3—On-Site Wind Monitoring Equipment; (3) Chapter 4—Fugitive Dust Control Plan Guidance; and (4) Chapter 7—Test Methods.[20]

c. SCAQMD Rule 1186—PM_{10} Emissions From Paved and Unpaved Roads, and Livestock Operations

SCAQMD Rule 1186 establishes controls to reduce dust from traffic on paved and unpaved roads, from hay grinding activities, and from access connections and feed lane at livestock operations. The rule includes requirements for purchase of PM_{10} efficient street sweepers; removal of material on roadways; curbing; treatment of medians; and paving, stabilization, and/or speed restrictions for unpaved roads. SCAQMD originally adopted Rule 1186 in 1997, and amended the rule in 1998, and 1999. On February 17, 2000 (65 FR 8057), we approved Rule 1186 as it was last amended in 1998.

On April 2, 2004, the SCAQMD adopted strengthening and clarifying amendments to the rule. The more significant changes include: extending street cleaning requirements to Coachella Valley and implementing requirements for improved road shoulders.

d. Coachella Valley Local Ordinances

On February 16, 1995, the State submitted for SIP approval the following fugitive dust ordinances adopted by the following Coachella Valley jurisdictions on the dates shown in parentheses: City of Cathedral City Ordinance No. 377 (2/18/93), City of Coachella Ordinance No. 715 (10/6/93), City of Desert Hot Springs Ordinance No. 93–2 (5/18/93), City of Indian Wells Ordinance No. 313 (2/4/93), City of Indio Ordinance No. 1138 (3/17/93), City of La Quinta Ordinance No. 219 (12/15/92), City of Palm Desert Ordinance No. 701 (1/14/93), City of Palm Springs Ordinance No. 1439 (4/21/93), City of Rancho Mirage Ordinance No. 575 (8/5/93), and County of Riverside Ordinance No. 742 (1/4/94). On December 9, 1998 (63 FR 67784), we approved all of these ordinances.

These ordinances were based on a model fugitive dust control ordinance developed by the Coachella Valley Association of Governments (CVAG), local governments, and the SCAQMD. The ordinances typically require: (1) Dust control plans for each construction project needing a grading permit; (2) plans to pave or chemically treat unpaved surfaces if daily vehicle trips exceed 150; (3) imposition of 15 mph speed limits for unpaved surfaces if daily vehicle trips do not exceed 150; (4) paving or chemical treatment of unpaved parking lots; and (5) actions to discourage use of unimproved property by off-highway vehicles.

Again working in cooperation with CVAG and SCAQMD, all of the jurisdictions recently developed a more stringent model ordinance and then adopted new replacement ordinances based on the model. The revised ordinances improve in numerous ways the effectiveness of controls on construction emissions and enhance the jurisdictions' various programs for reducing reentrained dust emissions.

On November 16, 2004, CARB submitted the following new and improved ordinances as replacements for the previously approved SIP provisions: City of Cathedral City Ordinance No. 583 (adopted 1/14/04), City of Coachella Ordinance No. 896 (10/8/03), City of Desert Hot Springs Ordinance No. 2003–16 (10/7/03), City of Indian Wells Ordinance No. 545 (11/6/03), City of Indio Ordinance No. 1357 (12/3/03), City of La Quinta Ordinance No. 391 (12/2/03), City of Palm Desert Ordinance No. 1056 (11/13/03), City of Palm Springs Ordinance No. 1639 (11/5/03), City of Rancho Mirage Ordinances No. 855 (12/18/03) and No. 863.(4/29/04), and County of Riverside Ordinance No. 742.1 (1/13/04).

2. Proposed Action on Regulations and Ordinances

The revisions to Rules 403, 403.1, and 1186 and the Coachella Valley fugitive dust ordinances strengthen the SIP-approved rules and ordinances. The rules and ordinances continue to contain adequate enforcement provisions for ensuring compliance by regulated facilities and the rules deliver emission reductions consistent with the South Coast and Coachella Valley

[16] Letter from Michael Scheible, CARB, to Wayne Nastri, USEPA, dated November 16, 2004, and letter from Elaine Chang, SCAQMD, to Dave Jesson, USEPA, dated September 17, 2004.

[17] Letter from Elaine Chang, SCAQMD, to Bob Fletcher, ARB, dated August 18, 2004.

[18] Rule 403.1 was originally titled "Wind Entrainment of Fugitive Dust." The amendment adopted this year includes a change in the rule's title to "Supplemental Fugitive Dust Control Requirements for Coachella Valley."

[19] Letter from Michael Scheible, CARB, to Wayne Nastri, USEPA, dated November 16, 2004, and letter from Elaine Chang, SCAQMD, to Dave Jesson, USEPA, dated September 17, 2004.

[20] Letter from Elaine Chang, SCAQMD, to Bob Fletcher, ARB, dated August 18, 2004.

progress and attainment requirements. Prior versions of these rules and ordinances were previously determined to meet the BACM and MSM provisions, and the rules and ordinances, as now strengthened, continue to meet applicable CAA subpart 2 provisions.

As noted above, the SCAQMD has requested that we not approve certain provisions of the rules and accompanying handbooks. With these exceptions, we are proposing to approve SCAQMD Rules 403, 403.1, and 1186, including the rule handbooks (Rule 403 Implementation Handbook, Rule 403 Coachella Valley Agricultural Handbook, and Rule 403.1 Implementation Handbook), as amended on April 2, 2004, and the Coachella Valley fugitive dust ordinances under CAA section 110(k)(3), as submitted on November 16, 2004, as meeting the provisions of CAA sections 110(a), 188(e), and 189(b)(1)(B).

Finally, we are proposing to conclude that the 2003 South Coast AQMP and the 2003 Coachella Valley Plan continue to meet BACM and MSM control measure requirements under CAA sections 188(e) and 189(b)(1)(B), through fully adopted regulations and ordinances and (in the case of the South Coast) a very limited number of near-term commitments to adopt additional measures.

D. Contingency Measures

The CAA requires that the SIP include contingency measures to be implemented if the area fails to meet progress requirements or to attain the NAAQS by the applicable deadline. In response to this provision, the 2003 South Coast AQMP includes two updated contingency measures: CTY–01—Accelerated Implementation of Control Measures, and CTY–14—Emission Reductions from Miscellaneous Sources (Weed Abatement). These measures are discussed at length in Appendix IV–A, Section 2, pages IV–122 through IV–133. CTY–01 includes Table 4 (page IV–126) displaying the scheduled control measures whose implementation could be accelerated as part of the contingency measure implementation. Both measures have the potential to achieve significant further reductions in PM–10 and its precursors and may be implemented quickly to cure a SIP shortfall. Upon final federal approval, these contingency measures would supersede and replace the contingency measures in the 2002 SIP for the South Coast.

In addition to these contingency measures, the 2003 South Coast AQMP projects a level of excess control for years beyond 2006 for NO_X and VOC, two of the major secondary precursors to PM–10 in the South Coast. This safety margin is due to the future year benefits of measures already adopted in regulatory form by October 31, 2002, the cutoff date for the inventories in Appendix III, Attachment A. The extent of this cushion, which is primarily the result of fleet turnover to meet the State's stringent mobile source emission standards, is shown below in Table 3—"Emissions of PM–10 Precursors in the South Coast."

TABLE 3.—EMISSIONS OF PM–10 PRECURSORS IN THE SOUTH COAST

[Emissions are shown in average annual tons per day]

Precursor	2006 Table A–7	2007 Table A–8	2008 Table A–9	2010 Table A–10
NO_X	950	912	873	780
VOC	698	672	658	630

Source: 2003 South Coast AQMP, Appendix III, Attachment A.

Assuming that the 2006 levels are consistent with attainment of the PM–10 NAAQS, the declining total basinwide inventory of NO_X and VOC show additional reductions beyond those needed to maintain the NAAQS. Thus, for the year 2008, projected emissions of NO_X are 77 tpd below the attainment level, and projected emissions of VOC are 40 tpd below the attainment level.

We propose to approve the SCAQMD's contingency measure provisions under CAA section 110(k)(3) as meeting the requirements of CAA section 172(c)(9). Specifically, we are proposing to approve contingency measures CTY–01—Accelerated Implementation of Control Measures, and CTY–04—Control of Emissions from Miscellaneous Sources (Weed Abatement), as set forth in Section 2 of Appendix IV–A to the 2003 South Coast AQMP.

There are no new contingency measures in the 2003 Coachella Valley Plan. Therefore, the contingency provisions in the 2002 SIP for Coachella Valley (see 67 FR 77209) remain applicable.

E. Reasonable Further Progress (RFP) and Milestones

The plans must include quantitative milestones which are to be achieved every 3 years until the areas are redesignated to attainment, and which demonstrate RFP, as defined in CAA section 171(1), until the area reaches attainment. CAA sections 172(c)(2) and 189(c).

1. South Coast

The 2003 South Coast AQMP includes projected levels of controlled emissions, based on fully adopted regulations and enforceable schedules for implementation of the control measure commitments. The resulting emissions levels are shown in Table 4—"South Coast PM–10 Reasonable Further Progress Milestones." Using the approaches discussed in Section II.F.1 below, the SCAQMD modeled the emissions levels for 2006 to demonstrate that both the 24-hour and annual PM–10 NAAQS will be attained when emissions are reduced to the levels shown for 2006.

TABLE 4.—SOUTH COAST PM–10 REASONABLE FURTHER PROGRESS MILESTONES

[Emissions are shown in average annual tons per day]

Pollutant	2003	2006
PM–10	292	292
NO_X	1,048	935
SO_X	58	57
VOC	804	673

Source: 2003 South Coast AQMP, Table 6–1.

We propose to approve this milestone schedule as meeting the requirements of CAA section 189(c), since the schedule reflects expeditious implementation of BACM and expeditious attainment of the 24-hour and annual PM–10 NAAQS. These triennial progress milestones are the principal progress component, but the 2003 South Coast AQMP also provides additional information regarding interim year reductions. See, for example, Table 2 above, Table A–6 of Appendix III, and the 2005 milestone year reduction schedule for the 1-hour ozone component of the plan (Table 6–

3b). We therefore propose to conclude that the 2003 South Coast AQMP also meets the RFP provision of CAA section 172(c)(2).

2. Coachella Valley

The 2003 Coachella Valley Plan includes projected levels of controlled emissions, based on fully adopted regulations and enforceable schedules for implementation of the 2002 SIP's control measure commitment. The resulting emissions levels are shown in Table 5—"Coachella Valley PM–10 Reasonable Further Progress Milestones." Using the approaches discussed in Section II.F.2 below, the SCAQMD modeled the emissions levels for 2006 to demonstrate that both the 24-hour and annual PM–10 NAAQS will be attained when emissions are reduced to the levels shown for 2006.

TABLE 5.—COACHELLA VALLEY PM–10 REASONABLE FURTHER PROGRESS MILESTONES

[PM–10 emissions are shown in average annual tons per day]

2003	2006
30.32	29.09

Source: 2003 Coachella Valley Plan, Tables 2–9 and 2–7.

We propose to approve this schedule as meeting the RFP and milestone requirements of CAA section 189(c)(1), since the schedule reflects expeditious implementation of BACM and expeditious attainment of the 24-hour and annual PM–10 NAAQS. Specifically, we are proposing to approve the milestone provisions in Tables 2–9 and 2–7 of the 2003 Coachella Valley Plan. Because the reductions needed for attainment between the 2003 and 2006 milestones are small (1.23 tons per day), we believe that interim year reduction estimates are not necessary or meaningful, and we conclude that the plan meets the requirements of CAA section 172(c)(2) relating to RFP.

F. Attainment Demonstration

The plans must provide detailed demonstrations (including air quality modeling) that the specified control strategy will reduce PM–10 emissions so that the standards will be attained as soon as practicable but no later than December 31, 2006. CAA section 189(b)(1)(A). In the case of the South Coast and Coachella Valley, the attainment demonstration must analyze both the 24-hour and annual NAAQS, since the areas have historically violated both NAAQS.

1. South Coast

In the 2003 South Coast AQMP, SCAQMD primarily relied on UAMAERO–LT modeling approach to assess control scenarios and to determine attainment of the PM–10 NAAQS. The 2003 South Coast AQMP also employed linear rollback of speciated particulate at 5 representative sites in the basin.[21] Finally, a weight-of-evidence (WOE) assessment was used for basin grids where high concentrations were predicted. The inputs and application of the models and the WOE analyses are described in Chapter 2 of Appendix V (*Modeling and Attainment Demonstrations*) of the 2003 South Coast AQMP.

The modeling results for 1995, 2006, and 2010 are presented in Chapter 5 (Figure 5–1 shows maximum annual concentrations and Figure 5–2 shows maximum 24-hour concentrations), and on pages V–2–49 to V–2–58 of Appendix V. The modeling predicts that the peak annual concentration in 2006 with implementation of controls will be 50 $\mu g/m^3$, compared to the 50 $\mu g/m^3$ annual PM–10 NAAQS. The modeling predicts that the peak 24-hour concentration in 2006 with controls will be 150 $\mu g/m^3$, compared to the 150 $\mu g/m^3$ 24-hour PM–10 NAAQS.

In contrast to other pollutants, we have not issued detailed modeling guidelines for PM–10, nor have we established minimum performance requirements for PM–10 modeling.[22] We have reviewed the SCAQMD's modeling approaches for both primary PM–10 and secondary PM–10, using both receptor modeling and dispersion modeling. We believe that the modeling in the 2003 South Coast AQMP provides a reasonable basis for linking emissions with air quality, for identifying an appropriate control strategy, and for determining whether the strategy delivers attainment for both the 24-hour and annual PM–10 NAAQS.

The SCAQMD's modeling shows that the level of emissions after implementation of the proposed set of control strategies would result in 2006 ambient concentrations within the South Coast in attainment of both the 24-hour and annual PM–10 NAAQS. We therefore conclude that the air quality modeling and attainment demonstration contained in the 2003 South Coast AQMP, Chapter 5 and Appendix V, Chapter 2, are consistent with existing EPA guidance, and we propose to approve the attainment demonstration under CAA section 189(b)(1)(A).

2. Coachella Valley

In the 2003 Coachella Valley Plan as with the 2003 South Coast AQMP, SCAQMD primarily relied on UAMAERO–LT modeling approach to assess control scenarios and to determine attainment of the annual PM–10 NAAQS. The 2003 Coachella Valley Plan also employed linear rollback of each of the significant primary source categories as part of the demonstration of attainment of the 24-hour PM–10 NAAQS. The attainment demonstration is presented in Chapter 3. The predicted peak concentration is 49.6 $\mu g/m^3$ for the annual NAAQS and 141.6 $\mu g/m^3$ for the 24-hour NAAQS.[23]

The modeling thus shows that the level of emissions after implementation of the proposed set of control strategies would result in 2006 ambient concentrations within the Coachella Valley in attainment of both the 24-hour and annual PM–10 NAAQS. We therefore conclude that the air quality modeling and attainment demonstration contained in the 2003 Coachella Valley Plan, Chapter 3, are consistent with existing EPA guidance, and we propose to approve the attainment demonstration under CAA section 189(b)(1)(A).

G. Motor Vehicle Emission Budgets

Rate of progress and attainment demonstration submittals must specify the maximum emissions of transportation-related precursors of PM–10 allowed in each milestone year and the attainment year and demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with RFP and attainment. In order for us to find these emissions levels or "budgets"

[21] Under the District's PM10 Technical Enhancement Program (PTEP), SCAQMD has been measuring speciated particulate matter at the following sites: Anaheim, Diamond Bar, Fontana, Los Angeles, and Rubidoux. Information about the PTEP program may be found in Appendix V to the 1997 South Coast AQMP and 2003 South Coast AQMP.

[22] Over the years, EPA has issued some recommendations on PM–10 modeling, including those codified at 40 CFR part 51, appendix W, 7.2.1 and 7.2.2, and those set forth in the PM–10 SIP Development Guideline (USEPA 450/2–860001, 6/87). Although we do not set minimum performance goals or require model performance evaluation for PM–10 modeling, SCAQMD included a performance evaluation for the UAMAERO–LT by grid cell and monitoring site and also a performance evaluation at each of the 5 PTEP sites for sulfate, nitrate, ammonium, organic carbon, elemental carbon, and primary PM–10 (Appendix V, pages V–2–31 to V–2–47).

[23] The SCAQMD excercised its option to increase the estimated 2006 paved road dust emissions in the attainment demonstration to provide a safety margin in the motor vehicle emissions budget, resulting in predicted maximum concentrations of 50.4 $\mu g/m^3$ and 144.3 $\mu g/m^3$ (Table 3–3).

adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related PM–10 precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118(e)(4)(v)), and must include PM–10 and PM–10 precursor emissions from the following sources: Motor vehicles, reentrained dust from traffic on paved and unpaved roads, and emissions during construction of highway and rail projects.[24]

The motor vehicle emissions budgets for the South Coast are presented in Table 6 below, entitled "South Coast PM–10 Plan Motor Vehicle Emissions Budgets," which is taken from "2003 South Coast AQMP On-Road Motor Vehicle Emissions Budgets," an attachment to CARB's SIP submittal. The motor vehicle emissions budgets for the Coachella Valley are presented in Table 7 below, entitled "Coachella Valley PM–10 Plan Motor Vehicle Emissions Budgets," which is taken from "2003 Coachella Valley PM–10 SIP On-Road Motor Vehicle Emissions Budgets," an attachment to CARB's SIP submittal.

EPA has previously determined that these budgets are adequate (see 69 FR 15325, March 25, 2004), following posting of the budgets on EPA's conformity Web site: *http://www.epa.gov/otaq/transp/conform/reg9sips.htm*.

TABLE 6.—SOUTH COAST PM–10 PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in annual average tons per day]

Year	PM–10	NO_X	VOC
2003	168	635	311
2006	166	549	251

TABLE 7.—COACHELLA VALLEY PM–10 PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in annual average tons per day]

Year	PM–10
2003	12.3
2006	10.9

The 2003 Coachella Valley Plan provides additional information on the budgets in Chapter 2 (pages 2–9 through 2–12) and Chapter 3 (pages 3–3 through 3–4), where the safety margin in the 2006 budgets is explained. In Section II.B.2., we propose to approve committal measure TCB–01—Transportation Conformity Budget Backstop Measure, which is designed to ensure that motor vehicle emissions remain consistent with the South Coast PM–10 budget and continued attainment of the PM–10 NAAQS in the South Coast through the years 2020 and 2030.

As discussed above in Section II.A., Emission Inventories, the motor vehicle emissions portions of these budgets (*i.e.*, the evaporative and tailpipe emissions) were developed using the EMFAC2002 motor vehicle emissions factors, along with activity levels reflecting current information provided by SCAG.

We propose to approve the motor vehicle emission budgets shown in Tables 6 and 7 as consistent with CAA section 176(c)(2)(A) and the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the baseline emissions inventories, the motor vehicle control measure emission reductions used in the progress and attainment demonstration, and the reductions needed for continued attainment of the standard after the attainment deadline.

III. Summary of EPA's Proposed Action

We are proposing to approve revisions to SCAQMD Rules 403 (except for subdivision h), 403.1 (except for subdivision j), and 1186 regulating fugitive dust emissions; revisions to the implementation handbooks for the rules (Rule 403 Implementation Handbook, Chapters 5, 7, and 8; Rule 403 Coachella Valley Agricultural Handbook; Rule 403.1 Implementation Handbook, Chapters 2, 3, 4, and 7); and revisions to the fugitive dust ordinances for 10 Coachella Valley jurisdictions. These revisions update, improve, strengthen, and supplement the SIP provisions for control of PM–10 and PM–10 precursors in the two areas.

We are proposing to approve 2003 plan amendments to the 2002 SIPs for the South Coast and Coachella Valley serious nonattainment areas, as the plan amendments pertain to CAA provisions applicable to attainment SIPs for the 24-hour and annual PM–10 NAAQS. Specifically, we are proposing to approve under section 110(k)(3) the PM–10 portions of the 2003 South Coast AQMP and the 2003 Coachella Valley Plan with respect to the CAA requirements for emissions inventories under section 172(c)(3); control measures, as meeting the requirements of sections 110(a), 188(e), and 189(b)(1)(B); RFP under section 189(c)(1); contingency measures under section 172(c)(9); demonstration of attainment under section 189(b)(1)(A); and motor vehicle emissions budgets under section 176(c)(2)(A).

We show the proposed plan approvals in Table 8—"Proposed Approvals of South Coast and Coachella Valley PM–10 Attainment Plan Submittals."

[24] The conformity regulations provide that, for purposes of budgets and conformity determinations, the applicable pollutants are bOC, NOx, and PM–10 if the applicable implementation plan establishes a budget for such emissions as part of the RFP, attainment, or maintenance strategy, or EPA has made such a finding. 40 CFR 91.102(b)(2)(111). Thus, although the SCAMQD has set RFP and attainment reductions for SOx, the conformity regulations do not allow for SOx budgets. The conformity regulations require that, in PM–10 areas with SIPs which identify construction-related fugitive PM—10 as a contributor to the nonattainment problem, the PM–10 budget and conformity analysis must include fugitive, PM–10 emissions associated with the construction of highway and transit projects. 40 CFR 93.122(d)(2)

TABLE 8.—PROPOSED APPROVALS OF SOUTH COAST AND COACHELLA VALLEY PM–10 ATTAINMENT PLAN SUBMITTALS

CAA section	Provision	Plan citation	
		South Coast	Coachella Valley
172(c)(3)	Emission Inventories	2003 South Coast AQMP, Chapter 3 (Tables 3–1A and 3–3A); Appendix III (Tables A–1, A–2, A–3, A–5, and A–7); and Appendix V (Attachment 4).	2003 Coachella Valley Plan, Tables 2–2, 2–3, 2–4, and 2–5.
110(a), 188(e), and 189(b)(1)(B)	Control Measures	Table 1 (derived from 2003 South Coast AQMP, Appendix IV–A) and Table 2 (derived from 2003 South Coast AQMP, Table 4–8A).	No new measures.
172(c)(2), 189(c)(1)	Reasonable Further Progress	2003 South Coast AQMP, Table 6–1.	Table 5 (derived from 2003 Coachella Valley Plan, Tables 2–9 and 2–7).
172(c)(9)	Contingency Measures	2003 South Coast AQMP, Appendix IV–A, Section 2 (CTY–01, CTY–04, TCB–01).	No new measures.
189(b)(1)(A)	Attainment Demonstration	2003 South Coast AQMP, Chapter 5; Appendix V, Chapter 2.	2003 Coachella Valley Plan, Chapter 3.
176(c)(2)(A)	Motor Vehicle Emissions Budgets	Table 6 (derived from "2003 South Coast AQMP On-Road Motor Vehicle Emissions Budgets").	Table 7 (derived from "2003 Coachella Valley PM–10 SIP On-Road Motor Vehicle Emissions Budgets").

IV. Administrative Requirements

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. L. 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 17, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 05–14931 Filed 7–27–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 050520139–5139–01; I.D. 030305A]

RIN 0648–AS46

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Bering Sea/Aleutian Islands King and Tanner Crabs; Industry Fee System for Fishing Capacity Reduction Loan

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to implement an industry fee system for repaying a $97,399,357.11 Federal loan financing a fishing capacity reduction program in the Bering Sea/Aleutian Islands King and Tanner Crab fishery. This action's intent is to implement the fee system.

DATES: Written comments on this proposed rule must be received by August 29, 2005.

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

- E-mail: *0648–AS46@noaa.gov*. Include in the subject line the following identifier: Bering Sea/Aleutian Islands Crab Fishing Capacity Reduction Program RIN 0648–AS46: E-mail comments, with or without attachments, are limited to 5 megabytes.
- Federal e-Rulemaking Portal: *http:www.regulations.gov*.
- Mail: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.
- Fax: (301) 713–1306.

Comments involving the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted in writing to Michael L. Grable, at the above address, and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for the program may be obtained from Michael L. Grable, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorized fishing capacity reduction programs. In particular, section 312(d) authorized industry fee systems for repaying the reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing sections 312(b)-(e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorized reduction loans.

The Consolidated Appropriations Act of 2001 (Public Law 106–554) directed the Secretary of Commerce to establish a $100 million fishing capacity reduction program in the Bering Sea/Aleutian Islands king and Tanner crab fishery. Congress amended the authorizing act twice (Public Law 107–20 and Public Law 107–117), once to change the crab reduction program's funding from a $50 million appropriation and a $50 million loan to a $100 million loan and once to clarify provisions about crab fishery vessels.

NMFS published the crab reduction program's proposed implementation rule on December 12, 2002 (67 FR 76329) and its final rule on December 12, 2003 (68 FR 69331). Anyone interested in the program's full implementation details should refer to these two documents. NMFS initially proposed and adopted the program's implementation rule as § 600.1018 of Subpart L of 50 CFR part 600, but NMFS has since, without other change, re-designated the rule as § 600.1103 in a new subpart M of part 600.

To avoid confusion, the following table identifies the various part 600 rules involved in or affecting the crab reduction program:

DESCRIPTION	SUB-PART	SECTION
Reduction Framework Rule	L	600.1000–600.1017.
Program Implementation Rule's Initial Designation	L	600.1018.
Program Implementation Rule's Re-designation	M	600.1103.
Proposed Fee Rule	M	600.1104.

The crab reduction program's maximum cost was $100 million consisting of a 30–year loan to be repaid by fees on future crab landings. Each of six of the crab fishery's seven former crab area/species endorsement fisheries were to pay fees at different rates. In return for reduction payments equaling their bid amounts, voluntary program participants relinquished, among other things, their crab fishing license limitation program (LLP) licenses and other permits, their catch histories associated with those licenses and permits, and their crab fishing vessels' worldwide fishing privileges.

NMFS notice in the **Federal Register** (69 FR 7421) issued the crab reduction program's invitation to bid on February 17, 2004. The bidding period opened on March 5, 2004, and closed on April 23, 2004. NMFS scored each bid's amount against the bidder's past ex-vessel crab revenues and, in a reverse auction, accepted the bids whose amounts were the lowest percentages of the revenues.

Forty-two non-interim crab LLP license holders submitted bids totaling $192,600,916. NMFS accepted 28 bids totaling $99,878,316. The next lowest scoring bid would have exceeded the program's maximum cost.

NMFS next held a referendum about the fees. The reduction contracts would have become void unless a two thirds majority of votes cast in the referendum approved the fees. Each crab LLP license holder received one vote. NMFS mailed ballots to qualifying referendum voters and the voting period opened on May 7, 2004. The voting period closed on June 11, 2004. NMFS received 283 timely votes, four of which were otherwise unresponsive. Approximately 93 percent (259 votes) approved the fees. The referendum appeared to be successful.

Before publishing a reduction payment tender notice, however, NMFS learned that the crab catch history for some reduction/history vessels overstated their actual crab catch history during the bid scoring period. This resulted from a computer programming error which multiplied the crab catch history of co-owned reduction/history vessels times the number of vessel co-owners. Accordingly, the bids associated with these vessels appeared to have more crab catch history during the bid scoring period than they actually did. This resulted in some inaccurate bid scores.

Because of the government's unilateral mistake, the information NMFS provided to the referendum voters on May 7, 2004, was materially inaccurate. In response, NMFS readministered the referendum by mailing new ballots to qualifying referendum voters. The voting period opened on July 9, 2004, and closed on July 30, 2004. NMFS received 236 timely votes. This referendum was not successful since only approximately 46 percent (109) of the votes cast approved the fees.

Because of the first referendum's special circumstances, NMFS decided to re-invite bids and held a second referendum based on the new bidding results. The second bidding period opened on August 6, 2004, and closed on September 24, 2004. Fifty-five non-interim crab LLP license holders submitted bids totaling $225,954,284.

NMFS again scored each bid's amount against the bidder's past ex-vessel revenues and, in a reverse auction, accepted the bids whose amounts were the lowest percentages of the revenues.

NMFS accepted 25 bids totaling $97,399,357.11. The next lowest scoring

bid would have exceeded the program's maximum cost. The accepted bids involved 25 fishing vessels as well as 62 fishing licenses or permits. Twenty-five of the permits were non-interim crab fishery LLP licenses. The remaining included 15 groundfish fishing licenses, 20 Federal fishery vessel permits, one high seas permit, and one halibut individual fishing quota share allocation.

NMFS allocated the prospective $97,399,357.11 million reduction loan to the six reduction endorsement fisheries involved, as the following sub-amounts:

1. Bristol Bay red king, $17,129,957.23,
2. BSAI *C. opilio* and *C. bairdi*, $66,410,767.20,
3. Aleutian Islands brown king, $6,380,837.19,
4. Aleutian Islands red king, $237,588.04,
5. Pribilof red king and Pribilof blue king, $1,571,216.35, and
6. St. Matthew blue king, $5,668,991.10.

NMFS next held a another fee referendum. The reduction contracts would have become void unless a two thirds majority of votes cast in the second referendum approved the fees. Each crab LLP license holder received one vote. NMFS mailed ballots to 313 qualifying referendum voters. The voting period opened on October 1, 2004, and closed on November 15, 2004. NMFS received 273 timely votes. Over 79 percent (217 votes) approved the fees. The referendum was successful. Accordingly, the reduction contracts were in full force and effect.

On November 24, 2004, NMFS published another **Federal Register** notice (69 FR 68313) advising the public that NMFS would, beginning on December 27, 2004, tender the crab reduction program's reduction payments to the 25 accepted bidders. On December 27, 2004, NMFS required all accepted bidders to then permanently stop all further fishing with the reduction vessels and permits.

Subsequently, NMFS:

1. Disbursed $97,399,357.11 in reduction payments to 25 accepted bidders;
2. Revoked the relinquished reduction permits;
3. Revoked each reduction vessel's fishing history;
4. Notified the National Vessel Documentation Center to revoke the reduction vessels' fishery trade endorsements and appropriately annotate the reduction vessel's document; and
5. Notified the U.S. Maritime Administration to prohibit the reduction vessel's transfer to foreign ownership or registry.

On March 2, 2005, NMFS published a final rule (70 FR 10174 *et seq.*), effective April 1, 2005, implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab. Among other things, this rule added a new part 680 to this chapter. Amendments 18 and 19 amended the crab fishery management plan to include the Voluntary Three-Pie Cooperative Program, otherwise known as the Crab Rationalization Program (CRP).

The CRP involves terminology which sometimes differs from the terminology in the crab reduction program's implementation rule. For example, the CRP uses different terminology for each of the eight crab rationalization fisheries which, under the crab reduction program's implementation rule, constitute only six reduction endorsement fisheries. Rather than redefining these terms for an already completed crab reduction program, this action proposes to retain these terms and cross reference them to the new CRP terms.

The following table cross references the terms for the six reduction endorsement fisheries involved in the crab reduction program with the different terminology for the eight crab rationalization fisheries involved in the CRP:

REDUCTION ENDORSEMENT FISHERIES	CRAB RATIONALIZATION FISHERIES
Bristol Bay red king	Bristol Bay red king (BBR).
BSAI *C. opilio* and *C. bairdi*	Bering Sea snow (BSS) and Bering Sea tanner (BST).
Aleutian Islands brown king	Eastern Aleutian Islands golden king (EAG) and Western Aleutian Islands golden king (WAG).
Aleutian Islands red king	Western Aleutian Islands red king (WAI).
Pribilof red king and Pribilof blue king	Pribilof red king and blue king (PIK).
St. Matthew blue king	St. Matthew blue king (SMB).

Please note that, in two instances, what are two separate crab reduction fisheries are together but one reduction endorsement fishery. Consequently, both of the two separate crab reduction fisheries will, in each of the two instances, pay fees at the same rate as the one reduction endorsement fishery in which the two fisheries are included until the one fishery's reduction loan sub-amount, for whose payment the two fisheries are equally obligated, is fully repaid.

II. Proposed Regulations

NMFS has completed the crab reduction program except for implementing the fee which this action proposes to implement.

The terms defined in § 600.1103 of the crab reduction program's implementation rule and in section 600.1000 of the program's framework rule apply to this action except for the definitions of "reduction endorsement fishery" and "reduction fishery". This action proposes to refine the definitions of these two terms to reflect the post-CRP fishery's circumstances. If this rule is adopted, the new definitions of these terms would, for purposes of this action, supersede the old definitions in this subpart's § 600.1103.

The framework rule's § 600.1013 governs fee payment and collection in general, and this action proposes to apply the section 600.1013 provisions to the crab reduction program.

Under § 600.1013, the first ex-vessel buyers (fish buyers) of post-reduction fish (fee fish) subject to an industry fee system must withhold the fee from the trip proceeds which the fish buyers would otherwise have paid to the parties (fish sellers) who harvested and first sold the fee fish to the fish buyers. Fish buyers calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. Delivery value is the fee fish's full fair market value, including all in-kind compensation or other goods or services exchanged in lieu of cash.

Fish sellers pay the fees when fish buyers collect by withholding the applicable amount from trip proceeds. Fee payment and collection is mandatory, and there are substantial penalties for failing to pay and collect fees in accordance with the applicable regulations.

The framework rule's § 600.1014 governs how fish buyers must deposit,

and later disburse to NMFS, the fees which they have collected as well as how they must keep records of, and report about, collected fees.

Under the framework rule's § 600.1014, fish buyers must, no less frequently than at the end of each business week, deposit collected fees in segregated and Federally insured accounts until, no less frequently than on the last business day of each month, they disburse all collected fees in the accounts to a lockbox which NMFS has specified for this purpose. Settlement sheets must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least 3 years and send NMFS annual reports of fee collection and disbursement activities.

All parties interested in this proposed action should carefully read the following framework rule sections, whose detailed provisions apply to the fee system for repaying the crab reduction program's loan:

1. § 600.1012;
2. § 600.1013;
3. § 600.1014;
4. § 600.1015;
5. § 600.1016; and
6. § 600.1017.

You will not understand this action's full requirements unless you read this action in conjunction with reading at least the framework rule sections listed above.

NMFS proposes, in accordance with the framework rule's section 600.1013(d), to establish the initial fee for the program's six reduction endorsement fisheries. After this action becomes a final rule, NMFS will then separately mail notification to each affected fish seller and fish buyer of whom NMFS has notice. Until this notification, fish sellers and fish buyers do not have to either pay or collect the fee. After this action becomes a final rule, the initial fee rates applicable to each reduction endorsement fishery would be as indicated in the last column of the following table:

REDUCTION ENDORSEMENT FISHERIES	CRAB RATIONALIZATION FISHERIES	LOAN SUB-AMOUNT	FEE RATE
Bristol Bay red king	BBR	$17,129,957.23	1.9%
BSAI *C. opilio* and *C. bairdi*	BSS and BST	$66,410,767.20	5.0%
Aleutian Islands brown king	EAG and WAG	$6,380,837.19	2.6%
Aleutian Islands red king	WAI	$237,588.04	5.0%
Pribilof red king and Pribilof blue king	PIK	$1,571,216.35	5.0%
St. Matthew Blue	SMB	$5,668,991.10	5.0%

The rates are percentages of delivery value. Please see the framework rule's section 600.1000 for the definition of "delivery value" and of the other terms relevant to this proposed fee rule.

Each disbursement of the reduction loan's $97,399,357.11 principal amount began accruing interest as of the date of each such disbursement. The loan's interest rate will be the applicable rate, plus 2 percent, which the U.S. Treasury determines at the end of fiscal year 2005.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for the crab reduction program's final implementing rule (December 12, 2003; 68 FR 69331). The assessment discusses the program's impact on the natural and human environment. The assessment resulted in a finding of no significant impact. The assessment considered, among other alternatives, the implementation of the fee payment and collection which this action proposes. Therefore, this proposed action has received a categorical exclusion from additional analysis. NMFS will provide a copy of the assessment upon request (see **ADDRESSES**).

The Office of Management and Budget determined that this proposal is significant under Executive Order 12866. NMFS prepared a Regulatory Impact Review for the crab reduction program's final rule. NMFS will provide a copy of the review upon request (see **ADDRESSES**).

NMFS prepared a Final Regulatory Flexibility Analysis for the crab reduction program as required by the Regulatory Flexibility Act's section 603. The analysis describes the impact this proposed rule would have on small entities. NMFS will provide a copy of the analysis upon request (see **ADDRESSES**). An analysis summary follows:

1. Description of Reasons for Action and Statement of Objective and Legal Basis

Please see the initial background section of this proposed action's supplementary information, because the information there is similar to the analysis in this regard.

2. Description of Small Entities to Which the Rule Applies

The Small Business Administration has defined small entities to be all fish harvesting businesses which are independently owned and operated, are not dominant in their field of operation, and have annual receipts of $3.5 million or less. The definition also includes processors with 500 or fewer employees involved in related industries such as canned and cured fish and seafood or preparing fresh fish and seafood. Moreover, the definition also includes virtually all harvesting vessels.

3. Description of Recordkeeping and Compliance Costs

Please see this action's collection-of-information requirements following the analysis.

4. Duplication or Conflict with Other Federal Rules

This proposed rule does not duplicate or conflict with any Federal rules.

5. Description of Significant Alternatives Considered

NMFS considered three alternatives: (1) status quo (no fees); (2) buyback with uniform fees; and (3) buyback with weighted (by reduction endorsement fishery) fees.

Status Quo (Alternative 1)

Under the status quo, vessel revenues would not be affected. The status quo is a significant alternative to the proposed action because the former involves no fees and the latter does. NMFS could not choose this alternative because it is contrary to Public Law 106–554.

Uniform Loan Repayment Fees (Alternative 2)

Under Alternative 2, NMFS would apply one fee to the entire crab fishery rather than assigning a different fee to each of the six reduction endorsement fisheries based on their proportional bid crab values. NMFS could not choose this alternative because it is contrary to Public Law 106–554.

Repayment Fees (Alternative 3)

Under Alternative 3, NMFS would assign a different fee rate for each of the six reduction endorsement fisheries based on their proportional bid crab values. Like Alternative 2, Alternative 3 would adversely affect vessel revenues. Nevertheless, Alternative 3 is the most equitable because it apportions repayment obligations based on the actual reduction benefits which each reduction endorsement fishery actually received. This is the preferred alternative both because it is the most equitable and Public Law 106–554 requires this alternative's method.

6. Steps the Agency Has Taken to Mitigate Negative Effects of the Action

With the lack of available cost data, increases in revenues may serve as a proxy for increased profitability. Further, in light of available revenue data, and assuming that each individual vessel shares in the increased revenues resulting from the crab buyback program, the comparison of the relative effects of the program versus the effects of the fees show that overall economic benefits of the program would still be greater than the relative fees charged under this rule. NMFS is not aware of any other measures that could reduce the impact on small entities and still meet statutory requirements. However, NMFS welcomes comments that relay such ideas.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB has approved these information collections under OMB control number 0648–0376. NMFS estimates that the public reporting burden for these requirements will average:

1. Two hours for submitting a monthly fish buyer settlement sheet;
2. Four hours for submitting an annual fish buyer report; and
3. Two hours for making a fish buyer/fish seller report when one party fails to either pay or collect the fee.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, any information collection subject to the Paperwork Reduction Act unless that information collection displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs business, Reporting and recordkeeping requirements.

Dated: July 25, 2005.

James W. Balsiger,

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

For the reasons in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. Section 600.1104 text is added to read as follows:

§ 600.1104 Bering Sea and Aleutian Islands (BSAI) crab species fee payment and collection system.

(a) *Purpose.* As authorized by Public Law 106–554, this section's purpose is to:

(1) In accordance with § 600.1012 of subpart L, establish:

(i) The borrower's obligation to repay a reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(2) In accordance with § 600.1013 through § 600.1016 of subpart L, implement an industry fee system for the reduction fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1103 of this subpart expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Crab rationalization crab means the same as in § 680.2 of this chapter.

Crab rationalization fisheries means the same as in § 680.2 of this chapter.

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter formerly (before adoption of § 680 of this chapter) defined as crab area/species endorsements, except the area/species endorsement for Norton Sound red king. More specifically, the reduction endorsement fisheries, and the crab rationalization fisheries which (after adoption of § 680 of this chapter) correspond to the reduction endorsement fisheries, are:

(1) Bristol Bay red king (the corresponding crab rationalization fishery is Bristol Bay red king crab),

(2) Bering Sea and Aleutian Islands Area C. opilio and (the corresponding crab rationalization fisheries are two separate fisheries, one for Bering Sea snow crab and another for Bering Sea Tanner crab),

(3) Aleutian Islands brown king (the corresponding crab rationalization fisheries are the two separate fisheries, one for Eastern Aleutian Islands golden king crab and another for

Western Aleutian Islands golden king crab),

(4) Aleutian Islands red king (the corresponding crab rationalization fishery is Western Aleutian Islands red king crab),

(5) Pribilof red king and Pribilof blue king (the corresponding crab rationalization fishery is Pribilof red king and blue king crab), and

(6) St. Matthew blue king (the corresponding crab rationalization fishery is also St. Matthew blue king crab).

Reduction fishery means the fishery for all crab rationalization crab in all crab rationalization fisheries.

Sub-amount means the portion of the reduction loan amount for whose repayment the borrower in each reduction endorsement fishery is obligated.

(c) *Reduction loan amount.* The reduction loan's original principal amount is $97,399,357.11.

(d) *Sub-amounts.* The sub-amounts are:

(1) For Bristol Bay red king, $17,129,957.23;

(2) For Bering Sea and Aleutian Islands Area C. opilio and C. bairdi, $66,410,767.20;

(3) For Aleutian Islands brown king, $6,380,837.19;

(4) For Aleutian Islands red king, $237,588.04;

(5) For Pribilof red king and Pribilof blue king, $1,571,216.35; and

(6) For St. Matthew blue king, $5,668,991.10.

(e) *Interest accrual from inception.* Interest began accruing on each portion of the reduction loan amount on and from the date on which NMFS disbursed each such portion.

(f) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year 2005 plus 2 percent.

(g) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from January 19, 2005, but each fee shall continue indefinitely for as long as necessary to fully repay each subamount.

(h) *Reduction loan repayment.* (1) The borrower shall, in accordance with § 600.1012, repay the reduction loan;

(2) Fish sellers in each reduction endorsement fishery shall, in accordance with § 600.1013, pay the fee at the rate applicable to each such fishery's subamount;

(3) Fish buyers in each reduction endorsement fishery shall, in accordance with § 600.1013, collect the fee at the rate applicable to each such fishery;

(4) Fish buyers in each reduction endorsement fishery shall, in accordance with § 600.1014, deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery; and,

(5) The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through § 600.1017.

[FR Doc. 05–14951 Filed 7–27–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 144
Thursday, July 28, 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 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: NMFS Alaska Region Vessel Monitoring System (VMS) Program.

Form Number(s): None.

OMB Approval Number: 0648–0445.

Type of Request: Regular submission.

Burden Hours: 4,796.

Number of Respondents: 1,545.

Average Hours Per Response: 1 minute.

Needs and Uses: The National Marine Fisheries Service (NMFS) manages the crab fisheries in the waters off the coast of Alaska under the Fishery Management Plan for Bering Sea and Aleutian Islands Crab (FMP). Amendments 18 and 19 amend the FMP to include the Crab Rationalization Program (Program). Congress amended the Magnuson-Stevens Act to require the Secretary of Commerce to approve the Program. The Program reallocates BSAI crab resources among harvesters, processors, and coastal communities. This collection-of-information addresses the vessel monitoring system (VMS) requirements for the Program. A vessel that harvests crab in the crab fisheries, including a vessel harvesting community data quota or Adak allocations, would be required to have onboard an operating NMFS-approved VMS transmitter at any time when the vessel has crab gear on board. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System (GPS) satellites and send the position information to NMFS via a mobile communication service provider.

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: July 22, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14906 Filed 7–27–05; 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: Evaluation of the Coastal Services Magazine and the Coastal Connections Newsletter.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 59.

Number of Respondents: 292.

Average Hours Per Response: 12 minutes.

Needs and Uses: The NOAA Coastal Services Center (Center) produces two publications for coastal resource managers, the bi-monthly Coastal Services Magazine and the bi-monthly Coastal Connections Newsletter. The proposed survey will be used by the Center to obtain information from our subscribers to evaluate customer satisfaction, learning and application regarding the two publications.

Affected Public: State, local or tribal government; Federal government.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: July 22, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14907 Filed 7–27–05; 8:45 am]

BILLING CODE 3510–JS–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 Institute of Standards and Technology.

Title: Manufacturing Extension Partnership (MEP) Client Impact Surveys.

Form Number(s): None.

OMB Approval Number: 0693–0021.

Type of Review: Regular submission.

Burden Hours: 1,083.

Number of Respondents: 6,500.

Average Hours Per Response: 10 minutes.

Needs and Uses: This collection allows the MEP Program to obtain specific information from clients served

by the program to evaluate program strengths and weaknesses in order to plan for improvements in program effectiveness and efficiency.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

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, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 22, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14910 Filed 7–27–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 7 of the 2004 Panel

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 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 September 26, 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(s) and instructions should be directed to Patrick J. Benton, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to five years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on retirement plans, taxes, and providing health care in the home. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 Panel is currently scheduled for 5 years and will include 15 waves of interviewing, which began in February 2004. The 2004 Panel is scheduled for 5 years because of the re-authoring of the instrument and re-engineering of the post data collection processing systems for the 2009 Panel. Approximately 62,000 households were selected for the 2004 Panel, of which, 46,500 are expected to be interviewed. We estimate that each household will contain 2.1 people 15 years of age or older, yielding 97,650 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2004 SIPP Panel during FY 2006. The total annual burden for 2004 Panel SIPP interviews will be 146,475 hours in FY 2006.

The topical modules for the 2004 Panel Wave 7 collect information about:

- Informal Caregiving.
- Retirement and Pension Plan Coverage.
- Annual Income and Retirement Accounts.
- Taxes.

Wave 7 interviews will be conducted from February 2006 through May 2006.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews will require an additional 1,553 burden hours in FY 2006.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2004 Panel, respondents are interviewed a total of 15 times (15 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0905.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 97,650 people per wave.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 148,028.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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 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: July 22, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14908 Filed 7–27–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice Requesting Nominations for the Advisory Committee on Commercial Remote Sensing (ACCRES)

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) was constituted to advise the Secretary of Commerce through the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing industry and NOAA's activities to carry out responsibilities of the Department of Commerce set forth in the Land Remote Sensing Policy Act of 1992 (15 U.S.C. Secs 5621–5625). The Committee is composed of leaders in the commercial space-based remote sensing industry, space-based remote sensing data users, government (federal, state, local), and academia. The Department of Commerce is seeking up to eight highly qualified individuals knowledgeable about the commercial space-based remote sensing industry and uses of space-based remote sensing data to serve on the Committee.

DATES: Nominations must be postmarked on or before August 29, 2005.

SUPPLEMENTARY INFORMATION: ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing industry and NOAA's activities to carry out responsibilities of the Department of Commerce set forth in the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5621–5625).

The Committee meets at least twice a year. Committee members serve in a representative capacity for a term of two years and may serve up to two consecutive terms, if reappointed. No less than 12 and no more than 15 individuals may serve on the Committee. Membership is comprised of highly qualified individuals representing the commercial space-based remote sensing industry, space-based remote sensing data users, government (Federal, state, local), and academia from a balance of geographical regions. Nominations are encouraged from all interested persons and organizations representing interests affected by the U.S. commercial space-based remote sensing industry. Nominees must possess demonstrable expertise in a field related to the space-based commercial remote sensing industry or exploitation of space-based commercial remotely sensed data and be able to attend committee meetings that are held at least two times per year. In addition, selected candidates must apply for and obtain a security clearance. Membership is voluntary, and service is without pay.

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

Nominations should be sent to Douglas Brauer, NOAA/NESDIS International and Interagency Affairs, 1335 East West Highway, Room 7311, Silver Spring, Maryland 20910 and nominations must be received by August 29, 2005. The full text of the Committee Charter and its current membership can be viewed at the Agency's Web page at *http://www.accres.noaa.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Douglas Brauer, NOAA/NESDIS International and Interagency Affairs, 1335 East West Highway, Room 7311, Silver Spring, Maryland 20910; telephone (301) 713–2024 x213, fax (301) 713–2032, e-mail *Douglas.Brauer@noaa.gov.*

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 05–14928 Filed 7–27–05; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Applications for Trademark Registration (formerly Trademark Processing).

Form Number(s): PTO Forms 4.8, 4.9, 1478, and 1478(a).

Agency Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 74,593 hours annually.

Number of Respondents: 253,801 responses per year.

Avg. Hours Per Response: The USPTO estimates that the public will take approximately 15 to 23 minutes completing the applications in this collection, depending on the form and the nature of the information. This includes the time to gather the necessary information, create the documents, and submit the completed request. The time estimates for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.* and is implemented through the Trademark rules set forth in 37 CFR part 2. It provides for the registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application to register their mark.

The USPTO is proposing to split this collection into four separate collections, based upon the Trademark business

processes. This collection will contain the use-based and intent to use applications and applications filed under §§ 44(d) and (e). In addition, this collection includes a reduced filing fee of $275 per class for applications filed through TEAS that meet certain requirements and a $50 processing fee to process applications that do not meet the requirements (see notice of proposed rulemaking, "Requirements to Receive a Reduced Fee for Filing an Application Through the Trademark Electronic Application System" (RIN 0651–AB88) published in the **Federal Register** on April 7, 2005).

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions, farms, Federal government, and State, local, or tribal government.

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 any of the following methods:

• E-mail: *Susan.Brown@uspto.gov.* Include "0651–0009 Applications for Trademark Registration (formerly Trademark Processing) copy request" in the subject line of the message.

• Fax: 571–273–0112, marked to the attention of Susan Brown.

• Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 29, 2005 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: July 18, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–14925 Filed 7–27–05; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–3472 between the hours of 9 a.m. and 4:30 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its AmeriCorps Application for Membership (OMB Control Number 3045–0054 with an expiration date of 10/2005). Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by September 26, 2005.

ADDRESSES: Send comments to the Corporation for National and Community Service, Office of Public Affairs, Attn: Denise Yeager, 1201 New York Avenue, NW., Washington, DC 20525 or fax to: (202) 606–3460, Attn: Denise Yeager.

FOR FURTHER INFORMATION CONTACT: Denise Yeager, (202) 606–6712 or e-mail to *dyeager@cns.gov.*

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The AmeriCorps member application will gather data from applicants, including background information, educational history, skills and experience, and a motivational statement that AmeriCorps may use in evaluating their suitability for becoming a member and to place them in the most appropriate program(s) that match their skills and interests.

Current Action

The Corporation seeks approval of its AmeriCorps Application for Membership. The application has very few changes from the previously approved application. If approved, this application will continue to enable applicants to complete one application and be considered for multiple programs within AmeriCorps. The application will continue to be cost-effective for the government by providing a centralized information source and streamlined process for receiving applications and placing them into the proper programs.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application for Membership.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Those individuals interested in applying to become a member of any of the AmeriCorps programs, including AmeriCorps*NCCC and AmeriCorps*VISTA and hundreds of State and local programs located throughout the country which recruit AmeriCorps members.

Total Respondents: Approximately 75,000. (Approximately 50,000 individuals serve each year in AmeriCorps programs; (collection totals are inexact, as almost all completed applications are submitted to local programs and are not sent to the Corporation for National Service)).

Frequency: One time. Applicants may make copies of their completed form, and submit copies (each, however, with an original signature) to several different AmeriCorps programs for consideration.

In addition, applicants may fill out the same application online at the Corporation's Web site. Applicants may then send multiple applications to programs electronically.

Average Time Per Response: 45 minutes.

Estimated Total Burden Hours: 56,250 hours. (if 75,000 individuals complete the form per year).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: July 20, 2005.

Timothy McManus,

Director of Marketing.

[FR Doc. 05–14909 Filed 7–27–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Overview Information; Rehabilitation Continuing Education Programs (RCEP)—Regional Rehabilitation Continuing Education Projects—Community Rehabilitation Programs (RRCEP–CRP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.264B.

Dates: Applications Available: July 28, 2005.

Deadline for Transmittal of Applications: September 12, 2005.

Deadline for Intergovernmental Review: November 10, 2005.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Note: We are inviting applications for CFDA number 84.264B for Department of Education Regions V, VII, and IX only.

Estimated Available Funds: The Administration has requested $38,826,000 for the Rehabilitation Training program for FY 2006, of which we intend to use an estimated $1,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $450,000–$500,000.

Estimated Average Size of Awards: $475,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

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: To support training centers that serve either a Federal region or another geographical area and provide for a broad, integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 389.10).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Community Rehabilitation Programs

Projects must develop and conduct training programs for staff of—

(a) Private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services; and

(b) Centers for independent living.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 389.

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: Cooperative agreements.

Estimated Available Funds: The Administration has requested $38,826,000 for the Rehabilitation Training program for FY 2006, of which we intend to use an estimated $1,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $450,000–$500,000.

Estimated Average Size of Awards: $475,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Note: We are inviting applications for Department of Education Regions V, VII, and IX only.

2. *Cost Sharing or Matching:* The Secretary has determined that a grantee must provide a match of at least 10 percent of the total cost of the project (34 CFR 389.40).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

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 84.264B.

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 Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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 45 pages, using the following standards:

- A page is 8.5″ by 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.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 28, 2005.

Deadline for Transmittal of Applications: September 12, 2005.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). 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: November 10, 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.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Continuing Education Programs—Regional Rehabilitation Continuing Education Projects—Community Rehabilitation Programs-CFDA Number 84.264B must be submitted electronically using the Grants.gov Apply site at: *http://www.grants.gov*. Through this site; you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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*.

You may access the electronic grant application for Rehabilitation Continuing Education Programs—Regional Rehabilitation Continuing Education Projects—Community Rehabilitation Programs at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://eGrants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all the steps in the Grants.gov registration process (see *http://www.grants.gov/GetStarted*) and provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete.
- 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 all information typically included on the Application

for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov 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 Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov 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: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5053, Potomac Center Plaza, Washington, DC 20202–2800. FAX: (202) 245–7591.

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 84.264B), 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 84.264B), 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 84.264B), 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 Application for Federal Education Assistance (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

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR parts 385 and 389 of the program regulations and 34 CFR part 75.210 of EDGAR and are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR parts 385 and 389.30.

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. 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.

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the RCEP—RRCEP–CRP is to upgrade the skills of personnel currently employed in private rehabilitation agencies and facilities that cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services and personnel in centers for independent living. In order to measure the success of RRCEPs in meeting this goal, each RRCEP grantee is required to conduct an evaluation of RRCEP training activities. In annual performance reports, RRCEPs are required to provide specific information on the number of training activities, the topics of each training program, the number of participants served, the target groups represented by participants, and summary data from participant evaluations. This information allows the Rehabilitation Services Administration (RSA) to measure results against the regional needs assessment conducted by the RRCEP and against the goal of upgrading the skills of personnel currently employed in CRPs that cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services and centers for independent living. RSA is in the process of developing a uniform data collection instrument for future use to collect these data directly from the grantee. We expect to have a draft instrument available for public comment by December 31, 2005. Use of the uniform data collection instrument is expected to be required beginning with the 2007 project period.

VII. Agency Contact

For Further Information Contact: Christine Marschall, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5053, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7429.

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: July 22, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–14920 Filed 7–27–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the Fusion Energy Sciences Advisory Committee

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Fusion Energy Sciences Advisory Committee has been renewed for a two-year period beginning July 22, 2005.

The Committee will provide advice to the Director, Office of Science, on long-range plans, priorities, and strategies for advancing plasma science, fusion science and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. The Secretary has determined that the renewal of the Fusion Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instruction issued in implementation of those acts.

For Further Information Contact: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on July 22, 2005.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 05–14929 Filed 7–27–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Allegheny Energy, Inc., Monongahela Power Company, The Potomac Edison Company, and Allegheny Energy Supply Company, LLC (Docket No. EC05–104–000); and Monongahela Power Company, Allegheny Energy Supply Company, LLC, and Allegheny Energy OVEC Supply Company, LLC (Docket No. ER05–1212–000); Notice of Filing

July 21, 2005.

Take notice that on July 13, 2005, Allegheny Energy, Inc. (Allegheny Energy) Monongahela Power Company (Mon Power), The Potomac Edison Company (PE), Allegheny Energy Supply Company, LLC (AE Supply) and Allegheny Energy OVEC Supply Company, LLC (AEOS) (collectively, the Applicants) filed a request pursuant to section 203 of the Federal Power Act (FPA) and Part 33 of the Commission's Regulations, that the Commission approve a restructuring transaction (the Transaction) that will realign the generation ownership and contractual arrangements within the Allegheny Energy holding company system.

Applicants state that the transaction involves both the transfer of jurisdictional assets and the restructuring of contractual arrangements among the Applicants. As a result, the Applicants also are submitting for filing under section 205 of the FPA and Part 35 of the Commission's regulations the following agreements: (1) An Amended and Restated Full Requirements Service Agreement, which amends an existing Service Agreement between AE Supply and PE and which will be assigned by AE Supply to Mon Power; (2) an amended and restated Facilities Lease and Assignment Agreement, which amends an existing Facilities Lease Agreement between AE Supply and PE, and which will be assigned by PE to Mon Power; (3) a new Facilities Lease and Assignment Agreement between Mon Power and PE; and (4) a new Power Sales Agreement between AEOS and AE Supply.

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, 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 the parties in 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.

Comment Date: 5 p.m. eastern time on August 3, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4020 Filed 7–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–108–000]

La Paloma Acquisition Co, LLC; Notice of Filing

July 22, 2005.

Take notice that on July 15, 2005, La Paloma Acquisition Co, LLC submitted an application pursuant to section 203 of the Federal Power Act for pre-authorization, for a two-year period, effective as of the date of the Commission's Order herein, for future transfers of ownership or control of membership interests in La Paloma Acquisition Co, LLC to buyers that are banks, institutional investors, financial institutions, investment companies or related entities not primarily engaged in energy-related business activities. Applicant requests that any future buyers be pre-authorized to hold up to 20 percent of the membership interests in La Paloma Acquisition Co, LLC so long as the future buyer and/or its affiliates do not collectively own or control five percent or more voting interest in any public utility that has interests in any generation facilities or that engages in any jurisdictional activities within the California Independent System Operator, Inc.

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, 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 the parties in 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.

Comment Date: 5 p.m. eastern time on August 5, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4021 Filed 7–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–105–000, et al.]

La Paloma Acquisition Co, LLC, et al.; Electric Rate and Corporate Filings

July 20, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. La Paloma Acquisition Co, LLC and Morgan Stanley & Co., Incorporated

[Docket No. EC05–105–000]

Take notice that on July 15, 2005, La Paloma Acquisition Co, LLC (Acquisition Co) and Morgan Stanley & Co., Incorporated (MS&Co.) submitted an application pursuant to section 203 of the Federal Power Act for authorization for an indirect disposition of jurisdictional facilities resulting from a proposed transfer of ownership or control of up to 20 percent equity interests in Acquisition Co from CEH/La Paloma Holding Company, LLC to MS&Co. At the time of the proposed transaction, Acquisition Co will own 100 percent membership interest in La Paloma Generating Company, LLC which owns a 1,040 megawatt generator located near McKittrick, California and certain associated interconnection facilities that connect the generator to the Pacific Gas & Electric Company transmission system.

Comment Date: 5 p.m. eastern time on August 5, 2005.

2. Calpine Energy Services, L.P.

[Docket No. EC05–106–000]

Take notice that on July 15, 2005, Calpine Energy Services, L.P. submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities in connection with the assignment of a power purchase agreement.

Comment Date: 5 p.m. eastern time on August 5, 2005.

3. Energy Factors, Incorporated, AG-Energy, Inc., AG-Energy, L.P., Power City Generating, Inc., Power City Partners, L.P, and Alliance Energy, New York LLC

[Docket No. EC05–107–000]

Take notice that on July 15, 2005, Energy Factors, Incorporated (Energy Factors), AG-Energy, Inc., AG-Energy, L.P., Power City Generating, Inc., Power City Partners, L.P, and Alliance Energy, New York LLC (Alliance Energy and, together, the Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Alliance Energy would acquire all of the interests in AG-Energy, L.P. and Power City Partners, L.P. directly and indirectly owned by Energy Factors (transaction). The Applicants state that the transaction would be accomplished pursuant to a Purchase and Sale Agreement between Alliance Energy and Energy Factors, certain portions of which the Applicants request be treated as confidential.

Comment Date: 5 p.m. eastern time on August 5, 2005.

4. Vienna Power LLC

[Docket No. EG05–88–000]

On July 18, 2005, Vienna Power LLC (Vienna) filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's regulations.

Vienna states that it is a limited liability company that is engaged either directly or indirectly and exclusively in the business of owning and operating an approximately 170 MW oil-fired electric generation facility located in Maryland.

Comment Date: 5 p.m. eastern time on August 8, 2005.

Standard Paragraph

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to long on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available to 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 TYY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4022 Filed 7–27–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0019, FRL–7945–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Clean Watersheds Needs Survey (Renewal), EPA ICR Number 0318.10, OMB Control Number 2040–0050

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 to renew 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 August 29, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0019, to EPA online using

EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Water, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Plastino, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 4204M, Washington, DC 20460: telephone number: 202–564–0682; fax number: 202–501–2399; e-mail address: *plastino.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 14, 2005 (70 FR 12474), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OW–2003–0019, which is available for public viewing at the Office of Water 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 Office of Water Docket is (202) 566–2426. 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 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, 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*.

Title: Clean Watersheds Needs Survey (Renewal).

Abstract: The Clean Watersheds Needs Survey (CWNS) is required by sections 205(a) and 516(b)(1) of the Clean Water Act (*http://www.epa.gov/owm/mtb/cwns/index.htm*). It is a periodic inventory of existing and proposed publicly owned wastewater treatment works (POTWs) and other water pollution control facilities in the United States, as well as an estimate of how many POTWs need to be built. The CWNS is a voluntary, joint effort of EPA and the States. The Survey records cost and technical data associated with POTWs and other water pollution control facilities, existing and proposed, in the United States. The State respondents who provide this information to EPA are State agencies responsible for environmental pollution control. No confidential information is used, nor is sensitive information protected from release under the Public Information Act. EPA achieves national consistency in the final results through the application of uniform guidelines and validation techniques.

During the period of this ICR, EPA will not be requiring or asking States to update CWNS information. EPA is planning to keep the CWNS database open for States that voluntarily choose to submit updated information, for their own purposes, between the 2004 and 2008 CWNS data entry periods. EPA will not be requiring or asking States to submit updated data until the 2008 CWNS data entry period, which will be covered under a subsequent ICR.

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.

Burden Statement: Should States choose to update CWNS facilities during this period, the average burden per respondent per facility updated is 1.55 hours. In previous between-survey periods, five to ten States have elected to update CWNS facility information. Assuming ten states choose to update facilities in this between survey period, with an average of 600 facilities per state and an average of 50% of facilities needing updates every 4 years, the total overall voluntary burden to ten States would be approximate 4,650 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State government agencies responsible for water pollution control and sewage treatment.

Estimated Number of Respondents: 10.

Frequency of Response: Every 4 years (States' options to update data between cycles).

Estimated Total Annual Hour Burden: 1,550 hours.

Estimated Total Annual Cost: $53,816, which includes $0 Capital Expense, $0 Operation and Maintenance, and $53,816 Respondent Labor Costs.

Changes in the Estimates: There is a decrease of 6,122 hours in the total annual estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a change in program requirements, as data updates during periods between the 4-year collection cycles are completely at states' discretion.

Dated: July 19, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14933 Filed 7–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0048; FRL–7945–6]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (Renewal), ICR Number 1983.04, OMB Number 2060–0489

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 29, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0048, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marcia B. Mia, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code: 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7042; fax number: (202) 564–0050; e-mail address: *mia.marcia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 1, 2004 (69 FR 69909), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2004–0048, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (40 CFR part 63, subpart YY) (Renewal).

Abstract: This ICR is for hazardous air pollutant (HAP) emission sources in the carbon black (CB) production, cyanide (CY) chemicals manufacturing, ethylene (ET) production, and spandex (SP) production source categories. For the purposes of this ICR the phrases "cyanide chemicals manufacturing," "cyanide production," and "CY production" have the same meaning.

The recordkeeping and reporting requirements in the standards ensure compliance with the applicable regulations which were promulgated in accordance with the Clean Air Act (CAA).The collected information is also used for targeting inspections and as evidence in legal proceedings.

Performance tests are required in order to determine an affected facility's initial capability to comply with the emission standards. In addition, continuous emission monitors are used to ensure that the respondent complies with the standards at all times. During the performance test, a record of the operating parameters under which compliance was achieved may be recorded and used to determine compliance in place of a continuous emission monitor.

The notifications required in the standards are used to inform the Agency or delegated authority when a source becomes subject to the requirements of the regulations. The reviewing authority may then inspect the source to ensure that the pollution control devices are properly installed and operated, that leaks are detected and repaired, and that the standards are met. The performance test may also be observed.

The required reports are used to determine periods of excess emissions, identify problems at the facility, verify operation and maintenance procedures, and for compliance determinations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 90 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Producers of Carbon Black, Cyanide, Ethylene or Spandex.

Estimated Number of Respondents: 72.

Frequency of Response: Annually, semiannually and on occasion.

Estimated Total Annual Hour Burden: 13,533 hours.

Estimated Total Annual Costs: $1,439,150, which includes $0 annualized capital/startup costs, $359,000 annual O&M costs, and $1,080,150 annual labor costs.

Changes in the Estimates: There is a decrease of 20,393 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is because the previous ICR included some items in the inventory (*e.g.*, control equipment related) that are not consistent with the concept of burden. Additionally, the previous ICR overestimated the time and frequency to prepare startup, shutdown and malfunction (SS&M) reports, and the time to store, file and maintain records and to retrieve records and reports.

The Capital/Startup costs as calculated in this ICR's section 6(b)(iii) compared with the costs in the previous ICR have decreased. Since the previous ICR covered initial compliance with the standard, the costs were mostly associated with the purchase of monitors and control equipment. Since there are no new sources for the three years covered by this ICR, the costs will be only be O&M costs.

Dated: July 19, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14934 Filed 7–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7946–6]

Environmental Justice Strategic Plan Framework and Outline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice; reopening of public comment period.

SUMMARY: On June 22, 2005 (70 FR 36167), EPA's Office of Environmental Justice announced a solicitation for public comment on the draft: (1) "Framework for Integrating Environmental Justice;" and (2) "Environmental Justice Strategic Plan Outline," which includes proposed Environmental Justice Priorities ("EJ Priorities"). The Framework for Integrating Environmental Justice will be the foundation for the Environmental Justice Strategic Plan for FY2006–2011. The Environmental Justice Strategic Plan Outline identifies the anticipated structure of the EJ Strategic Plan. EPA is drafting the Environmental Justice Strategic Plan to integrate its environmental justice efforts more fully into the Agency's existing programs and operations, including its 5-year planning and budgeting processes. This supplemental notice announces an extension to the public comment period.

DATES: The public comment period is extended to August 15, 2005.

ADDRESSES: Comments should be addressed to Mr. Barry E. Hill, Director, Office of Environmental Justice, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2201A, Ariel Rios South Building, Room 2226, Washington, DC 20460–0001. You may also e-mail comments to *hill.barry@epa.gov*. Please identify e-mailed comments with the phrase "EJ Strategic Plan Comments" in the subject line.

FOR FURTHER INFORMATION CONTACT: Danny Gogal, Senior Environmental Protection Specialist, EPA Office of Environmental Justice, (202) 564–2576, *gogal.danny@epa.gov*, or Delleane McKenzie, Senior Program Analyst, EPA Office of Environmental Justice, (202) 564–6358, *mckenzie.delleane@epa.gov*.

SUPPLEMENTARY INFORMATION: To provide additional time for the public to comment and in response to requests for additional time, EPA is extending the comment period until August 15, 2005.

The draft Framework identifies the proposed key elements of the EJ Strategic Plan that will help the Agency track progress and benchmark its national environmental justice program objectives. The draft Framework also describes the proposed link between the Environmental Justice Action Plans of the Agency's 10 regional offices and the substantive headquarters program offices (*e.g.*, Office of Air and Radiation, Office of Solid Waste and Emergency Response) and the National Environmental Justice Priorities and targets established in the EJ Strategic Plan.

The draft Outline identifies the "mission" and "vision" that will guide the Environmental Justice Strategic Plan and identifies where specific Environmental Justice Strategic Targets will be included, once they are developed. The Outline also includes 12 potential National EJ Priorities, which would help focus attention on critical human health and environmental issues faced by communities with disproportionate impacts (*e.g.*, asthma reduction, healthy schools, safe drinking water). While the regional offices will continue to take action on a wide range of environmental justice issues, using a spectrum of strategies including cross-cutting approaches (*e.g.*, community capacity-building, grants, training) to address local needs, we would like to select 5–7 priorities for heightened national attention. Therefore, in addition to providing comments on the overall Outline, we ask that you rank the potential priorities (1 = highest priority, 12 = lowest priority) and submit your ranking with your other comments. If you have additional suggested priorities, please include those as well.

The draft "Framework for Integrating Environmental Justice" and the "Environmental Justice Strategic Plan Outline," along with responses to anticipated questions and a one-page fact sheet, are available online at: *http://www.epa.gov/compliance/resources/reports/ej.html*. A hardcopy of these documents is available upon request.

Dated: July 25, 2005.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 05–15041 Filed 7–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7944–9]

Availability of "Allocation of Funds for Fiscal Year 2005 Operator Training Grants"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Allocation of Funds for Fiscal Year 2005 Operator Training Grants" issued on June 2, 2005. This memorandum provides National guidance for the allocation of funds used under Section 104(g)(1) of the Clean Water Act.

ADDRESSES: Municipal Assistance Branch, U.S. EPA, 1200 Pennsylvania Avenue, NW., (4204–M), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gajindar Singh, (202) 564–0634 or *singh.gajindar@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's home page, *http://www.epa.gov/owm/mab/104gallocmem05.pdf.*

Dated: July 15, 2005.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 05–14935 Filed 7–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7945–7]

Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment E–Docket ID No. ORD–2005–0022

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 30-day public comment period for the external review draft document titled, "Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment" (EPA/600/R–05/043A). The draft document was prepared by the EPA's National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD).

EPA also anticipates that Versar, Inc., an EPA contractor for external scientific peer review, will convene a panel of experts and organize and conduct an external peer-review workshop. This workshop will be announced in a separate **Federal Register** notice, once EPA is notified by Versar, Inc., of the date and location for the workshop. The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document.

DATES: The 30-day public comment period begins July 28, 2005, and ends August 29, 2005. Technical comments should be in writing and must be received by EPA by August 29, 2005.

ADDRESSES: The draft document and EPA's peer-review charge are available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff, NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title, "Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment" (EPA/600/R–05/043A).

Comments may be submitted electronically via EPA's E–Docket, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the OEI Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

If you have questions about the document, please contact the Technical Information Staff, National Center for Environmental Assessment, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050; or e-mail: *NCEADC.Comment@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Physiologically-based pharmacokinetic (PBPK) models represent an important class of dosimetry models that are useful for predicting internal dose at target organs for risk assessment applications. Dose-response relationships that appear unclear or confusing at the administered dose level can become more understandable when expressed on the basis of internal dose of the chemical. To predict internal dose level, PBPK models use pharmacokinetic data to construct mathematical representations of biological processes associated with the absorption, distribution, metabolism, and elimination of compounds. With the appropriate data, these models can be used to extrapolate across species and exposure scenarios, and address various sources of uncertainty in risk assessments. This external review draft document addresses the following questions: (1) Why do risk assessors need PBPK models; (2) How can these models be used in risk assessments; and (3) What are the characteristics of acceptable PBPK models for use in risk assessment?

II. How To Submit Technical Comments to EPA's E-Docket

EPA has established an official public docket for information pertaining to "Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment" (EPA/600/R–05/043A), Docket ID No. ORD–2005–0022. The official public docket is the collection of materials available for public viewing and includes the documents specifically referenced in this action, any public comments received, and other information related to this action, but excludes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, 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 OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, E-Docket. You may use E-Docket at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index 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.

Certain types of information will not be placed in E-Docket. Information claimed as CBI and other information for which disclosure is restricted by statute will not be available for public viewing in the official public docket or in E-Docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be referenced there and will be available as printed material in the official public docket.

If you intend to submit comments to EPA, please note that it is EPA policy to make public comments available for public viewing as received at the EPA Docket Center or in E-Docket. This policy applies to information submitted electronically or in paper form, except where restricted by copyright, CBI, or 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 official public docket.

Public comments submitted on computer disks that are mailed or delivered to the EPA Docket Center will be transferred to E-Docket. Public comments that are mailed or delivered to the EPA Docket Center will be scanned and placed in E-Docket. Where practical, physical objects will be photographed, and the photograph will be placed in E-Docket with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits.

If you submit comments electronically, 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 submitted disk or CD–ROM, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the person submitting the comment and allows EPA to contact you in case the Agency cannot read your submission due to technical difficulties or needs further information on the substance of your comment. 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 E-Docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, it may delay or preclude consideration of your comment.

Electronic submission of comments to E-Docket 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. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. ORD–2005–0022. 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.

Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. ORD–2005–0022. 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 E-Docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and in E-Docket.

You may submit comments on a disk or CD–ROM that you mail to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word, or PDF format. Avoid the use of special characters and any form of encryption.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Dated: July 22, 2005.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 05–14932 Filed 7–27–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 21, 2005, 10 a.m. Meeting open to the public. This meeting was cancelled.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 28, 2005, 10 a.m. Meeting open to the public. This meeting was cancelled.

DATE AND TIME: Thursday, August 4, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: These hearings will be open to the public.

MATTERS BEFORE THE COMMISSION:

(1) State, District, and Local Party Committee Payment of Certain Salaries and Wages;

(2) Definition of Federal Election Activity.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–15068 Filed 7–26–05; 2:30 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement AA173]

A Cooperative Agreement for the Interstitial Cystitis Association To Develop and Implement a Program To Enhance Interstitial Cystitis Public and Health Provider Awareness Through Partnership, Education and Communication; 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 promote public awareness and partnership, provide interstitial cystitis (IC) education for the general public and for health care providers, and develop and enhance communication channels to allow for improved interaction and information sharing among those with IC, advocates for persons with IC and their families, those who provide care and services for persons with IC, researchers, public health scientists, and the general public. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to Interstitial Cystitis Association, 110 N. Washington Street, Suite 340, Rockville, MD 20850.

Founded in 1984, The Interstitial Cystitis Association (ICA) is a not-for-profit health organization and *the* national leader dedicated to providing patient and physician educational information and programs, patient support, public awareness and, most importantly, research funding for IC. ICA is the *only* not-for-profit national IC organization that promotes and provides funding for much needed IC research. This characteristic of ICA's organization is unmatched by any other public or private IC health organization currently conducting similar activities in the United States. The primary mission of ICA is to research a cure and treatment for IC and provide information and

assistance to patients, doctors, and the general public.

The ICA has over 20 years of achievement unmatched by any other health organization dealing with IC issues. Some of these achievements include:

• Public awareness—the ICA has consistently attracted media attention to IC. Numerous articles featuring IC and the ICA have been published from the "New York Times," "SELF Magazine," "Good Housekeeping," and many other national magazines. Subject-matter experts from the ICA have appeared on national TV and radio programs to include ABC's "Good Morning America," CNN, and National Public Radio.

• Physician and Patient Education—Subject-matter experts from the ICA have published numerous articles on IC for professional journals including "Urology" and the "World Journal of Urology." The ICA has worked closely with the NIDDK Division of Urology for over 15 years and has co-sponsored with the NIDDK, international scientific conferences as well as national IC patient meetings on IC biannually. ICA has also sponsored numerous regional educational programs for patients throughout the United States each year.

• Patient Support—The ICA provides a toll-free 800 number designed to quickly assist both IC patients and healthcare providers. ICA also provides nationwide individual support via telephone and e-mail by ICA National Patient Support Advocates; the International IC Question Corner on its Web site, where patients can e-mail the ICA and receive one-on-one assistance with their questions; the ICA Physician Registry which helps IC patients find IC-knowledgeable physicians; and IC connections, which brings together patients based on specific interests, concerns and regions, and an informational program on how to start new IC support groups.

• Innovative resources—the ICA published, and continues to regularly update, a series of brochures and fact sheets as well as "IC Treatment Guidelines"—the *first* comprehensive summary of IC treatments and medications designed for patients and their physicians for use as the basis for an individualized treatment plan. The ICA also publishes an on-line monthly news digest, "Café ICA," and two quarterly newsletters—the "ICA Update," the only printed newsletter on IC in the United States, and the "ICA Physician Perspectives." ICA also publishes a "Pocket Guide" series for continuing patient education.

• Comprehensive Web Site—The ICA's Web site *http://www.icahelp.org*, established in 1995, is the most comprehensive Web site on IC available today, receiving over 1.4 million hits per month. The site includes: a Clinical trials section, their on-line monthly news digest—"Café ICA," IC Question Corner which provides one-on-one patient support, Treatment Options, a section for health care providers, a comprehensive research section, and much more * * *.

• Non-profit leadership—the ICA remains the *only* United States 501 (c)(3) registered non-profit organization to fund IC research and provide educational programs on IC for both physicians and patients, as well as the public at large.

This mission and ICA's extensive network of resources and record of unmatched achievements over the last 20 years, makes it highly probable that ICA will successfully implement and complete all the required activities for this program announcement. For these reasons, the ICA is the only organization being considered for this program announcement.

C. Funding

Approximately $ 510,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before September 1, 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 technical questions about this program, contact: Richard S. Roman, Project Officer, HCAS/DACH/NCCDPHP/CDC, 4770 Buford Hwy., N.E., MS K–51, Chamblee, GA 30341; telephone: 770–488–5144; e-mail: *rsr1@cdc.gov*.

Dated: July 22, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–14927 Filed 7–27–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–4:30 p.m., August 25, 2005.

Place: Emory Conference Center, 1615 Clifton Road, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters to Be Discussed: Agenda items will include updates on CDC priorities with discussions of program activities including updates on CDC scientific and programmatic activities, strategic imperatives, goals, research agenda, and health equity.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert Delaney, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–14, Atlanta, Georgia 30333. Telephone (404) 639–7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 25, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–15019 Filed 7–27–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Vaccine Information Materials for Hepatitis A and Influenza Vaccines; Interim Vaccine Information Materials for Influenza Vaccines

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. CDC seeks written comment on proposed new vaccine information materials for hepatitis A and trivalent influenza vaccines. In addition, to ensure that influenza vaccine information materials are available at the beginning of the upcoming influenza vaccination season, this notice includes interim vaccine information materials covering influenza vaccines for use pending issuance of final influenza materials following completion of the formal NCVIA development process.

DATES: Written comments are invited and must be received on or before September 26, 2005.

ADDRESSES: Written comments should be addressed to Stephen L. Cochi, M.D., M.P.H., Acting Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Stephen L Cochi, M.D., M.P.H., Acting Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since June 1, 1999, health care providers are also required to provide copies of vaccine information materials for the following vaccines that were added to the National Vaccine Injury Compensation Program: hepatitis B, haemophilus influenzae type b (Hib), and varicella (chickenpox) vaccines. In addition, use of vaccine information materials for pneumococcal conjugate vaccine has been required since December 15, 2002. Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC Web site at: *http://www.cdc.gov/nip/publications/VIS/*. In addition, single camera-ready copies are available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

Proposed Hepatitis A Vaccine Information Materials

Interim and Proposed Influenza Vaccine Information Materials

With the December 1, 2004 addition of hepatitis A vaccine and the July 1, 2005 addition of trivalent influenza vaccines to the National Vaccine Injury Compensation Program, CDC, as required under 42 U.S.C. 300aa–26, is proposing vaccine information materials covering those vaccines, which are included in this notice. In addition, in order to have Influenza Vaccine Information Statements available for use in the upcoming influenza vaccination season, the proposed influenza vaccine materials are also being issued as interim VISs through this notice. These interim materials may be used by providers pending completion of the final influenza vaccine information materials.

Development of Vaccine Information Materials

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

In addition, we invite written comment on the proposed vaccine information materials that follow, entitled "Hepatitis A Vaccine: What You Need to Know," "Inactivated Influenza Vaccine: What You Need to Know," and "Live, Intranasal Influenza Vaccine: What You Need to Know." Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their mandatory use.

We also propose to revise the January 15, 2003 Instructions for the Use of Vaccine Information Statements to add the requirement for use of the hepatitis A and influenza vaccine information materials.

Use of Interim Influenza Vaccine Information Materials

The proposed influenza vaccine information materials included in this notice are concurrently being issued through this notice as interim Influenza Vaccine Information Statements, dated July 18, 2005. Providers are encouraged to use these interim materials pending issuance of the final influenza materials following completion of the formal NCVIA development process. Copies of these interim influenza VISs can be downloaded in PDF format from the CDC Web site at: *http://www.cdc.gov/nip/publications/VIS/*.

Proposed Hepatitis A Vaccine Information Statement

Hepatitis A Vaccine: What You Need to Know

1. Why get vaccinated?

Hepatitis A is a serious liver disease caused by the hepatitis A virus (HAV). HAV is found in the stool of people with hepatitis A. It is usually spread by close personal contact and sometimes by eating food or drinking water containing HAV.

Hepatitis A can cause:

- Mild "flu-like" illness;
- Jaundice (yellow skin or eyes);
- Severe stomach pains and diarrhea.

People who become ill with hepatitis A often have to be hospitalized.

About 100 people die from hepatitis A infection in the U.S. each year.

A person who has hepatitis A can easily pass the disease to other people in the same household. Hepatitis A vaccine can prevent hepatitis A.

2. Who should get hepatitis A vaccine and when?

WHO?

- Children and adolescents who live in states or communities where routine vaccination has been recommended.
- People 2 years of age and older traveling to or working in countries where risk for catching hepatitis A is high. These include countries located in Central or South America, the Caribbean, Mexico, Asia (except Japan), Africa, and Eastern Europe.
- Men who have sex with men.
- People who use street drugs.
- People with chronic liver disease.
- People who are treated with clotting factor concentrates.
- People who work with HAV-infected primates or who work with HAV in research laboratories.

Other people might get hepatitis A vaccine in special situations:

- Hepatitis A vaccine might be recommended for children or adolescents in communities where outbreaks of hepatitis A are occurring.

Hepatitis A vaccine is not licensed for children younger than 2 years of age.

WHEN?

Two doses of the vaccine are needed for lasting protection. These doses should be given at least 6 months apart. If you miss the second dose, get it as soon as you can. There is no need to start over.

—The hepatitis A vaccine series may be started whenever a person is at risk of infection.
—For travelers, the vaccine works best if given at least one month before traveling.
—Travelers who get the vaccine less than one month before traveling may also get a second shot called Immune Globulin (IG). IG gives immediate, temporary protection.

Hepatitis A vaccine may be given at the same time as other vaccines.

3. Some people should not get hepatitis A vaccine or should wait

- Anyone who has ever had a severe (life-threatening) allergic reaction to a previous dose of hepatitis A vaccine should not get another dose.
- Anyone who has a severe (life-threatening) allergy to any vaccine component should not get the vaccine. Tell your doctor if you have any severe allergies.
- People who are moderately or severely ill should usually wait until they recover before getting hepatitis A vaccine. If you are ill, talk to your doctor or nurse about whether to reschedule the vaccination. People with a mild illness can usually get the vaccine.
- Tell your doctor if you are pregnant. The safety of hepatitis A vaccine for pregnant women has not been determined. But there is no evidence that it is harmful to either pregnant women or their unborn babies. The risk, if any, is believed to be very low.

4. What are the risks from hepatitis A vaccine?

A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. The risk of hepatitis A vaccine causing serious harm, or death, is extremely small. Getting hepatitis A vaccine is much safer than getting the disease.

Mild problems:

- Soreness where the shot was given (about 1 out of 2 adults and up to 1 out of 5 children);
- Headache (about 1 out of 6 adults and 1 out of 20 children);
- Loss of appetite (about 1 out of 12 children);
- Tiredness (about 1 out of 14 adults).

If these problems occur, they usually last for 1 or 2 days.

Severe problems:

- Serious allergic reaction, within a few minutes to a few hours of the shot (very rare).

5. What if there is a severe reaction?

What should I look for?

- Any unusual condition, such as a high fever or behavior changes. Signs of a serious allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your doctor, nurse, or health department to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form.

Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov*, or by calling 1–800–822–7967.

VAERS does not provide medical advice.

6. The National Vaccine Injury Compensation Program

In the rare event that you or your child has a serious reaction to a vaccine, a federal program has been created to help pay for the care of those who have been harmed.

For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit the program's Web site at *http://www.hrsa.gov/osp/vicp*.

7. How can I learn more?

- Ask your doctor or nurse. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO)
—Visit CDC Web sites at: *http://www.cdc.gov/hepatitis* or *http://www.cdc.gov/nip*.

Department of Health and Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, Hepatitis A, (00/00/0000) (Proposed), 42 U.S.C. 300aa–26.

Interim and Proposed Inactivated Influenza Vaccine Information Statement

Inactivated Influenza Vaccine: What You Need to Know

1. Why get vaccinated?

Influenza ("flu") is a very contagious disease.

It is caused by the influenza virus, which spreads from infected persons to the nose or throat of others.

Other illnesses can have the same symptoms and are often mistaken for influenza. But only an illness caused by the influenza virus is really influenza.

Anyone can get influenza. For most people, it lasts only a few days. It can cause:

- Fever;
- Sore throat;
- Chills;
- Fatigue;
- Cough;
- Headache;
- Muscle aches.

Some people get much sicker. Influenza can lead to pneumonia and can be dangerous for people with heart or breathing conditions. It can cause high fever and seizures in children. Influenza kills about 36,000 people each year in the United States, mostly among the elderly. Influenza vaccine can prevent influenza.

2. Inactivated influenza vaccine

There are two types of influenza vaccine:

An inactivated (killed) vaccine, given as a shot, has been used in the United States for many years.

A live, weakened vaccine was licensed in 2003. It is sprayed into the nostrils. This vaccine is described in a separate Vaccine Information Statement.

Influenza viruses are constantly changing. Therefore, influenza vaccines are updated every year, and an annual vaccination is recommended.

For most people influenza vaccine prevents serious illness caused by the influenza virus. It will not prevent "influenza-like" illnesses caused by other viruses. It takes about 2 weeks for protection to develop after the shot and protection can last up to a year. Inactivated influenza vaccine may be given at the same time as other vaccines, including pneumococcal vaccine.

Some inactivated influenza vaccine contains thimerosal, a preservative that contains mercury.

Some people believe thimerosal may be related to developmental problems in children. In 2004 the Institute of Medicine published a report concluding that, based on scientific studies; there is no evidence of such a relationship. If you are concerned about thimerosal, ask your doctor about thimerosal-free influenza vaccine.

3. Who should get inactivated influenza vaccine?

Influenza vaccine can be given to people 6 months of age and older. It is recommended for people who are at risk of serious influenza or its complications, and for people who can spread influenza to those at high-risk (including all household members):

People at high risk for complications from influenza:

- All children 6–23 months of age.
- People 65 years of age and older.
- Residents of long-term care facilities housing persons with chronic medical conditions.
- People who have long-term health problems with:

—Heart disease;
—Kidney disease;
—Lung disease;
—Metabolic disease, such as diabetes;
—Asthma;
—Anemia, and other blood disorders.

- People with certain conditions (such as neuromuscular disorders) that can cause breathing problems.
- People with a weakened immune system due to:

—HIV/AIDS or other diseases affecting the immune system;
—Long-term treatment with drugs such as steroids;
—Cancer treatment with x-rays or drugs.

- People 6 months to 18 years of age on long-term aspirin treatment (these people could develop Reye Syndrome if they got influenza).
- Women who will be pregnant during influenza season.

People who can spread influenza to those at high risk:

- Household contacts and out-of-home caretakers of infants from 0–23 months of age.
- Physicians, nurses, family members, or anyone else in close contact with people at risk of serious influenza.

Influenza vaccine is also recommended for adults 50–64 years of age and anyone else who wants to reduce their chance of catching influenza.

An annual flu shot should be considered for:

- People who provide essential community services.
- People living in dormitories or under other crowded conditions, to prevent outbreaks.
- People at high risk of flu complications who travel to the Southern hemisphere between April and September, or to the tropics or in organized tourist groups at any time.

4. When should I get influenza vaccine?

The best time to get influenza vaccine is in October or November.

Influenza season usually peaks in February, but it can peak any time from November through May. So getting the vaccine in December, or even later, can be beneficial in most years.

Some people should get their flu shot in October or earlier:

—People 50 years of age and older,
—Younger people at high risk from influenza and its complications (including children 6 through 23 months of age),
—Household contacts of people at high risk,
—Healthcare workers, and
—Children younger than 9 years of age getting influenza vaccine for the first time.

Most people need one flu shot each year. Children younger than 9 years of age getting influenza vaccine for the first time should get 2 doses, given at least one month apart.

5. Some people should talk with a doctor before getting influenza vaccine

Some people should not get inactivated influenza vaccine or should wait before getting it.

- Tell your doctor if you have any severe (life-threatening) allergies. Allergic reactions to influenza vaccine are rare.

—Influenza vaccine virus is grown in eggs. People with a severe egg allergy should not get the vaccine.
—A severe allergy to any vaccine component is also a reason to not get the vaccine.
—If you have had a severe reaction after a previous dose of influenza vaccine, tell your doctor.

- Tell your doctor if you ever had Guillain-Barré syndrome (a severe paralytic illness, also called GBS). You may be able to get the vaccine, but your doctor should help you make the decision.
- People who are moderately or severely ill should usually wait until they recover before getting flu vaccine. If you are ill, talk to your doctor or nurse about whether to reschedule the vaccination. People with a mild illness can usually get the vaccine.

6. What are the risks from inactivated influenza vaccine?

A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. The risk of a vaccine causing serious harm, or death, is extremely small. Serious problems from influenza vaccine are very rare. The viruses in inactivated influenza vaccine have been killed, so you cannot get influenza from the vaccine.

Mild problems:

- Soreness, redness, or swelling where the shot was given;
- Fever;
- Aches.

If these problems occur, they usually begin soon after the shot and last 1–2 days.

Severe problems:

- Life-threatening allergic reactions from vaccines are very rare. If they do occur, it is within a few minutes to a few hours after the shot.
- In 1976, a certain type of influenza (swine flu) vaccine was associated with Guillain-Barré syndrome (GBS). Since then, flu vaccines have not been clearly linked to GBS. However, if there is a risk of GBS from current flu vaccines, it would be no more than 1 or 2 cases per million people vaccinated. This is much lower than the risk of severe influenza, which can be prevented by vaccination.

7. What if there is a severe reaction?

What should I look for?

- Any unusual condition, such as a high fever or behavior changes. Signs of a serious allergic reaction can include

difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

• Call a doctor, or get the person to a doctor right away.

• Tell your doctor what happened, the date and time it happened, and when the vaccination was given.

• Ask your doctor, nurse, or health department to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form.

Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov,* or by calling 1–800–822–7967.

VAERS does not provide medical advice.

8. The National Vaccine Injury Compensation Program

In the event that you or your child has a serious reaction to a vaccine, a federal program has been created to help pay for the care of those who have been harmed. For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit their Web site at *http://www.hrsa.gov/osp/vicp.*

9. How can I learn more?

• Ask your immunization provider. They can give you the vaccine package insert or suggest other sources of information.

• Call your local or state health department.

• Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO)

—Visit CDC's Web site at *http://www.cdc.gov/flu.*

Department of Health and Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, Inactivated Influenza Vaccine, (6/18/05) (Interim), 42 U.S.C. 300aa–26.

Interim and Proposed Live, Intranasal Influenza Vaccine Information Statement

Live, Intranasal Influenza Vaccine: What You Need to Know

1. Why get vaccinated?

Influenza ("flu") is a very contagious disease.

It is caused by the influenza virus, which spreads from infected persons to the nose or throat of others.

Other illnesses can have the same symptoms and are often mistaken for influenza. But only an illness caused by the influenza virus is really influenza.

Anyone can get influenza, but rates of infection are highest among children. For most people, it lasts only a few days. It can cause:

• Fever;
• Sore throat;
• Chills;
• Fatigue;
• Cough;
• Headache;
• Muscle aches.

Some people get much sicker. Influenza can lead to pneumonia and can be dangerous for people with heart or breathing conditions. It can cause high fever and seizures in children. Influenza kills about 36,000 people each year in the United States.

Influenza vaccine can prevent influenza.

2. Live, attenuated influenza vaccine (nasal spray)

There are two types of influenza vaccine:

Live, attenuated influenza vaccine (LAIV) was licensed in 2003. LAIV contains live but attenuated (weakened) influenza virus. It is sprayed into the nostrils rather than injected into the muscle. It is recommended for healthy children and adults from 5 through 49 years of age, who are not pregnant.

Inactivated influenza vaccine, sometimes called the "flu shot," has been used for many years and is given by injection. This vaccine is described in a separate Vaccine Information Statement. Influenza viruses are constantly changing. Therefore, influenza vaccines are updated every year, and annual vaccination is recommended.

For most people influenza vaccine prevents serious illness caused by the influenza virus. It will not prevent "influenza-like" illnesses caused by other viruses. It takes about 2 weeks for protection to develop after vaccination, and protection can last up to a year.

3. Who can get LAIV?

Live, intranasal influenza vaccine is approved for healthy children and adults from 5 through 49 years of age, including most healthcare workers and household contacts of most people at high risk for influenza complications. However, LAIV should not be given to pregnant women or people with certain medical conditions.

4. Who should not get LAIV?

The following people should not get live intranasal influenza vaccine. They should check with their health-care provider about getting the inactivated vaccine.

• Adults 50 years of age or older or children younger than 5.

• People who have long-term health problems with:

—Heart disease;
—Kidney disease;
—Lung disease;
—Metabolic disease, such as diabetes;
—Asthma;
—Anemia, and other blood disorders.

• People with a weakened immune system due to:

—HIV/AIDS or other diseases affecting the immune system;
—Long-term treatment with drugs that weaken the immune system, such as steroids;
—Cancer treatment with x-rays or drugs.

• Children or adolescents on long-term aspirin treatment (these people could develop Reye syndrome if they get influenza).

• Pregnant women.

• Anyone with a history of Guillain-Barré syndrome (a severe paralytic illness, also called GBS).

Inactivated influenza vaccine (the flu shot) is the preferred vaccine for people (including health-care workers, and family members) coming in close contact with anyone who has a severely weakened immune system (that is, anyone who requires care in a protected environment).

Some people should talk with a doctor before getting either influenza vaccine:

• Anyone who has ever had a serious allergic reaction to eggs or to a previous dose of influenza vaccine.

• People who are moderately or severely ill should usually wait until they recover before getting flu vaccine. If you are ill, talk to your doctor or nurse about whether to reschedule the vaccination. People with a mild illness can usually get the vaccine.

5. When should I get influenza vaccine?

The best time to get influenza vaccine is in October or November. Influenza season usually peaks in February, but it can peak any time from November through May. So getting the vaccine in December, or even later, can be beneficial in most years.

Most people need one dose of influenza vaccine each year. Children younger than 9 years of age getting influenza vaccine for the first time should get 2 doses. For LAIV, these doses should be given 6–10 weeks apart.

LAIV may be given at the same time as other vaccines. This includes other live vaccines, such as MMR or chickenpox. But if two live vaccines are not given on the same day, they should be given at least 4 weeks apart.

6. What are the risks from LAIV?

A vaccine, like any medicine, could possibly cause serious problems, such

as severe allergic reactions. However, the risk of a vaccine causing serious harm, or death, is extremely small.

Live influenza vaccine viruses rarely spread from person to person. Even if they do, they are not likely to cause illness.

LAIV is made from weakened virus and does not cause influenza. The vaccine can cause mild symptoms in people who get it (see below).

Mild problems:

Some children and adolescents 5–17 years of age have reported mild reactions, including:

- Runny nose, nasal congestion or cough;
- Headache and muscle aches;
- Fever;
- Abdominal pain or occasional vomiting or diarrhea.

Some adults 18–49 years of age have reported:

- Runny nose or nasal congestion;
- Sore throat;
- Cough, chills, tiredness/weakness;
- Headache.

These symptoms did not last long and went away on their own. Although they can occur after vaccination, they may not have been caused by the vaccine.

Severe problems:

- Life-threatening allergic reactions from vaccines are very rare. If they do occur, it is within a few minutes to a few hours after vaccination.
- If rare reactions occur with any new product, they may not be identified until thousands, or millions, of people have used it. Over two million doses of LAIV have been distributed since it was licensed, and no serious problems have been identified. Like all vaccines, LAIV will continue to be monitored for unusual or severe problems.

7. What if there is a severe reaction?

What should I look for?

- Any unusual condition, such as a high fever or behavior changes. Signs of a serious allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your doctor, nurse, or health department to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form.

Or you can file this report through the VAERS Web site at *http://www.vaers.hhs.gov*, or by calling 1–800–822–7967.

VAERS does not provide medical advice.

8. The National Vaccine Injury Compensation Program

In the event that you or your child has a serious reaction to a vaccine, a federal program has been created to help pay for the care of those who have been harmed.

For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit their Web site at *http://www.hrsa.gov/osp/vicp.*

9. How can I learn more?

- Ask your immunization provider. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–4636 (1–800–CDC–INFO)

—Visit CDC's Web site at *http://www.cdc.gov/flu.*

Department of Health and Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, Live, Intranasal Influenza Vaccine, (6/18/05) (Interim), 42 U.S.C. 300aa–26.

Dated: July 22, 2005.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 05–14924 Filed 7–27–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0510]

Thomas M. Rodgers, Jr.; Denial of Hearing; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Mr. Thomas M. Rodgers, Jr.'s request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Mr. Thomas M. Rodgers, Jr., for 5 years from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. FDA bases this order on a finding that Mr. Rodgers was convicted of three misdemeanors under Federal law for conduct relating to the regulation of a drug product under the act, and that the type of conduct that served as the basis for the convictions undermines the process for the regulation of drugs. Mr. Rodgers failed to file with FDA information and analyses sufficient to create a basis for a hearing concerning this action. Therefore, FDA finds that there is no genuine and substantial issue of fact to grant a hearing on the debarment.

DATES: This order is effective July 28, 2005.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen Swisher, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

On May 4, 2000, the U.S. District Court for the District of Massachusetts accepted a plea of guilty from Mr. Thomas M. Rodgers, Jr. for three counts charged as Federal misdemeanors under section 303(a)(1) of the act (21 U.S.C. 333(a)(1)): (1) Owning and operating an unregistered facility for the manufacture of drugs (301(p) of the act (21 U.S.C. 331(p))); (2) shipping an unapproved new drug in interstate commerce (301(d) of the act; and (3) shipping an adulterated drug in interstate commerce (301(a) of the act).Mr. Rodgers was the Chairman of the Board of Directors and majority shareholder of Private Biologicals Corporation (PBC). PBC, which was not registered as an establishment engaged in the manufacture of drugs, was in the business of producing a product identified as "LK–200," an unapproved new drug which PBC and its agents intended to be used in the treatment of a variety of diseases, including various forms of cancer. Mr. Rodgers caused LK–200, an unapproved and adulterated new drug, to be introduced into interstate commerce.

As a result of Mr. Rodgers' conviction, FDA sent to Mr. Rodgers by certified letter on December 17, 2002, a proposal to debar Mr. Rodgers for 5 years from providing services in any capacity to a person that has an approved or pending drug product application, including but not limited to, a biologics license application. The letter also provided Mr. Rodgers notice of an opportunity for a hearing on the proposal in accordance

with section 306 of the act (21 U.S.C. 335a) and part 12 (21 CFR part 12). FDA based the proposal on the findings under section 306(b)(2)(B)(i) of the act (21 U.S.C. 335a(b)(2)(B)(i)) that Mr. Rodgers was convicted of three misdemeanors under Federal law for conduct relating to the regulation of a drug product under the act and that the type of conduct that served as the basis for the convictions undermines the process for the regulation of drugs.

The certified letter also informed Mr. Rodgers that his request for a hearing could not rest upon mere allegations, denials, or general descriptions of positions and contentions, but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also informed Mr. Rodgers that the facts underlying his conviction were not at issue and that the only material issue is whether he was convicted of misdemeanors under Federal law as alleged in the letter, and, if so, whether, as a matter of law, the convictions permit his debarment.

In a letter dated January 16, 2003, Mr. Rodgers, through his legal counsel, requested a hearing on the proposed debarment. The request for a hearing included the following objections to the debarment: (1) Mr. Rodgers' actions did not continue to undermine the process for the regulation of drugs by FDA; and (2) the descriptions of Mr. Rodgers' conduct in the proposal to debar letter were not found in the Information filed in the U.S. District Court of Massachusetts (the Information), despite the letter's statement to the contrary.

II. Denial of Hearing

In his request for a hearing, Mr. Rodgers argued that the previous conduct that led to his conviction does not continue to undermine FDA regulatory processes, and that such a determination is necessary to debar him under the debarment statute. Mr. Rodgers asserts that the proposal to debar did not reference present or future regulatory processes that are or will be undermined; rather, the proposal to debar included a statement that only referenced past processes. According to Mr. Rodgers, without a finding that the conduct that resulted in his conviction has a continuing impact on the regulation of drugs, the elements of the debarment statute have not been met. FDA disagrees with Mr. Rodgers' assertion.

Mr. Rodgers does not deny that type of conduct for which he was convicted is the "type of conduct" that undermines the process for the regulation of drugs, part of the statutory standard for permissive debarment under section 306(b)(2)(B) of the act. Instead, he argues that the statutory language does not mean what it says but rather that it means the agency must establish that his conduct which served as a basis for his conviction continues to undermine the regulation of drugs. Mr. Rodgers' argument is totally without merit. The agency notes that Mr. Rodgers' argument is a legal one, and does not state grounds to grant Mr. Rodger's request for a hearing (See § 12.24(b)(1)). We address Mr. Rodgers' legal argument below.

Sections 306(b)(2)(B)(i) and (c)(2)(A)(iii) of the act permit FDA to debar an individual for up to 5 years if the FDA Commissioner (in exercising his authority delegated from the Secretary) finds first that the individual was convicted of, among other things, a misdemeanor under Federal law for conduct relating to the regulation of any drug product, and second that "the type of conduct which served as the basis for the conviction undermines the process for the regulation of drugs." Mr. Rodgers challenges the basis for the second finding, arguing that the debarment statute requires the agency to find that the conduct on which the convictions were based continue to undermine the regulatory process for drugs. Mr. Rodgers, in effect reads a continuing harm requirement into the statute.

Mr. Rodgers' argument relies solely on the present tense of the word "undermines." In focusing exclusively on verb tense, Mr. Rodgers ignores the subject of the statutory language and offers an interpretation contradicted by the plain language of the debarment statute.

Under well-established principles of statutory construction, the starting point in determining the meaning of a statute is the language of the statute itself (See, e.g., *Watt* v. *Alaska*, 451 United States 259, 265–66 (1981) (citations omitted)). The language of section 306(b)(2)(B)(i) of the act is clear. It states that "the type of conduct which served as the basis for the conviction undermines the process for the regulation of drugs." The subject of the verb "undermines" in the relevant statutory language is "the type of conduct," not the conduct of the individual facing debarment. Because the statute refers to a general category of conduct, the statute uses the present tense in the term "undermines" to permit debarment for conduct that is of a type that in general undermines the process for the regulation of drugs, regardless of whether the particular conduct that gave rise to the misdemeanor conviction continues to undermine the regulation of drugs. The statute does not require that the specific criminal acts that the individual committed continue to undermine the regulatory process.

Mr. Rodgers' contention that the use of the term "undermines" requires a continuing harm as a result of his conduct reads the express reference to a type of conduct out of the statute and reads into the statute the words "continues to undermine" that simply are not there. Even though the statute states that the type of conduct at issue is the type of conduct that "served as the basis for the conviction," this reference to the past conduct of the individual does not mean that the agency must establish that the past conduct continues to undermine the regulation of drugs to subject the individual to permissive debarment under section 306(b)(2)(B)(i).

It is clear that the type of conduct that served as the basis for Mr. Rodgers' conviction (failure to register a drug facility and shipping unapproved and adulterated drugs in interstate commerce) are types of conduct that undermine, in a general way, the process for regulating drugs. These statutory requirements are core requirements in the act's regulatory scheme for drugs.

Debarment is intended to protect the integrity of the drug process. In enacting the debarment statute, Congress recognized "a need to establish procedures to bar individuals who have been convicted of crimes pertaining to the regulation of drug products from working for companies that manufacture or distribute such products." Generic Drug Enforcement Act of 1992, Public Law 102–282, Section 1(c) (*emphasis added*), quoted in *Bae* v. *Shalala*, 44 F.3d 489, 493 (7th Cir. 1995). Congress concluded that in order to ensure the integrity of the drug approval process and to protect public health, it was necessary, among other things, to unequivocally exclude from the drug industry those individuals who had previously engaged in fraudulent or corrupt acts with respect to the regulation of drugs (65 FR 3458, January 21, 2000) (citing H.R. Rep. No. 102–272, 102d Cong., 1st Sess., at 14 (1991)). The application of permissive debarment to Mr. Rodgers is consistent with this purpose and is not contingent on a finding that his conduct continues to undermine the regulation of drugs.

Mr. Rodgers cites *Bae* v. *Shalala*, 44 F. 3d at 493 in support of his position, noting that the *Bae* court found that the Congressional purpose behind enactment of the debarment provisions was not punishment, but the prevention of present and future problems. In that

case, the Seventh Circuit held that the debarment statute is remedial rather than punitive in nature, but noted further that a law's general deterrent effect is consistent with a primarily remedial purpose (See id. at 494). The *Bae* court contrasted the general deterrent effect of the debarment statute with legislation intended to effect specific deterrence, noting that the latter "aims to change a particular individual's behavior through negative reinforcement." This description of laws aimed at specific deterrence also characterizes Mr. Rodgers' interpretation of the debarment statute: His interpretation ties debarment to the continuing harm from the behavior of the particular individual facing debarment, rather than to a type of behavior that in general undermines drug regulation. In contrast, an interpretation of the term "undermines" to allow debarment for conduct with a general tendency to undermine the regulation of drugs is consistent with the statute's remedial goal of protecting the processes for the regulation of drugs by deterring all individuals from engaging in damaging conduct presently or in the future. See id.; see also *DiCola v. FDA*, 77 F. 3d 504, 506–508 (D.C. Cir. 1996) (discussing remedial purpose behind debarment statute).

Mr. Rodgers also argues that contrary to assertions included in the proposal to debar, the following statements are not included in the Information: (1) A detailed description of the LK–200 product (e.g., that it was a supernatant of white blood cell materials or that it meets the definition of a drug product); or (2) any claim that FDA was prevented from obtaining accurate and complete information necessary to regulate the drug process by Mr. Rodgers.

Mr. Rodgers' objection (that Mr. Rodgers' conduct described in the December 17, 2002, proposal to debar is not explicitly stated in the Information) does not raise a genuine and substantial issue of fact as to whether Mr. Rodgers was convicted of misdemeanors under Federal law or whether, as a matter of law, the convictions permit Mr. Rodgers' debarment. Mr. Rodgers does not deny the accuracy of the statements made in the proposal to debar, only that the descriptions of his conduct are not found in the Information.

Mr. Rodgers was convicted of three counts of violating the act, specifically section 301(p), (d), and (a), for owning and operating an unregistered facility for the manufacture of drugs; shipping an unapproved new drug in interstate commerce; and shipping an adulterated drug in interstate commerce (see, e.g., April 4, 2000, plea agreement letter from the U.S. Department of Justice U.S. Attorney, District of Massachusetts re: *United States* v. *Thomas M. Rodgers, Jr.*, whereby Mr. Rodgers expressly and unequivocally admits that Mr. Rodgers in fact committed the crimes charged in the Information, and is in fact guilty of those offenses; see also 68 FR 46197, at 46198, August 5, 2003, Thomas Ronald Theodore, Debarment Order, description of the LK–200 drug product). It is clear that there is no genuine and substantial issue of fact regarding whether Mr. Rodgers was convicted.

In accordance with § 12.24(b)(1), a hearing will only be granted if materials are submitted showing that there is a genuine and substantial issue of fact for resolution at a hearing. For the reasons set forth previously, FDA finds that Mr. Rodgers failed to identify any genuine and substantial issue of fact justifying a hearing. In addition, Mr. Rodgers' legal arguments do not create a basis for a hearing, and, in any event, are without merit. Accordingly, the Commissioner denies Mr. Rodgers' request for a hearing.

III. Findings and Order

Therefore, the Commissioner, under section 306(b)(2)(B)(i) of the act, and under the authority delegated to the Commissioner of Food and Drugs, finds that Mr. Thomas M. Rodgers, Jr., has been convicted of three misdemeanors under Federal law for conduct relating to the regulation of a drug product under the act and that Mr. Rodgers' conduct which served as the basis for his conviction is the type of conduct that undermines the process for the regulation of drugs (21 U.S.C. 335a(b)(2)(B)(i)).

As a result of the foregoing findings, Mr. Thomas M. Rodgers, Jr. is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under sections 351 of the Public Health Service Act (42 U.S.C. 262). Any person with an approved or pending drug product application including, but not limited to, a biologics license application, who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Rodgers, in any capacity, during Mr. Rodgers' debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Rodgers, during his debarment, provides services in any capacity to a person with an approved or pending drug product application, including but not limited to, a biologics license application, Mr. Rodgers will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Rodgers during Mr. Rodgers' debarment (section 306(c)(1)(B) of the act).

Any application by Mr. Rodgers for termination of debarment under section 306(d)(4) of the act should be identified with the Docket No. 2002N–0510 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies (21 CFR 10.20(a)). The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 20, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14967 Filed 7–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0410] (formerly Docket No. 03E–0410)

Determination of Regulatory Review Period for Purposes of Patent Extension; ZUBRIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZUBRIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term

Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product ZUBRIN (tepoxalin). ZUBRIN is indicated for the control of pain and inflammation associated with osteoarthritis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZUBRIN (U.S. Patent No. 4,826,868) from Johnson & Johnson, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of ZUBRIN represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZUBRIN is 2,347 days. Of this time, 1,887 days occurred during the testing phase of the regulatory review period, and 460 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act) involving this animal drug product became effective:* October 28, 1996. The applicant claims October 29, 1996, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the date of FDA's letter assigning a number to the INAD was October 28, 1996, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the act:* December 27, 2001. The applicant claims December 20, 2001, as the date the new animal drug application (NADA) for ZUBRIN (NADA 141–193) was initially submitted. However, a review of FDA records reveals NADA 141–193 was initially submitted on December 27, 2001.

3. *The date the application was approved:* March 31, 2003. FDA has verified the applicant's claim that NADA 141–193 was approved on March 31, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,405 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written comments and ask for a redetermination by September 26, 2005. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 24, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 2005.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 05–14921 Filed 7–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Compacts taking effect.

SUMMARY: Notice is given that the Supplement to the Tribal-State Compact between the Chickasaw Nation and the State of Oklahoma is considered to have been approved and is in effect.

EFFECTIVE DATE: July 28, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11(d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal-State compact that is approved, or considered to have been approved for the purpose of engaging in Class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove this compact before the date that is 45 days after the date this compact was submitted. It could not be determined within the 45 day time frame to approve or disapprove this compact, whether the games listed, in the supplement to the compact, were class II or class III. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), this supplement to the compact is considered to have been approved, but only to the extent that it is consistent with IGRA.

Dated: July 19, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–14966 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14826–B (DYA–6)]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to K'oyitl'ots'ina, Limited. The lands are located in T. 21 N., R. 23 W., and T. 20 N., R. 25 W., Fairbanks Meridian, in the vicinity of Alatna, Alaska, aggregating 4,997.54 acres. Notice of the decision will also be published four times in the *Fairbanks Daily News Miner.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 29, 2005 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Joe J. Labay by phone at 907–271–3340, or by e-mail at *joe_labay@ak.blm.gov.*

Joe J. Labay,

Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 05–14940 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14827–B (DYA–6)]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to K'oyitl'ots'ina, Limited for lands in T. 21 N., R. 22 W., T. 22N., R. 22 W., and T. 22 N., R. 23 W., Fairbanks Meridian, located in the vicinity of Allakaket Alaska. Notice of the decision will also be published four times in the Fairbanks Daily News Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 29, 2005 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Joe J. Labay by phone at 907–271–3340, or by e-mail at *joe_labay@ak.blm.gov.*

Joe J. Labay,

Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 05–14942 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–05–1220–PN]

Notice of Seasonal Closure of Certain Public Lands Referred to as the Serpentine Area of Critical Environmental Concern (ACEC), Located in the Southern Portion of San Benito County and Western Fresno County, Central Coast Region of California, to All Types of Motorized and Non-Motorized Recreation Use

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of seasonal closure of public lands.

SUMMARY: Pursuant to 43 Code of Federal Regulations (CFR) subpart 8364, notice is hereby given that the Bureau of Land Management (BLM), Hollister Field Office will seasonally restrict public access to certain BLM-administered public lands during the period of June 4, 2005 through October 15, 2005. This seasonal closure is needed to ensure visitor safety and protect public land users from potential health risks associated with naturally occurring asbestos found within the closure area. The BLM may also implement a visitor use permit system to control public access during the period October 16–June 1. A permit system will provide an opportunity to educate the public on the risks related to recreation use in areas of naturally occurring asbestos.

DATES: This seasonal closure is effective from June 4, 2005 through October 15, 2005.

ADDRESSES: Bureau of Land Management (BLM) Hollister Field Office, 20 Hamilton Court, Hollister, California, 95023.

FOR FURTHER INFORMATION CONTACT: George Hill, Assistant Field Manager, Telephone: 831–630–5036 Fax: 831–630–5055, during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: This seasonal closure affects public lands located within the 30,000-acre Serpentine Area of Critical Environmental Concern (ACEC) situated within the Clear Creek Management Area (CCMA). Except for travel on county roads, public access within this area will be allowed only by written authorization from the Hollister Field Manager. Personnel of the BLM, California Department of Fish and Game, U.S. Fish & Wildlife Service, and law enforcement, fire, and emergency personnel are exempt from this closure only when performing official duties. Operators of communication facilities may perform maintenance activities; livestock operators may perform permitted activities, and private in-holders may access their private property, as approved.

The CCMA is a popular location for off-highway vehicle (OHV) recreation. A variety of other recreation activities also occur within the CCMA, including hunting, rock-hounding, wildlife watching, and hiking. This is a unique geological area with serpentine soils and a suite of rare plants and animals. The type and level of OHV use also must be carefully managed to create an environment that promotes the health and safety of visitors.

BLM will be restricting public access during the dry season within the CCMA, in response to studies being conducted by the U.S. Environmental Protection Agency (EPA), which are analyzing the exposure levels of various recreationists to naturally occurring asbestos at the CCMA. Studies conducted by EPA in September of 2004 found elevated levels

of airborne asbestos fibers present during various recreation activities. This action is also in accordance with the 1995 Final Environmental Impact Statement (FEIS) and Resource Management Plan Amendment for the CCMA.

The soil moisture during the time period of June through October is at the lowest point and therefore the dust generating potential and release of naturally occurring airborne asbestos is greatest. Analysis of airborne asbestos exposure reflected in EPA's Technical Memorandum issued February 5, 2005, titled "Human Health Risk Assessment "Asbestos Air Sampling Clear Creek Management Area, California," based on samples collected September 15, 2004, indicate a higher risk from airborne asbestos exposure in CCMA than EPA and BLM previously thought. Based on preliminary EPA results, use restrictions in CCMA may be needed to reduce risk to the public from asbestos exposure, particularly during the dry season.

Closure Order:

Pursuant to 43 CFR 8364.1, notice is hereby given that the BLM is seasonally restricting access to portions of public lands within the Clear Creek Management Area (CCMA) located in the southern portion of San Benito County and western Fresno County, California. A closure order to this effect was signed on May 25, 2005. All public access, including motorized and non-motorized recreation use is restricted on public lands within the Serpentine ACEC from June 4, 2005 through October 15, 2005. These lands are located in the Mount Diablo Meridian in portions of T.17 S., R. 11 E.; T. 17 S., R. 12 E.; T. 18 S., R 11 E.; T. 18 S., R. 12 E.; T. 18 S., R. 13 E.; T. 19 S., R. 13 E.

This seasonal closure is necessary to ensure visitor safety and protect public land users from potential health risks associated with naturally occurring asbestos found within the restricted area. Dry soil conditions and high dust generating potential from public use activities during this time period create a significant hazard and risk associated with exposure to asbestos.

Except for travel on San Benito County roads, all public access and motorized vehicle travel will be allowed only by written authorization of the Hollister Field Manager. The following persons are exempt from the identified restrictions:

(1) Federal, State, or local law enforcement officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in the execution of their official duties.

(3) Any member of an organized rescue, fire-fighting force, or emergency medical services organization while in the performance of their official duties.

(4) Any member of a federal, state, or local public works department while in the performance of an official duty.

(5) Any person in receipt of a written authorization of exemption obtained from the authorized officer from the Hollister Field Office.

(6) Private landowners with in-holdings within the restricted area who have a responsibility or need to access their property, and persons with valid existing rights-of-way or lease operations, or representatives thereof.

During the closure period, the area will be clearly posted. Closure signs are posted at main entry points to all locations affected by this Notice. Maps of the area are posted with this notice at key locations that provide access into the closure areas, and may be obtained with further information at the Hollister Field Office, 20 Hamilton Court, Hollister, California 95023.

Seasonal closure orders may be implemented as provided in 43 CFR, subpart 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

May 25, 2005.

Robert E. Beehler,

Field Manager.

[FR Doc. 05–14936 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council (RAC).

The business meeting will beheld on August 23, 2005, in Safford, Arizona, at the Manor House located at 415 E. Highway 70 in Safford. It will begin at 9:30 a.m. and conclude at 4:30 p.m. The agenda items to be covered include: Review of the May 3, 2005 Meeting Minutes; BLM State Directors' Update on Statewide Issues; Presentations on the Gila Watershed Council, San Simon Watershed, Arizona Land use Planning Updates, Saginaw Hill Update; and RAC Questions on Written Reports from BLM Field Managers; Field Office Rangeland Resource Team proposals; Reports by the Standards and Guidelines, Recreation, Off-Highway Vehicle Use, Public Relations, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11 a.m. on August 23, 2005 for any interested publics who wish to address the Council.

On August 24, the RAC will tour several public land areas in the Safford Field Office. BLM will highlight the San Simon Watershed Project, Hotwell Dunes Off-Highway Vehicle Area, and some of the areas paleontological resources. The tour will be conducted from approximately 6 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Carl Rountree,

Acting Arizona State Director.

[FR Doc. 05–14926 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–79030]

Notice of Realty Action: Reacreation and Public Purposes (R&PP) Act Classification of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*) approximately 5 acres of public land in Clark County, Nevada. The church of Jesus Christ of Latter Day Saints (LDS Church) proposes to use the land for a church and related facilities.

FOR FURTHER INFORMATION CONTACT: Sharon DiPinto, Bureau of Land Management, Las Vegas Field Office, at (702) 515–5062.

SUPPLEMENTARY INFORMATION: On September 2, 2004 the LDS Church filed a R&PP application for 5 acres of public land to be developed as a church with related facilities. These related facilities included a multipurpose building (a worship center, offices, classrooms,

nursery, kitchen, restrooms, utility/storage rooms and a lobby) with sidewalks, landscaped areas, paved parking areas, and off site improvements. The LDS Church is a qualified nonprofit entity. Additional detailed information pertaining to this application, plan of development, and site plans is on file in case file N–79030 located in the BLM Las Vegas Field Office.

The LDS Church proposes to use the following described public land for a church and related facilities:

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E., Sec. 11: N½SE4NW4SE4
Containing 5 acres, more or less.

Churches are a common applicant under the "public purposes" provision of the R&PP Act. The LDS Church is an IRS registered non-profit organization and is therefore, a qualified applicant under the R&PP Act.

The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement in favor of Clark County for roads, public utilities and flood control purposes.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

ADDRESSES: Send written comments to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

On July 28, 2005, the land described below will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands until September 12, 2005.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a church meeting house. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective September 26, 2005. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Authority: 43 CFR 2741.

Sharon DiPinto,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 05–14947 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–EQ; NMNM111685]

Notice of Realty Action; Commercial Lease on public land, San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has determined that a 100.53 acre tract of public land in San Juan County, New Mexico, is available for use as a poultry-production farm. Pursuant to the Federal Land Policy and Management Act of 1976, a non-competitive lease application for a use of this kind will be accepted for processing and given careful consideration by the BLM.

DATES: Interested persons may submit comments in writing to the BLM at the address given below on or before September 12, 2005.

ADDRESSES: Bureau of Land Management, Field Office Manager, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Carol Balkus, at the address given above, or by telephone at: (505) 599–6353.

SUPPLEMENTARY INFORMATION: Nageezi Enterprises, a domestic corporation, has informally proposed in writing that the following described tract of public land, located near Bloomfield, New Mexico, be used, occupied and developed as a commercial, poultry-production farm:

New Mexico Principle Meridian

T. 27 N., R. 11 W., Section 9, lots 1 and 4, and the NE¼ NE¼
Containing 100.53 acres, more or less.

After review, the BLM has determined the proposed use of the above described tract of land is in conformance with the applicable BLM land use plan, *i.e.*, the Farmington Resource Management Plan, and that the above described land is available for that use. Therefore, pursuant to section 302 (b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732 (b)) and the implementing regulations at 43 CFR part 2920, the BLM will accept for processing an application to be filed by Nageezi Enterprises, or its duly qualified designee, for a non-competitive lease of the above described tract of land, to be used and occupied as stated above.

A non-competitive lease will be employed in this case because the lease is proposed within a checkerboard land pattern next to the Navajo Nation farm with intermingled land ownership which is primarily managed for Navajo interests. There is no known competitive interest. Water and feed for the poultry farm are provided by the Navajo farm at a significant discount to the corporation since the corporation is a joint venture by Navajo chapter members from Nageezi and Huerfano chapters. Land use authorizations may be offered on a negotiated, non-competitive basis, when in the judgment of the authorized officer equities, such as prior use of the lands, exist, no competitive interest exists or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the

unique land use concept. The BLM will estimate the costs of processing the lease application. Before the BLM begins to process the application, the lease applicant must pay the full amount of the estimated costs to the United States. If a lease is not granted, the lease applicant must pay to the United States, in addition to the estimated costs, the reasonable costs incurred by the BLM in processing the lease in excess of the estimated costs.

The current, appraised rental value relative to the above described land, is $94.74 per acre. Rent, payable annually or otherwise in advance, will be determined by the BLM, if and when a lease application is granted and periodically thereafter. If a lease is granted, the lessee shall reimburse the United States for all reasonable administrative and other costs incurred by the United States in processing the lease application and for monitoring construction, operation, maintenance and rehabilitation of the land and facilities authorized. The reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

The lease application must include a reference to this notice and comply in all other respects with the regulations pertaining to land use authorization applications at 43 CFR 2920.5–2 and 2920.5–(5)(b).

The applicable regulations, and further details concerning the foregoing are available for review in the BLM, Farmington Field Office at the address stated above.

If authorized, a lease would be subject to valid existing rights, including but not limited to the following:

1. A right-of-way for a natural gas pipeline granted to El Paso Natural Gas by right-of-way New Mexico 57925, under the Act of February 25, 1920 (30 U.S.C. 185).

2. A right-of-way for a natural gas pipeline granted to El Paso Natural Gas by right-of-way New Mexico 07301, under the Act of February 25, 1920 (30 U.S.C. 185).

3. A right-of-way for a natural gas pipeline granted to El Paso Natural Gas by right-of-way New Mexico 08538, under the Act of February 25, 1920 (30 U.S.C. 185).

4. A right-of-way for a natural gas pipeline granted to El Paso Natural Gas by right-of-way New Mexico 08545, under the Act of February 25, 1920 (30 U.S.C. 185).

5. A right-of-way for a natural gas pipeline granted to El Paso Natural Gas by right-of-way New Mexico 021702, under the Act of February 25, 1920 (30 U.S.C. 185).

On or before September 12, 2005, interested parties may submit comments to the BLM at the address stated above with respect to:

(1) The decision of the BLM regarding the availability of the lands described herein and

(2) The decision of the BLM to entertain an application from Nageezi Enterprises for a non-competitive lease.

Adverse comments will be evaluated by the BLM Field Manager, Farmington, NM, who may sustain, vacate or modify this realty action. In the absence of any adverse comment, this realty action will become a final determination of the BLM as to each one of the two decisions stated above.

(Authority: 43 CFR 2920.4)

Dated: June 20, 2005.

Joel E. Farrell,

Assistant Field Manager.

[FR Doc. 05–14943 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1430–ES; UTU–79052]

Classification and Conveyance of Public Lands for Shooting Range Purposes, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Public lands located in Uintah County, Utah, have been examined and found suitable for classification for lease or conveyance to Uintah County under the provisions of the Recreation and Public Purposes Act as amended (43 U.S.C. 869 *et seq.*) for a public shooting range complex.

FOR FURTHER INFORMATION CONTACT: Naomi Hatch, BLM Realty Specialist at (435) 781–4454.

SUPPLEMENTARY INFORMATION: Uintah County proposes to use the following described public lands in Uintah County, Utah to construct, operate and maintain a public shooting range complex. The land is not needed for Federal purposes. Leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public's interest.

Salt Lake Meridian, Utah

T. 4 S., R. 22 E.,
Sec. 3, Lots 2, 3, 4, W½NE¼SW¼NE¼, W½SW¼NE¼, S½NW¼, SW¼, NE¼NW¼NW¼SE¼, W½W½NW¼SE¼, W½W½SW¼SE¼.
Sec. 4, Lots 1, E½SE¼SW¼NE¼, SE¼NE¼SW¼NE¼, SE¼NE¼, E½E½NW¼SE¼, E½SW¼SW¼SE¼, E½SW¼SE¼, E½SE¼, SW¼SW¼SW¼SE¼.
Sec. 9, NE, N½N½SE¼, N½S½N½SE¼.
Sec. 10, W½W½NE¼, NW¼, N½N½SW¼, N½S½N½SW¼, W½NW¼NW¼SE¼, NW¼SW¼NW¼SE¼.
Containing 1074.92 acres, more or less.

The lease or patent, when issued, would be subject to the following terms conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. A right-of-way for ditches or canals constructed by the authority of the United States.

4. Those rights for a natural gas pipeline granted by right-of-way UTU–018084 to Questar Gas Company.

5. Those rights for a telephone line granted by right-of-way UTU–09017 to Qwest Corporation.

6. Those rights for a natural gas pipeline granted by right-of-way UTU–049527 to Questar Gas Company and Questar Regulated Service Company.

7. Those rights for road purposes granted by right-of-way UTU–73611 to Uintah County.

8. Any other valid and existing rights of record not yet identified.

9. A cultural resource site will be fenced outside of the project area and be shielded by the proposed tree line.

10. If any vertebrate fossils are discovered during construction of the proposed shooting range complex, work shall cease and a BLM permitted paleontologist should be called in to evaluate the find.

11. Sign the fence boundary on the shooting range clearly stating "Do Not Enter—Live Fire Arms being Discharged within this Boundary".

12. Design projects should blend with topographic forms and existing vegetation patterns in shape and placement, and use both to screen developments. Color selection chart will be furnished to Uintah County.

Upon publication of this notice in the **Federal Register**, the public lands described above are segregated from all other forms of appropriation under the public land laws, including the general mining laws and leasing under the mineral leasing laws, except for leasing or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this

Notice, interested parties may submit comments regarding the proposed classification, leasing or conveyance of the land to the Field Manager, Bureau of Land Management Vernal Field Office, 170 South 500 East, Vernal, Utah 84078.

Classification Comments

Interested parties may submit comments regarding the suitability of the land for a shooting range complex. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

William Stringer,

Field Manager.

[FR Doc. 05–14945 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–915–1220–PM]

Notice of Proposed Supplementary Rules for Meadowood Special Recreation Management Area, Fairfax County, VA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules for Visitor Use and Permits—Bureau of Land Management-Eastern States (BLM–ES), Springfield, Virginia.

SUMMARY: These proposed supplementary rules, applicable to specified public lands administered by BLM, would implement the management decisions made in the Meadowood Farm Proposed Program Analysis/Environmental Assessment, and the Meadowood Integrated Activity Management Plan for the Meadowood Special Recreation Management Area (SRMA). The purposes of the proposed supplementary rules are to protect natural resources and provide for the safety of visitors and property on public land located in Fairfax County, Virginia.

DATES: Comments on the proposed supplementary rules must be received or postmarked by August 29, 2005 to be assured consideration. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Comments may be mailed or hand-delivered to the BLM–ES Lower Potomac Field Station, 10406 Gunston Road, Lorton, Virginia 22079. You may also comment via Internet e-mail to: *jeff_mccusker@es.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Cooper, BLM–ES, Lower Potomac Field Station Manager, 10406 Gunston Road, Lorton, Virginia 22079, at (703) 339–8009.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing. The comments that the BLM receives after the close of the comment period (*see* **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address not listed above (*see* **ADDRESSES**), may not be considered or included in the Administrative Record for the final rule.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the BLM–ES Lower Potomac Field Station, 10406 Gunston Road, Lorton, Virginia 22079, during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, street address, and other contact information (such as internet address, fax, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection in their entirety all submissions from organizations or businesses and their representatives or officials.

II. Background

The BLM–ES Lower Potomac Field Station staff has developed the supplementary rules listed below to implement the management decisions made in the Meadowood Farm Proposed Program Analysis/Environmental Assessment, and the Meadowood Integrated Activity Management Plan for the Meadowood SRMA. These plans were both developed through a series of public meetings, and public comment and appeal periods were allowed. No protests or appeals were received on the decisions in either document. Upon publication of these supplementary rules in final form, the Meadowood SRMA will be fully open for the uses and purposes identified in the Meadowood Farm Proposed Program Analysis/Environmental Assessment, and the Meadowood Special Recreation Management Area Integrated Activity Management Plan/Environmental Assessment. The publication of this rule will also rescind the temporary closure of these public lands as provided in a **Federal Register** notice on October 22, 2001 (66 FR 53431).

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules do not constitute a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. They merely impose rules of conduct and impose other limitations on certain recreational activities on certain public lands to protect natural resources and human health and safety.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We

invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed supplementary rules clearly stated? (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections? (5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand? Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an Environmental Assessment (EA), the Meadowood Farm Proposed Program Analysis/ Environmental Assessment, and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules should have no effect on business entities of whatever size. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These proposed supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). They would not result in an annual effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or on the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The proposed supplementary rules would have no effect on private lands or property. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed supplementary rules would have no effect on state or local government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules do not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these proposed supplementary rules do not include policies that have tribal implications.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these proposed supplementary rules is Gary Cooper, Lower Potomac Field Station Manager, Eastern States, Bureau of Land Management.

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 CFR 8341.2, 8364.1, and 8365.1–6, and 43 U.S.C. 1740, the State Director, Eastern States, Bureau of Land Management, proposes to issue supplementary rules for public lands managed by the BLM in the Lower Potomac Field Station area to read as follows:

Supplementary Rules for Certain Public Lands Managed by the Lower Potomac Field Station Office, Bureau of Land Management

Prohibited Acts within the Meadowood Special Recreation Management Area (SRMA) boundary:

1. You must not hunt unless you are participating in a managed hunt following Commonwealth of Virginia hunting regulations, and planned by the

Lower Potomac Field Station Manager (LPFSM).

2. You must not use fireworks or explosive devices.

3. You must not enter the Meadowood SRMA between sunset and sunrise unless you have a contract or other written permission to board or maintain horses at Meadowood. Between sunset and sunrise, persons with a boarding contract and their accompanied guests and other persons authorized by the LPFSM may enter the boarding facilities and adjacent pastures at 10406 Gunston Road only.

4. You must not swim or bathe in the ponds or streams.

5. You must not operate motorized vehicles or devices in the SRMA unless authorized by the LPFSM, except for the following established roads:

a. From Old Colchester Road to the control line flying circles in the west parcel.

b. From Belmont Boulevard to the visitor parking area.

c. From Gunston Road to the parking areas at the horse barn and the BLM compound. These parking areas are designated for BLM employees and contractors, visitors to the Lower Potomac Field Station Office, boarders, or their guests only.

6. You must not enter the fenced pastures at 10406 Gunston Road unless you have a contract or other written permission to board or maintain horses at Meadowood.

7. You must not enter into any area posted as closed to entry or use.

8. You must not camp unless authorized by the LPFSM.

9. You must not use a bicycle except on the roads identified above and on designated trails.

10. You must not store fuel or accelerants.

11. You must not use control line model airplanes outside of times and places designated by the LPFSM.

12. You must not use model rockets or explosive devices.

13. You must not use or possess weapons, other than for hunts planned by the BLM.

Exception for Official Use of Site

Federal, State, and local law enforcement officers, government employees, and BLM volunteers are exempt from these supplementary rules in the course of their official duties. Limitations on the use of motorized vehicles do not apply to emergency vehicles, fire suppression and rescue vehicles, law enforcement vehicles, and other vehicles performing official duties, or as approved by an authorized officer of the BLM.

Penalties

1. Violations of these supplementary rules are punishable as follows: By a sentence of incarceration not more than one year, and a fine as provided by law under 43 U.S.C. 1733 and 18 U.S.C. 3571.

2. You may also be subject to civil action for unauthorized use of the public lands or related waters and their resources, for violations of permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. 05–14938 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–130–05–1220–AL]

Notice of Proposed Supplementary Rules; Recreation Area Conditions of Use; North Fruita Desert; Mesa County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules for conditions of use on public land within the North Fruita Desert.

SUMMARY: The Bureau of Land Management (BLM), Grand Junction Field Office, is publishing proposed supplementary rules regulating the conduct of certain activities on all public lands within the North Fruita Desert Special Recreation Management Area (SRMA). These proposed supplementary rules notify the public that certain activities are no longer allowed in the North Fruita Desert, and include, but are not limited to the following: Prohibition of fires outside of designated fire rings within the designated campground in the bicycle emphasis area, required use of fire pans outside of the mountain bike emphasis area, prohibition of discharge of dangerous weapons within the mountain bike emphasis area, prohibition of camping outside of designated camping sites within the mountain bike emphasis area, limiting all motorized and mechanized vehicle travel within the area to designated routes, the seasonal closure of certain routes, prohibition of possession or use of firewood containing nails or other metal hardware, and the prohibition on shooting any glass objects.

DATES: Comments on the proposed supplementary rules must be received or postmarked by August 29, 2005, to be assured consideration. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Mail, personal or messenger delivery: Bureau of Land Management, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506. Internet e-mail: Attn: *Britta_Laub@co.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Britta Laub, Supervisory Outdoor Recreation Planner, at (970) 244–3000.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Public comment on the North Fruita Desert Plan amendment and recreation activity plan ended on September 3, 2004. This notice is intended to ensure decisions made in the amendment and plan are enforceable.

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (*see* **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at Bureau of Land Management, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506, during regular business hours (7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for

public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The North Fruita Desert Management Plan was approved on November 8, 2004. The North Fruita area has become increasing popular for its mountain biking, dispersed camping, and motorized recreational opportunities. In 2003, use numbered about 50,000 visits. Increased use and marketing of the area have resulted in impacts to resources (illegal trail construction and proliferation of social trails, vegetation tramping, weed invasion, sterilization of soil through multiple ground fires), have raised public health and safety issues (human and dog waste, glass and metal debris), and social conflicts (between motorized and mechanized users, competition for camping space, local vs. recreation destination visitors, and shooting over trails). The plan addresses these issues and these proposed supplementary rules enact the prescriptions outlined in the plan.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These proposed supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose rules of conduct and impose other limitations on certain recreational activities on certain public lands to protect natural resources and human health and safety.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed supplementary rules clearly stated? (2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections? (5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These proposed supplementary rules should have no effect on business entities of whatever size. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These proposed supplementary rules are not a "major rule" as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety.

Unfunded Mandates Reform Act

These proposed supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The rule does not represent a government action capable of interfering with Constitutionally protected property rights. The plan addresses the management of public lands within the North Fruita Desert and in no way addresses the management of private lands. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The rule 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. The state of Colorado was involved in the development of the plan, the plan underwent the required 60 day Governors Consistency review, and the rule addresses the federal enforceability of conditions of use as described in the plan and does not impact State power or responsibilities. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal

In accordance with Executive Order 13175, we have found that this rule does not include policies that have tribal implications. The conditions of use as described in this notice are intended to protect resources, public health and safety, and mitigate user conflict. No tribal lands are located within or near the North Fruita Desert. The rule does not apply to Indian lands.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal authors of these proposed supplementary rules are: Perry McCoy, James Cooper, and Britta Laub, Grand Junction Field Office.

IV. Discussion of the Proposed Supplementary Rules

These proposed supplementary rules will apply to the public lands under the administration of the Bureau of Land Management located within the North Fruita Desert. The BLM has determined that these rules are necessary to protect the area's natural resources, to provide for safe public recreation, public health, reduce potential for user conflict, and reduce the potential for damage to the environment and to enhance the experience of the visitor.

Under the authority found in 43 U.S.C. 1733(a), pursuant to 43 CFR 8364.1, 43 CFR 8365.1–6, 43 CFR 9212.2, 43 CFR 9268.3 the Bureau of Land Management proposes to enforce the following rules on all public lands administered by the Bureau of Land Management within the North Fruita Desert. You must follow these rules:

Sec. 1: Prohibited Acts/Rules

While on public lands in the North Fruita Desert,

a. No discharge of dangerous weapons will be allowed in the bicycle emphasis area, except for the lawful taking of game during bonafide hunting seasons.

b. In North Fruita Desert SRMA, all fires must be contained in a fire pan and all ash and burned material removed and disposed of off of public lands.

c. In the North Fruita Desert SRMA, provided and/or portable toilets must be used and contents disposed of according to Mesa County requirements.

d. In the North Fruita Desert SRMA, it is prohibited to collect downed wood for campfires or other purposes.

e. In the mechanized (bicycle) emphasis area, visitors must camp in designated campsites. Dispersed camping will continue to be allowed in the remaining portions of the North Fruita Desert SRMA.

f. All motorized and mechanized travel is limited to designated roads and trails.

g. No motorized travel is permitted, except on the graveled access road, V.7 Road, and campground spur pull-offs in the mechanized (bicycle) emphasis area. The mechanized (bicycle) emphasis area is defined as portions of T8S R102W sec. 24, 25, and 36, T9S R102W sec.1, T8S R101W sec. 28, 29, 30, 31, 32, 33, 34, and 35, T9S R101W sec. 3, 4, 5, and 6.

h. No motorized or mechanized vehicle travel is permitted, except on Q.5 Road, within the non-motorized/non-mechanized emphasis area. The non-motorized/non-mechanized emphasis area is defined as portions of T8S R101W sec. 35 and 36, T9S R101W sec. 1, 2, 3, 9, 10, 11, 12, and 14, T9S R100W sec. 5, 6, 7, and 8.

i. The Lippan Wash Trail and Coal Gulch Trail will be seasonally closed to mechanized and motorized travel from December 1 until April 1 of each year. The opening date may be moved to an earlier or later date if conditions warrant.

j. No person shall use or possess firewood containing nails, screws, or other metal hardware to include, but not limited to, wood pallets and construction debris.

k. Administrative use is limited to designated routes. Exemptions to travel restrictions are listed under "ORV", exclusions, below.

Sec. 2: Definitions

"Dangerous weapons" include, but are not limited to: Rifles, pistols, air guns, paint ball guns, bows and arrows, slingshots, or any mechanical devices that propel a projectile.

"Designated fire ring" means specific areas designed and delineated for use and containment of camping and/or cooking fires. Fire rings are typically constructed of metal sheeting 2½ to 3 feet in diameter and no less than 1 foot deep.

"Fire pan" means a metal container elevated off the ground that serves as a barrier between the ground and the fire, to contain the fire and facilitate the removal of ashes.

"Mechanized vehicle" means a mechanical vehicle propelled by human power without use of a motor (*e.g.:* mountain bike).

"Motorized vehicle" is used synonymously with ORV and OHV, and may include motorcycles, ATVs, or full sized vehicles.

"Non-motorized, non-mechanized" means powered by human power alone without use of mechanized or motorized assistance. Equestrian use falls under this definition.

"OHV" means Off Highway Vehicle and is used synonymously with ORV.

"ORV" means Off Road Vehicle as defined in 43 CFR 8340.0–5 (a) as any motorized vehicle capable of, or designed for, travel onto or immediately over land, water, or other natural terrain, excluding:

1. Any non-amphibious registered motorboat;

2. Any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes;

3. Any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved;

4. Vehicles in official use:

5. Any combat or support vehicle when used in times of national defense emergencies.

"Public lands" means any land in the North Fruita Desert, the surface of which is administered by the Bureau of Land Management. The North Fruita Desert is bounded by East Salt Creek on the West, Coal Gulch on the North, 21 Road on the east, and the BLM/private land boundary on the south, Mesa County Colorado, T.2 N.R., R3W., T.2N. R.2W. Ute Principle Meridian, T.9S. R.103W., T.8S. R.103W., T.9S. R.102W., T.8S. R.102W., T.9S. R.101W., T.8S.

R.101W., T.9S. R.100W., T.8S. R.100W. 6th Principle Meridian.

Sec. 3: Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, 43 CFR 9268.3(d)(1)(2), and 18 U.S.C. 3571 if you violate any of these proposed supplementary rules on public lands within the boundaries established in the rules, you shall be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations shall also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Douglas M. Koza,

Acting State Director.

[FR Doc. 05–14946 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–668–05–1220–PM]

Restrictions on Recreational Use of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice. Issuance of Restriction Orders.

SUMMARY: Notice is hereby given that the Bureau of Land Management has issued orders pursuant to 43 CFR 8364.1 that restrict the launching and landing of hang gliders and similar aircraft, the discharge of gas- and air-powered weapons and simulated weapons, recreational shooting, and entry with pets on all or certain public lands in the Santa Rosa and San Jacinto Mountains National Monument, Riverside County, California, to protect resources and enhance visitor safety.

DATES: The hang gliding restriction became effective February 2, 2005. Restrictions pertaining to the discharge of gas- and air-propelled weapons, recreational shooting, and entry with pets became effective March 24, 2005.

ADDRESSES: Santa Rosa and San Jacinto Mountains National Monument, Palm Springs-South Coast Field Office, Bureau of Land Management, 690 West Garnet Ave., P.O. Box 581260, North Palm Springs, CA 92258–1260.

FOR FURTHER INFORMATION CONTACT: Jim Foote, Outdoor Recreation Planner, telephone 760–251–4800, e-mail *jfoote@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: *Hang Gliding.* Launches of hang gliders, paragliders, ultralights, and similar aircraft from, and landing on, public lands within and adjacent to essential habitat for Peninsular Ranges bighorn sheep in the Santa Rosa and San Jacinto Mountains National Monument are prohibited.

The purpose of the prohibition is to protect the distinct vertebrate population segment of bighorn sheep occupying the Peninsular Ranges of southern California from potential adverse impacts that may result from the launching and landing of hang gliders and similar aircraft. This population of bighorn sheep was listed as endangered by the U.S. Fish and Wildlife Service on March 18, 1998 (63 FR 13134), pursuant to the Endangered Species Act of 1973, as amended.

This prohibition includes launches from public lands at the Vista Point roadside pullout on California Highway 74, as well as landings on public lands at or near the National Monument Visitor Center, also on California Highway 74.

The use of mechanical transport, including hang gliders, is already prohibited in wilderness managed by BLM (43 CFR 6302.20(d) and (e); 6301.5). The prohibition of hang gliders on public lands in wilderness within the National Monument is, therefore, applicable throughout the Santa Rosa Wilderness, whether inside or outside essential habitat for Peninsular Ranges bighorn sheep.

Launches and landings of hang gliders and similar aircraft are prohibited on the following public lands:

Santa Rosa Mountains—All public lands within the National Monument in southeast ¼ Township 4 South, Range 4 East; Township 5 South, Range 5 East; Township 6 South, Range 5 East; south ½ Township 5 South, Range 6 East; Township 6 South, Range 6 East outside the Santa Rosa Wilderness; west ½ Township 6 South, Range 7 East outside the Santa Rosa Wilderness; and Township 7 South, Range 7 East outside the Santa Rosa Wilderness, San Bernardino Meridian.

San Jacinto Mountains—All public lands within the National Monument in south ½ Township 3 South, Range 3 East; southwest ¼ Township 3 South, Range 4 East; west ½ Township 4 South, Range 4 East; and Township 5 South, Range 4 East, San Bernardino Meridian.

Discharge of Gas- and Air-powered Weapons. The discharge of gas- and air-propelled weapons and simulated weapons, including paintball and paintball-like weapons, is prohibited on public lands in the Santa Rosa and San Jacinto Mountains National Monument.

The purpose of the prohibition is to protect cultural, biological, and geological resources from defacement and damage resulting from the discharge of gas- and air-propelled and simulated weapons. Potential adverse impacts include the staining of cultural artifacts, plant materials, and exposed rock with paint from paint ball projectiles.

Recreational Shooting. Recreational shooting, except for hunting, but including target shooting, is prohibited on public lands in the Santa Rosa and San Jacinto Mountains National Monument.

The purpose of the prohibition is to protect cultural resources from damage resulting from their use as targets; protect wildlife from disruption of feeding, breeding, and other important behaviors; protect wildlife from direct mortality, and temporary or permanent abandonment of habitat, especially with regard to the endangered Peninsular Ranges bighorn sheep; and enhance visitor safety by minimizing potential for accidental shootings.

Hunting will continue to be permitted in accordance with California Department of Fish and Game regulations. Possession of firearms, however, is not permitted on Federal and nonfederal lands within the Santa Rosa Mountains State Game Refuge in accordance with state regulations.

Entry with Pets. All pets must be restrained by leashes not exceeding 10 feet in length while on public lands in the Santa Rosa and San Jacinto Mountains National Monument. Owners of pets are required to collect and properly dispose of their pet's fecal matter. Pets are allowed in designated areas only within essential habitat for Peninsular Ranges bighorn sheep.

The purpose of the leash and fecal collection requirements, and restriction of pets to designated areas in bighorn sheep habitat is to protect wildlife and enhance visitor enjoyment of the National Monument. The leash requirement reduces potential for harassment, chasing, and predation of wildlife by pets. It also protects visitors from unleashed aggressive pets, thereby enhancing visitor safety and enjoyment. Collection of a pet's fecal matter enhances visitor enjoyment by providing for an aesthetically pleasing setting. Persons using dogs to facilitate official search and rescue or law enforcement operations are exempt from these restrictions.

Designated pet areas will be identified through the Santa Rosa and San Jacinto Mountains Trails Plan element of the Coachella Valley Multiple Species Habitat Conservation Plan. Pending completion of the Habitat Conservation

Plan, dogs are prohibited on public lands in the National Monument, with exceptions (65 FR 3473–3474, January 21, 2000).

The discharge of gas- and air-propelled weapons, recreational shooting, and entry with pets are prohibited or restricted on the following public lands:

Santa Rosa Mountains—All public lands within the National Monument in southeast ¼ Township 4 South, Range 4 East; Township 5 South, Range 5 East; Township 6 South, Range 5 East; east ½ Township 8 South, Range 5 East; south ½ Township 5 South, Range 6 East; Township 6 South, Range 6 East; Township 7 South, Range 6 East; Township 8 South, Range 6 East; west ½ Township 6 South, Range 7 East; Township 7 South, Range 7 East; Township 8 South, Range 7 East; and west ½ Township 8 South, Range 8 East, San Bernardino Meridian.

San Jacinto Mountains—All public lands within the National Monument in south ½ Township 3 South, Range 3 East; southwest 1/4 Township 3 South, Range 4 East; west ½ Township 4 South, Range 4 East; and Township 5 South, Range 4 East, San Bernardino Meridian.

The decision to prohibit hang gliding and similar activities, prohibit the discharge of gas- and air-propelled weapons and simulated weapons, prohibit recreational shooting, and restrict entry with pets was approved by BLM and U.S. Forest Service on February 5, 2004, in the Record of Decision for the Santa Rosa and San Jacinto Mountains National Monument Management Plan. The order prohibiting hang gliding activities was signed by the Field Manager, Palm Springs-South Coast Field Office, on February 2, 2005. The order prohibiting discharges of gas- and air-propelled weapons, prohibiting recreational shooting, and restricting entry with pets was signed by the Field Manager on March 24, 2005. Any person who fails to comply with these orders may be subject to the penalties provided in 43 CFR 8360.0–7, or the enhanced penalties provided for by 18 U.S.C. 3571.

Gail Acheson,

Field Manager.

[FR Doc. 05–14937 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–03–0158; HAG 05–0084]

Final Supplementary Rules for Public Land Within the West Eugene Wetlands, Eugene District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM)'s Siuslaw Resource Area is publishing these final supplementary rules for use on public lands within the West Eugene Wetlands in the Siuslaw Resource Area, Eugene District, Lane County, Oregon. The final supplementary rules address issues of conduct for such things as occupancy, motor vehicle use, firearms and campfires. The final supplementary rules are needed in order to protect the area's natural resources and provide for public health and safety. The rules are needed in order to promote consistency with the ordinances that govern adjacent City of Eugene lands.

EFFECTIVE DATE: July 28, 2005.

ADDRESSES: Personal delivery: BLM, Siuslaw Resource Area, 2890 Chad Drive, Eugene, Oregon, 97408; Mail: BLM, Siuslaw Resource Area/Field Office, at P.O. Box 10226, Eugene, Oregon, 97440–2226; or Internet e-mail: *Eugene_mail@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Calish, Siuslaw Resource Area Manager, 2890 Chad Drive, Eugene, Oregon, 97408, telephone (541) 683–6600.

I. Background

A "Notice of Proposed Establishment of Supplementary Rules" was published in the **Federal Register** on September 30, 2003 (68 FR 56310). The notice provided for a thirty day comment period that ended on October 30, 2003. We received no comments on the proposed supplementary rules.

II. Discussion of the Supplementary Rules

These final supplementary rules apply to the public lands within the West Eugene Wetlands, including any lands acquired within the described lands subsequent to the adoption of these rules. The West Eugene Wetlands is located in the southern Willamette Valley, in and immediately west of the City of Eugene, Oregon, within Sections 27, 28, 29, 30, 31, 32, 33, 34 and 35 of Township 17 South, Range 4 West of the Willamette Meridian, and sections 4 and 5 of Township 18 South, Range 4 West of the Willamette Meridian. These rules apply to BLM lands located south of Royal Avenue only. BLM has determined these rules necessary to protect the area's natural resources and to provide for safe public recreation, public health, and reduce the potential for damage to the environment and to enhance the safety of visitors and neighboring residents.

In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), BLM for good cause finds it necessary to make these supplementary rules effective the date of publication. Due to the current extraordinary drought conditions in Oregon, it is essential that the fire control measures in the supplementary rules be effective immediately. Further, the supplementary rules are not controversial; no comments were received during the public comment period.

Private Lands: This order is in no way intended to affect the legal rights, or existing rights-of-way, of adjacent private land owners.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These final supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of personal conduct for public use of certain public lands. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The final supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) designated EA–08–01, dated June 18, 2001, which covers the West Eugene Wetlands Recreation,

Access and Environmental Education Plan, and has found that the final supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain lands in Oregon. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. It can also be found at *http://frwebgate.access.gpo.gov /cgibin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.edo.or.blm.gov/nepa/ea_archive.htm.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but merely contains rules of personal conduct for public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these final supplementary rules will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local or tribal governments or the private sector of more than $100 million per year; nor do these final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The final supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights, because all rules are only effective on public lands. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132. Federalism (Replaces Executive Orders 12612 and 13083)

The final supplementary rules 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, in accordance with Executive Order 13132, BLM has determined that this final supplementary rules does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final supplementary rules will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. The supplementary rules would not apply to Indian lands or resources, or trust lands or resources.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Pat Johnston, Wetlands Project Manager, Bureau of Land Management, Siuslaw Resource Area, 2890 Chad Drive, Eugene, Oregon 97408, telephone (541) 683–6600.

Supplementary Rules for the West Eugene Wetlands

Sec. 1 Rules of conduct:

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rules on the public lands within the West Eugene Wetlands, Siuslaw Resource Area, Eugene District Office, Oregon. You must follow these rules:

a. You must not litter.

b. You must not enter areas that are posted or otherwise delineated, fenced, or barricaded to close them to public use.

c. You must not use or occupy any area one hour after sunset through one hour before sunrise, unless you are traveling on the Fern Ridge Bike Path.

d. You must not discharge fireworks, firearms, air guns, slingshots or use any other projectile launching device.

e. You must not leave personal property unattended.

f. You must not use or operate motorized vehicles on the Fern Ridge Bike Path, or operate motorized or non-motorized vehicles off those roads or paths or parking areas specifically designated for vehicle use. Motor vehicles being used by duly authorized emergency response personnel, including police, ambulance and fire suppression, as well as BLM or BLM-authorized vehicles being used for official duties, are excepted.

g. You must not build or use campfires or other open flame fires. You must not smoke when it is determined by the authorized officer that smoking must be prohibited to protect natural resources and/or adjacent properties from wildfire hazard.

h. You must not possess, disturb, or collect any natural resource unless specifically permitted by the authorized officer.

i. You must not allow entry of pets or livestock into areas closed to pet or livestock use. Livestock are not permitted south of Royal Avenue. Pets must be restrained on a leash not to exceed six feet in length or be physically restricted at all times. Pet owners must clean up pet waste and pack it out or dispose of in garbage receptacle.

j. You must not possess or consume alcoholic beverages.

k. You must not possess glass beverage containers.

Sec. 2 Penalties:

On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 any person who violates any of these supplementary rules within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

On public lands fitting the criteria in the Sikes Act (16 U.S.C. 670), under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 16 U.S.C. 670j(a)(2), any person who violates any of these supplementary rules on public lands within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $500.00 or imprisoned for no more than six months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Elaine M. Brong,

State Director, Oregon State Office, Bureau of Land Management.

[FR Doc. 05–14941 Filed 7–27–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[AAG/A Order No. 005–2005]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Notice to establish system of records.

SUMMARY: The Federal Bureau of Investigation (FBI) proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The FBI is establishing a new system of records to cover records maintained by the Terrorist Screening Center (TSC). These records were previously covered by the FBI Central Records System (Justice/FBI–002), last published in full text on February 20, 1998 (63 FR 8671) and amended in part on March 29, 2001 (66 FR 17200). Public comments are invited.

DATES: This action will be effective on September 6, 2005, unless comments are received that would result in a contrary determination.

ADDRESSES: Address all comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On September 16, 2003, President George W. Bush issued Homeland Security Presidential Directive-6 (HSPD–6), which directed the establishment of an organization that would consolidate the government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes. As a result, the Director of Central Intelligence, Secretaries of State and Homeland Security, and the Attorney General signed a memorandum of understanding creating the TSC and placing it within the FBI, U.S. Department of Justice (DOJ). The Secretaries of the Treasury and Defense signed an addendum to the memorandum to join the partnership supporting the TSC. The TSC became operational on December 1, 2003 and is charged with consolidating and maintaining the U.S. government's terrorist watch list. In fulfilling its mission, the TSC collects and maintains records about individuals, described below, that are subject to the requirements of the Privacy Act. These records were previously covered by the FBI Central Records System (Justice/FBI–002) and upon the effective date of this notice they will be part of the Terrorist Screening Records System (TSRS), Justice/FBI–019.

Prior to HSPD–6, information about known or suspected terrorists was dispersed throughout the U.S. Government and no one agency was charged with consolidating it and making it available for use in terrorist screening. In March 2004, the TSC consolidated the government's terrorist watchlist information into a sensitive-but-unclassified database, known as the Terrorist Screening Database (TSDB), containing only identifying information about known or suspected terrorists. As required by HSPD–6, the TSDB contains "information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism." Information from the TSDB is now used to screen for terrorists in a variety of contexts, including during law enforcement encounters, the adjudication of applications for U.S. visas or other immigration and citizenship benefits, at U.S. land borders and ports of entry, and for civil aviation security purposes. The TSDB is included in the new TSRS.

Other records in the TSRS include those that document the operational support TSC provides to agencies that screen for terrorists ("screening agencies") and its internal quality assurance process to ensure the terrorist data is thorough, accurate and current. On a 24-hour basis, the TSC assists state, local and federal agencies in determining if an individual they have encountered is a positive identity match to a known or suspected terrorist. TSC also facilitates an appropriate and coordinated law enforcement response or other appropriate response (*e.g.*, medical and containment response to a biological hazard) to positive terrorist encounters. TSC uses information from other government databases, some of which are classified, to facilitate the identity match process and incorporates that information into TSC records as appropriate.

The TSC also maintains records related to the resolution of terrorist watchlist-related complaints or inquiries. The TSC plans to include a misidentified persons list, which is intended to help clear individuals who have been repeatedly misidentified as matches to the TSDB during screening. Misidentified persons are not in the TSDB, but simply bear a close enough similarity in their name or other identifier to someone who is in the TSDB, such that the screening process cannot readily differentiate them. The remedy for misidentified persons is therefore not removal from the TSDB, because they are not in fact in it, but a mechanism to permit the screening agency to readily identify them as persons who have been repeatedly confused with a known or suspected terrorist in the past. When operational, this list would be used by the TSC and each screening agency that uses the TSC, to help distinguish misidentified persons during the screening process. This would consolidate and improve the current redress processes for misidentified persons, which vary from agency to agency and usually only provide relief with respect to one agency's screening programs, but not those run by other agencies. The ultimate goal of a consolidated misidentified persons list would be to drastically reduce, and ultimately eliminate altogether, the delay and inconvenience that misidentified persons have experienced as a result of terrorist screening.

Because TSRS contains information about known or suspected terrorists that is derived from law enforcement and

intelligence sources, the Attorney General is proposing to exempt this system from certain portions of the Privacy Act, as permitted by law, to protect classified and sensitive information contained in this system and to prevent the compromise of ongoing counterterrorism investigations, sources and methods. As required by the Privacy Act, a proposed rule is being published concurrently with this notice to seek public comment on the proposal to exempt this system.

In accordance with 5 U.S.C. 552a(r), the Department of Justice has provided a report of this new system of records to the Office of Management and Budget and to Congress.

Dated: July 22, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/FBI–019

SYSTEM NAME:

Terrorist Screening Records System.

SECURITY CLASSIFICATION:

Classified, unclassified (law enforcement sensitive).

SYSTEM LOCATION:

Terrorist Screening Center, Federal Bureau of Investigation, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism ("known or suspected terrorists");

b. Individuals identified during a terrorist screening process as a possible identity match to a known or suspected terrorist;

c. Individuals who are repeatedly misidentified as a possible identity match to a known or suspected terrorist ("misidentified persons"); and

d. Individuals about whom a terrorist watchlist-related redress inquiry has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Identifying information, such as name, date of birth, place of birth, biometrics, passport and/or drivers license information, and other available identifying particulars used to compare the identity of an individual being screened with a known or suspected terrorist;

b. Information about encounters with individuals covered by this system, such as date, location, screening agency, analysis, and results (positive or negative identity match), and, for terrorist encounters only, other agencies notified and details of any law enforcement or other operational response;

c. For known or suspected terrorists, in addition to the categories of records listed above, references to and/or information from other government law enforcement and intelligence databases;

d. For misidentified persons, in addition to the categories of records listed above, additional identifying information that will be used during screening only for the purpose of distinguishing them from a known or suspected terrorist who has similar identifying characteristics (such as name, date of birth, etc.); and

e. For redress inquiries, in addition to the categories of records listed above, information provided by individuals or their representatives, information provided by the screening agency, and internal work papers and other documents related to researching and resolving the inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Homeland Security Presidential Directive-6, "Integration and Use of Screening Information to Protect Against Terrorism" (Sept. 16, 2003); E.O. 13356, "Strengthening the Sharing of Terrorism Information to Protect Americans" (Aug. 27, 2004); 28 U.S.C. 533.

PURPOSE(S):

a. To implement the U.S. Government's National Strategy for Homeland Security and Homeland Security Presidential Directive-6, to identify potential terrorist threats, to uphold and enforce the law, and to ensure public safety.

b. To consolidate the government's approach to terrorism screening and provide for the appropriate and lawful use of terrorist information in screening processes.

c. To maintain current, accurate and thorough terrorist information in a consolidated terrorist screening database and determine which agencies' terrorist screening processes will use each entry in the database.

d. To ensure that appropriate information possessed by state, local, territorial, and tribal governments, which is lawfully available to the Federal Government, is considered in determinations made by the TSC as to whether a person is a match to a known or suspected terrorist.

e. To host mechanisms and make terrorist information available to support appropriate domestic, foreign, and private sector terrorist screening processes.

f. To provide continual operational support to assist in the identification of persons screened and to facilitate an appropriate and lawful response when a known or suspected terrorist is identified in an agency's screening process.

g. To provide appropriate government officials and agencies with information about encounters with known or suspected terrorists.

h. To assist persons repeatedly misidentified during a terrorist screening process and to assist agencies in responding to individual complaints about the screening process (redress).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The TSC may disclose relevant system records in accordance with any current and future blanket routine uses established for FBI record systems. See Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, published on June 22, 2001 at 66 FR 33558 and amended on February 14, 2005 at 70 FR 7513. In addition, as routine uses specific to this system, the TSC may disclose relevant system records to the following persons or entities and under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

A. To those Federal agencies that have agreed to provide support to TSC for purposes of ensuring the continuity of TSC operations.

B. To Federal, State, local, tribal, territorial, foreign, multinational or other public agencies or entities, to entities regulated by any such agency or entity, and to owners/operators of critical infrastructure and their agents, contractors or representatives, for the following purposes: (1) For use in and in support of terrorist screening authorized by the U.S. Government, (2) to provide appropriate notifications of a positive terrorist encounter or a threat related to the encounter, (3) to facilitate any appropriate law enforcement or other response (*e.g.*, medical and containment response to a biological hazard) to a terrorist encounter or a threat related to the encounter, and (4) to assist persons repeatedly misidentified during a screening process.

C. To any individual, organization, or governmental entity in order to notify them of a serious terrorist threat for the

purpose of guarding against or responding to such a threat.

D. To Federal, State, local, tribal, territorial, foreign, or multinational agencies or entities, or other organizations that are engaged in, or are planning to engage in terrorist screening authorized by the U.S. Government, for the purpose of the development, testing, or modification of information technology systems used or intended to be used during or in support of the screening process; whenever possible, however, TSC will substitute de-identified data.

E. To Federal, State, local, tribal, territorial, foreign, or multinational agencies or entities to assist in coordination of terrorist threat awareness, assessment, analysis or response.

F. To any person or entity in either the public or private sector, domestic or foreign, where reasonably necessary to elicit information or cooperation from the recipient for use by the TSC in the performance of an authorized function, such as obtaining information from data sources as to the thoroughness, accuracy, currency, or reliability of the data provided so that the TSC may review the quality and integrity of its records for quality assurance or redress purposes, and may also assist persons repeatedly misidentified during a screening process.

G. To any federal, state, local, tribal, territorial, foreign or multinational agency, task force, or other entity or individual that receives information from the U.S. Government for terrorist screening purposes, in order to facilitate TSC's or the recipient's review, maintenance, and correction of TSC data for quality assurance or redress purposes, and to assist persons repeatedly misidentified during a screening process.

H. To any agency, organization or individual for the purposes of performing authorized audit or oversight operations of the DOJ, FBI, TSC, or any agency engaged in or providing information used for terrorist screening that is supported by the TSC, and meeting related reporting requirements.

I. To a former employee of the TSC (including those detailed or assigned to the TSC from another government agency) or a former contractor supporting the TSC for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with any applicable government regulations; or facilitating communications with a former employee/contractor that may be necessary for personnel-related or other official purposes where the TSC requires information and/or consultation assistance from the former employee/contractor regarding a matter within that person's former area of responsibility.

J. To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, multinational or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

K. To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for law enforcement or intelligence purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper and/or electronic format. Electronic storage is on servers. CD-ROMs, DVD-ROMs, and magnetic tapes.

RETRIEVABILITY:

Records in this system are typically retrieved by individual name, date of birth, passport number, and other identifying data, including unique identifying numbers assigned by the TSC or other government agencies.

SAFEGUARDS:

All records are maintained in a secure government facility with access limited to only authorized personnel or authorized and escorted visitors. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by authorized government personnel and contractors and are protected by appropriate physical and technological safeguards to prevent unauthorized access. All federal employees and contractors assigned to the TSC must hold an appropriate security clearance, sign a non-disclosure agreement, and undergo privacy and security training.

RETENTION AND DISPOSAL:

Records in this system will be retained and disposed of in accordance with a records schedule to be approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Terrorist Screening Center, Federal Bureau of Investigation, FBI Headquarters, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURE:

Because this system contains classified and law enforcement information related to the government's counterterrorism, law enforcement and intelligence programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j) and (k) of the Privacy Act. Requests for notification should be addressed to the FBI at the address and according to the requirements set forth below under the heading "Record Access Procedures."

RECORD ACCESS PROCEDURES:

Because this system contains classified and law enforcement information related to the government's counterterrorism, law enforcement and intelligence programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j) and (k) of the Privacy Act. A request for access to a non-exempt record shall be made in writing with the envelope and the letter clearly marked "Privacy Act Request." Include in the request your full name and complete address. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access to information must be addressed to the Record Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001.

CONTESTING RECORD PROCEDURES:

Because this system contains classified and law enforcement information related to the government's counterterrorism, law enforcement and intelligence programs, records in this system are exempt from notification, access, and amendment to the extent permitted by subsections (j) and (k) of the Privacy Act. Requests for amendment should be addressed to the FBI at the address and according to the requirements set forth above under the heading "Record Access Procedures."

If, however, individuals are experiencing repeated delays or difficulties during a government screening process and believe that this might be related to terrorist watch list information, they may contact the

Federal agency that is conducting the screening process in question ("screening agency"). The screening agency is in the best position to determine if a particular problem relates to a terrorist watch list entry or is due to some other cause, such as a criminal history, an immigration violation or random screening. Some individuals also experience repeated delays during screening because their names and/or other identifying data, such as dates of birth, are similar to those of known or suspected terrorists. These individuals, referred to as "misidentified persons," often believe that they themselves are on a terrorist watch list, when in fact they only bear a similarity in name or other identifier to an individual on the list. Most screening agencies have or are developing procedures to expedite the clearance of misidentified persons during screening.

By contacting the screening agency with a complaint, individuals will be able to take advantage of the procedures available to help misidentified persons and others experiencing screening problems. Check the agency's requirements for submitting complaints but, at a minimum, individuals should describe in as much detail as possible the problem they are having, including dates and locations of screening, and provide sufficient information to identify themselves, such as full name, citizenship status, and date and place of birth. The TSC assists the screening agency in resolving any screening complaints that may relate to terrorist watch list information, but does not receive or respond to individual complaints directly. However, if TSC receives any such complaints, TSC will forward them to the appropriate screening agency.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals covered by the system, public sources, agencies conducting terrorist screening, law enforcement and intelligence agency record systems, government databases, and foreign governments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d)(1), (2), (3) and (4), (e)(1), (2), (3), (5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 05–14849 Filed 7–27–05; 8:45 am]
BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 3 p.m. on Monday, July 18, 2005, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to discuss the procedure to be followed for review of one case upon request of the Attorney General as provided in 18 U.S.C. 4215(c).

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Cranston J. Mitchell, Deborah A. Spagnoli, Isaac Fulwood, Jr., and Patricia Cushwa.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 19, 2005.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 05–15004 Filed 7–26–05; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Notice of Controversion of Right to Compensation (LS–207). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 26, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Division of Longshore and Harbor Workers' Compensation administers the Longshore and Harbor Worker's Compensation Act. This Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel. In addition, several acts extend Longshore Act coverage to certain other employees. Pursuant to sections 914(d) of the Act, and 20 CFR 702.251, if an employer controverts the right to compensation he/she shall file with the district director in the affected compensation district on or before the fourteenth day after he/she has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted. Form LS–207 is used for this purpose. Form LS–207 is used by insurance carriers and self-insured employers to controvert claims under the Longshore Act and extensions. The information is used by OWCP district offices to determine the basis for not paying benefits in a case. This information collection is currently approved for use through March 31, 2006.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to meet the statutory requirements to ensure payment of compensation or death benefits under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Notice of Controversion of Right to Compensation.

OMB Number: 1215–0023.

Agency Numbers: LS–207.

Affected Public: Business or other for-profit.

Total Respondents: 750.

Total Annual Responses: 15,750.

Estimated Total Burden Hours: 3,938.

Estimated Time Per Response: 15 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $7,011.00.

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

Dated: July 21, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–14903 Filed 7–27–05; 8:45 am]

BILLING CODE 4510–CF–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit 1; Exemption

1.0 Background

The FirstEnergy Nuclear Operating Company (FENOC or the licensee) is the holder of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Ottawa County, Ohio.

2.0 Request

Title 10 of the Code of Federal Regulations (10 CFR), part 50, appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," establishes fire protection requirements to satisfy 10 CFR part 50, appendix A, General Design Criterion No. 3, "Fire Protection." By letter dated January 20, 2004 (ADAMS ML040220470), as supplemented by letters dated September 3, 2004 (ADAMS ML042520326), and February 25, 2005 (ADAMS ML050610249), FENOC requested an exemption from Appendix R, Section III.G.3, "Fire Protection of Safe Shutdown Capability."

The licensee is requesting an exemption from the requirements of Section III.G.3 to provide area-wide fire detection and fixed fire suppression in Fire Area HH. Control room emergency ventilation systems are routed through Fire Area HH in the auxiliary building. Fire Area HH is equipped with a fire detection system (covering approximately 96 percent of Fire Area HH), but no fixed suppression system is installed.

In summary, FENOC has requested an exemption from the 10 CFR Part 50, Appendix R, Section III.G.3 requirement for a fixed fire suppression system in Fire Area HH and for fire detection in the approximately 4 percent of Fire Area HH not equipped with a fire detection system.

3.0 Discussion

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These special circumstances are described in 10 CFR 50.12(a)(2)(ii), in that the application of these regulations in this circumstance is not necessary to achieve the underlying purpose of the regulations.

The underlying purpose of appendix R, section III.G, is to provide features capable of limiting fire damage so that: (1) One train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage; and (2) systems necessary to achieve and maintain cold shutdown from either the control room or emergency control station(s) can be repaired within 72 hours.

Fire Area HH consists of the Air Conditioning (A/C) Equipment Room (Room 603), the Records and Storage Area (Room 603A), and Vestibule (Room 603B). Room 603 consists of approximately 3,150 square feet of floor area, with an in situ combustible loading consisting of cable insulation; heating, ventilation and air conditioning (HVAC) duct insulation; and small quantities of grease, lube oil, and miscellaneous combustibles. Combustibles are located throughout the room, and in proximity to the cables of interest. Rooms 603A and 603B do not contain combustibles or equipment.

Existing fire protection capability in the area consists of a fire detection system that protects the A/C Equipment Room (Room 603) and manual (not fixed) fire suppression capability consisting of portable fire extinguishers and standpipe hose stations for the protection of the entire area. Rooms 603A and 603B are not equipped with detection. Room 603A is separated from Room 603 by a 12-inch thick concrete masonry unit wall and a Underwriters Laboratory Class B fire door with a louvered opening. Room 603A is no longer used as a records storage area. The louvered opening is equipped with a fire damper held open by a fusible link. The door is normally locked and placarded with a sign that states, "Storage of Any Kind is Forbidden" and "Door Must Remain Locked." Room 603B is a vestibule separated from Room 603 by a 2-hour rated barrier.

Fire Area HH has 3-hour rated fire barriers on the walls and floors. The fire barrier between Room 603 and the stairwell and elevator, Fire Area UU, is 2-hour rated. All cables are within

conduit or cabinets. There are no cable trays in Area HH.

Fire damage to the circuits for the Control Room Emergency Ventilation System (CREVS) in Fire Area HH could disable the Control Room HVAC.

The installed ionization smoke detection system will alert the Control Room operators to summon the fire brigade to respond and manually extinguish the fire. Standpipe hose stations are available to the fire brigade. No combustibles are stored in Rooms 603A and 603B, and these rooms are separated from Room 603, therefore a fire in Room 603A or 603B is not expected to damage the cables of interest.

FENOC performed an analysis to determine the impact of a fire in Fire Area HH. For example, assuming a 500kW fire in Room 603, the room would not exceed 250 °F for at least 20 minutes. Even with this relatively large fire size for the equipment in the room, the room temperature would not be high enough to cause area-wide cable damage. Also, 20 minutes would provide time for the fire brigade to respond to the fire alarm that would annunciate in the control room. The 20-minute response time allows 5 minutes for the detection system to actuate and 15 minutes for the fire brigade to respond.

FENOC verified that a number of the motor control centers in Room 603 were remote from the cables of interest and therefore, would not be expected to impact them. Other combustible sources were considered to cause damage to the cables of interest and are discussed in the risk analysis.

A floor drain is provided in Room 603. Based on the configuration of the room, it is expected that if any of the combustible liquids leak from their enclosures the liquids would flow to the floor drain and not flow to below the circuits of interest, where if ignited, could cause a fire that would impact the cables of interest.

Loss of the Control Room HVAC is not expected to have an immediate effect on the ability to shutdown the plant from the Control Room. With no reduction in Control Room heat load, FENOC calculated that it will take 30 minutes before the Control Room will reach a temperature of 105 °F. Although procedural guidance to mitigate a temporary loss of HVAC is provided (*i.e.*, by reducing the Control Room heat load), the operators may need to or choose to abandon the Control Room due to high temperatures.

FENOC has identified a few pinch points where a single fire could potentially fail both trains of CREVS circuits. These pinch points are in the area near the C6714 and C6715 cabinets, around C6705 cabinet, and a transient fire affecting the CREVS controls and compressors located in Room 603. Since the room configuration does not assure that safe shutdown will not be challenged, the licensee has performed a risk analysis to determine the probability that the existing configuration will challenge safe shutdown as discussed below.

Alternate shutdown capability can be provided by evacuating the Control Room and shutting down the plant from the Auxiliary Shutdown Panel. Plant procedures include instructions for these manual operator actions if Control Room cooling is disabled.

The licensee performed a risk analysis of Room 603, and determined that the fire frequency of fires that could impact the CREVS is 8.25E–5/year. The risk analysis also estimates the likelihood that the Control Room operators would fail to take actions to shed Control Room heating loads in order to keep the Control Room habitable. This conditional probability of failure to shed control room heat loads was evaluated as 0.05 (5E–2). The risk analysis also estimates the likelihood that safe shutdown would fail if a fire affecting the CREVS required control room evacuation. This conditional probability was calculated to be 0.079 (7.9E–2). Therefore, the probability that both the CREVS cables would be damaged by a fire and the mitigation from outside the control room would fail would be:

Fire frequency	×	Fail to shed heat loads	×	Fail to shut-down from alt. shutdown panel	=	Total
8.25E–5/year		5E–2		7.9E–2		3.3.E–7/year

This value is the frequency that a fire in the area may challenge safe shutdown. The value may be smaller (for example, this value does not take credit for manual suppression). FENOC also provides the overall core-damage frequency for DBNPS as 1.2E–5/year.

The NRC staff examined the licensee's submittals to determine if the configuration in Fire Area HH would meet the underlying purpose of the rule, 10 CFR part 50, appendix R. The NRC staff has compared the configuration to the three defense-in-depth elements described in 10 CFR part 50, appendix R:

1. To prevent fires from starting,
2. To detect rapidly, control, and extinguish promptly those fires that do occur, and
3. To provide protection for structures, systems and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The combustibles and ignition sources in Fire Area HH are limited to those expected in an area of this type. The licensee has control over transient combustibles and hot work performed in this area. Combustible liquids are installed within equipment, and cables are installed within cabinets and conduits; no cable trays are installed in the area. According to the licensee's analysis, if the combustible liquids were to escape their enclosure, they would flow to the floor drain and not to an area of Room 603 where, if ignited, could affect the cables of interest. There is substantial separation (2-hour rated barriers) between this area and other exposing fire areas.

Room 603 is equipped with an ionization smoke detection system which annunciates to the control room for rapid plant response. The other rooms, 603A and 603B, do not contain combustibles and are separated from Room 603, and therefore are not considered to be an ignition source that could damage the cables of interest. In the unusual event that a fire did occur in either Room 603A or 603B, it is expected that the fire detectors in Room 603 would actuate. Fire suppression equipment (hose stations and fire extinguishers) are available for suppression of a fire were it to occur.

Based on the room size and expected fire types, a fire creating a hot layer that causes area wide damage is not expected.

The licensee identified combustibles and pinch points in Fire Area HH. These may be subjected to fires in the area, which could challenge safe shutdown. FENOC states that there are only a few pinch points and only a few

fire hazards that could affect the pinch points. Although it is unlikely that a fire will affect the pinch points, if such damage were to occur and the CREVS was to be made inoperable, means to achieve safe shutdown remain available. First, the operators could shed loads to reduce the heat load in the Control Room so that Control Room abandonment is not required. Secondly, if Control Room abandonment is required, the alternate shutdown panel is available to shutdown the plant. The licensee performed a risk analysis of these configurations which is described above.

The risk analysis in the February 25, 2005, submittal is generally consistent with the NRC's fire protection significance determination process (Inspection Manual Chapter 0609, Appendix F). The results of the analysis are consistent with a change that would be acceptable when compared to the acceptance criteria described in Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," Revision 1.

The evaluation that FENOC prepared assesses the impact of the change. This evaluation uses a combination of risk-insights and deterministic methods to show that sufficient safety margins are maintained.

The NRC staff examined the licensee's rationale to support the exemption request and concluded that adequate defense-in-depth and safety margins exist. Although fixed suppression is not installed in the area, the configuration of the area makes it unlikely that the cables of interest will be damaged by a fire in the area. Also, if the cables of interest are damaged, adequate assurance remains to demonstrate that the plant can be brought to a safe shutdown condition.

Based upon the above, the NRC staff concludes that application of the regulation is not necessary to achieve the underlying purpose of the rule. Therefore, the NRC staff concludes that pursuant to 10 CFR 50.12(a)(2)(ii), the requested exemption is acceptable.

5.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants FENOC an exemption from the requirements of 10 CFR part 50, appendix R, section III.G.3 to install a fixed fire suppression system in Fire Area HH for DBNPS and to install fire detection in the approximately 4 percent of Fire Area HH (*i.e.*, Rooms 603A and 603B) not currently covered by a fire detection system. This exemption is based on the limited combustibles located in the fire area (including no storage of combustibles in Rooms 603A and 603B), the limited ignition sources in the fire area, administrative controls on both transient combustibles and hot work, the configuration of Room 603 that avoids in-situ combustible liquids from affecting the cables of interest, the fire detection and manual suppression capability available, and the availability of alternate means to achieve shutdown if a fire were to occur and cause damage to the cables of interest.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 42112).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 21 day of July 2005.

For the Nuclear Regulatory Commission

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4012 Filed 7–27–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–22685; ASLBP No. 05–840–01–SP]

In the Matter of David H. Hawes; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

David H. Hawes (Reactor Operator License for Vogtle Electric Generating Plant)

This proceeding concerns a request for hearing submitted on June 28, 2005, by David H. Hawes in response to a June 20, 2005, NRC staff letter proposing the denial of his application for a reactor operator license for the Vogtle Electric Generating Plant. According to the staff letter, the basis for the proposed denial action was Mr. Hawe's failure to obtain a passing grade on the May 27, 2005, written examination portion of his reactor operator license application for the Vogtle Electric Generating Plant.

The Board is comprised of the following administrative judges:

Ann M. Young, Chair, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Michael C. Farrar, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued in Rockville, Maryland, this 22nd day of July, 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E5–4010 Filed 7–27–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Announcement of a Public Meeting To Discuss Selected Topics for the Review of Emergency Preparedness (EP) Regulations and Guidance for Commercial Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission's (NRC's) reassessment of emergency preparedness following September 11, 2001, terrorist attacks concluded that the planning basis for emergency preparedness (EP) remains valid. However, as part of our continuing EP review, some enhancements are being considered to EP regulations and guidance due to the terrorist acts of 9/11; technological advances; the need for clarification based upon more than 20 years of experience; lessons learned during drills and exercises; and responses to actual events.

Therefore, the NRC will hold a one and one-half-day public meeting to obtain stakeholder input on selected topics for the review of EP regulations and guidance for commercial nuclear power plants and to discuss EP-related issues that arose during an NRC/FEMA workshop at the 2005 National Radiological Emergency Preparedness (NREP) Conference.

DATES: Wednesday, August 31, 2005, 8:30 a.m. to 5 p.m. and Thursday, September 1, 2005, 8 to 12:30 p.m.

ADDRESSES: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, North Bethesda, Maryland 20852. (Go to *http://www.BethesdaNorthMarriott.com* for additional hotel information.)

FOR FURTHER INFORMATION CONTACT: Robert Moody, Mail Stop O6H2, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 1–800–368–5642, extension 1737; or e-mail *rem2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Meeting Purpose: The purpose of the meeting is to discuss selected topics for the review of EP regulations and guidance for commercial nuclear power plants and to obtain stakeholder input. The selected topics also include EP-related issues that arose during the 2005 NREP Conference, NRC/Federal Emergency Management Agency (FEMA) workshop. In addition to the comments provided by attendees during the discussion of the above topics, the NRC is accepting written comments.

Meeting Overview: The first day of the meeting will cover topics pertaining to potential changes to EP regulations and guidance for commercial nuclear power plants. This portion of the meeting will be conducted as a roundtable discussion among participants who have been invited to represent the broad spectrum of interests in the area of EP. The spectrum includes representatives from State, local, and Tribal governments, Department of Homeland Security (DHS)/FEMA, NRC, advocacy groups, and the nuclear industry. The meeting is open to the public, and all attendees, including State, local, and tribal governments not represented at the roundtable, will have an opportunity to offer comments and ask questions at selected points throughout the meeting. Any questions regarding the roundtable discussion should be directed to the meeting facilitator, Francis "Chip" Cameron by phone at 301–415–1642 or e-mail *fxc@nr.gov*.

The second day of the meeting will include a discussion of unanswered comments and questions captured during an NRC/FEMA workshop at the 2005 National Radiological Emergency Preparedness Conference (NREP). During the workshop, Emergency Preparedness Directorate (EPD) staff captured all unanswered comments and questions brought forth by stakeholders in a "Parking Lot." Since the NREP Conference, the staff has worked with FEMA to develop responses to the "Parking Lot" comments and questions. This part of the meeting is to discuss the NRC/FEMA responses to the NREP "Parking Lot" comments and questions in a town hall-type setting. All attendees are encouraged to participate in the discussion.

The public meeting notice and agenda, as well as the responses to the "Parking Lot" comments and questions from the NREP Conference, can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/epreview2005.html*.

Updated Meeting Information: The NRC encourages all participants to check frequently the following Web site for the most current information on the meeting. New information will be added to this Web site periodically: *http://www.nrc.gov/public-involve/public-meetings/epreview2005.html*.

Submitting Comments: Comments related to the review of EP regulations and guidance may be sent to Mr. Robert Moody, U.S. Nuclear Regulatory Commission, One White Flint North, Mail Stop O6H2, 11555 Rockville Pike, Rockville, MD 20852. Comments may also be hand-delivered to the NRC at the above address from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered, written comments must be received at the NRC by the close of business on Monday, October 17, 2005. Comments provided during the roundtable discussions will be captured in the meeting transcript, and along with any written comments, will be evaluated by the NRC staff.

Electronic comments may be submitted via the following Web site: *http://www.nrc.gov/public-involve/public-meetings/epreview2005.html*. Electronic comments must be sent no later than the close of business on October 17, 2005.

Meeting Transcript: A transcript of the meeting should be available electronically on or about September 15, 2005, and accessible on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/epreview2005.html*.

Primary EP Regulations: To facilitate discussion and comment, the primary EP regulations within the scope of review are as follows: 10 CFR 50.47; 10 CFR 50.54(q); Appendix E to 10 CFR 50.

These regulations are available on the NRC EP Web site at: *http://www.nrc.gov/what-we-do/emerg-preparedness/regs-guidance-comm.html*.

Primary EP Guidance Documents: A list of the primary EP guidance documents that are within the scope of the review are as follows and are also available on the NRC EP Web site at: *http://www.nrc.gov/what-we-do/emerg-preparedness/regs-guidance-comm.html*.

1. NUREG–0654/FEMA–REP–1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants".

2. NUREG–0654/FEMA–REP–1, Supplement 3, "Criteria for Protective Action Recommendations for Severe Accidents".

The following EP guidance documents are also within the scope of the review. However, they are currently only available electronically in NRC's Agencywide Documents Access and Management System (ADAMS): (Note: ADAMS is the NRC's online document management system at *http://www.nrc.gov*).

1. NUREG–0696, "Functional Criteria for Emergency Response Facilities" (ADAMS number ML051390358).

2. NUREG–0737, Supplement 1, "Clarification of TMI Action Plan Requirements" (ADAMS number ML051390367).

Brief History: Since 1958, applicants for nuclear power plant operating licensees have been required to have procedures for coping with a radiological emergency. In 1970, the Commission approved new emergency preparedness (EP) requirements in Appendix E to title 10 of the Code of Federal Regulations (CFR) part 50. The few public comments received on the proposed regulations applauded the Commission for its effort to strengthen radiological EP requirements.

The responsibility for carrying out the plans in the event of an accident remained in the hands of local and State governments. In 1973, the Commission issued guidance to local and State governments, including a checklist of 154 items that should be considered in their plans. In 1977, in response to advice from the Advisory Committee on Reactor Safety, the Commission published Regulatory Guide 1.101, "Emergency Planning and Preparedness for Nuclear Power Reactors," which gave nuclear plant licensees more detailed information on what should be included in emergency plans. Also, about this time, the Conference of (State) Radiation Control Program Directors asked the Commission to make a determination of the most severe accident basis for which radiological emergency response plans should be developed by offsite agencies. In response, the Commission and the Environmental Protection Agency formed a task force. The NRC/EPA task force submitted a report in December 1978, NUREG–0396, "Planning Basis for the Development of State and Local

Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants." Among other recommendations, this report recommended that for planning purposes, a plume exposure pathway emergency planning zone (EPZ) of about a 10-mile radius and the ingestion exposure pathway EPZ about a 50-mile radius.

Emergency response planning received close scrutiny by Congress and the Commission in the wake of the Three Mile Island (TMI) accident. Congressional oversight committees quickly made it clear that they wanted the Commission to upgrade emergency response planning. The final regulations related to TMI were issued in August 1980, when 10 CFR 50.47 was issued and Appendix E to 10 CFR part 50 was revised. Since that time, implementation of the regulations and guidance, technological advances, and lessons learned from actual events and drills and exercises have revealed areas for potential enhancements and increased clarity. In addition, the staff has undertaken a number of studies to improve the state of knowledge in the area of radiological EP.

The most important event in shaping the course of nuclear power since the Three Mile Island Accident in 1979 was the coordinated attack of terrorists on this nation on September 11, 2001. To enhance the interfaces among safety, security and emergency preparedness, the NRC created a new office, Office of Nuclear Security and Incident Response (NSIR), and subsequently an Emergency Preparedness Directorate within NSIR, to address the implications of 9/11 on nuclear power plants. NSIR has worked hard to develop improved security and preparedness for nuclear power plants over the past few years. In addition, following the events of September 11, 2001, the NRC staff conducted a formal evaluation of the emergency planning basis in view of the threat environment that has existed since the terrorist attacks. This evaluation addressed all aspects of nuclear power plant emergency preparedness requirements. In doing so, the evaluation determined that emergency preparedness at nuclear power plants remains strong, but identified several areas for enhancement. These areas for enhancement are the subjects for the first half-day of the meeting.

Review of EP Regulations and Guidance: The NRC staff is conducting a review of EP regulations and guidance to determine where enhancements are needed. The staff will summarize the results of its review, including comments from stakeholders, in a paper to the NRC Commissioners. The paper will include a framework of potential changes to EP guidance and, if necessary, to EP regulations, along with next steps, prioritization, and resource estimates. This effort will be conducted in cooperation with FEMA. Federal EP regulations state that NRC and FEMA will provide an opportunity for the other agency to review and comment on guidance prior to adoption as formal agency guidance.

Questions to Promote Discussion: The following questions have been developed to promote attendee discussion, to obtain attendee input, and to be considered by attendees to help focus their input in each area. Due to their generic nature, they may be applicable to any of the agenda topics. Other questions to promote discussion appear after the summary for each agenda item later in this notice.

1. How can Federal, State, local and tribal governments best respond to protect public health and safety to a rapidly developing security event that has already been broadcast in the media?

2. What approaches work best to minimize the impact of enhanced rules and/or guidance on local and State government?

3. What enhancements to EP regulations and guidance would help you to more effectively and efficiently implement them in a post-9/11 threat environment?

4. What EP regulations and guidance should be enhanced based upon advances in technology?

Agenda Items—Enhancements in Response to the Post 9/11 Threat Environment (Onsite):

1. Security-Based Emergency Classification Levels (ECLs) and Emergency Action Levels (EALs)

As a result of improvements in Federal agencies' information sharing and assessment capabilities, security-based emergency declarations could be accomplished in a more anticipatory manner than the current declarations for security events. Therefore, the NRC is considering modifications to security-based ECL definitions and EAL thresholds in an effort to recognize those improvements.

Suggested question to promote discussion: How will public health and safety be enhanced by having security-based ECLs and EALs?

2. Prompt NRC Notification

In the post-9/11 environment, there is the potential for coordinated attacks on multiple facilities. Prompt notification of the NRC is particularly important during a security event to support subsequent notifications made by the NRC to other licensees and initiate the Federal response in accordance with the National Response Plan. The NRC is considering modifications to require an abbreviated notification to the NRC Operations Center as soon as possible after the discovery of an imminent or actual threat against the facility, but not later than 15 minutes from discovery.

Suggested questions to promote discussion: (1) What public health and safety benefits can be derived from an early notification of a security event to a central location, such as the NRC Operations Center? (2) How should early notifications of security events be sequenced to best protect public health and safety?

3. Onsite Protective Actions

While actions, such as site assembly, personnel accountability, site evacuation, etc., are appropriate for some emergencies, other actions may be more appropriate for a terrorist attack, particularly an aircraft attack. Licensees have made protective measure changes in response to the NRC Order of February 25, 2002, but certain security-based scenarios could warrant consideration of other onsite protective measures. The NRC is considering a range of protection measures for site workers to address this threat.

Suggested question to promote discussion: What is the most effective way to implement offsite protective actions, such as site evacuation of non-responder personnel or accounting for personnel following release from the site, during a terrorist threat or strike?

4. Emergency Response Organization (ERO) Augmentation

The ERO is expected to be staged in a manner that supports rapid response to limit or mitigate site damage or the potential for an offsite radiological release. Some licensees have chosen not to activate elements of the ERO during a security-based event until the site is secured. It is prudent to fully activate emergency response organization members for off-normal hours events to promptly staff alternative facilities. During normal working hours, licensees should consider deployment of onsite emergency response organization personnel to an alternative facility near the site.

Suggested question to promote discussion: During a terrorist event, would there be impediments that would preclude effective recall to the site of station emergency response personnel during a terrorist event, and how could they be overcome?

5. Drill and Exercise Program

Current assessments indicate that licensee measures are available to mitigate the effects of terrorist acts. Consequently, such acts would not create an accident that causes a larger release or one that occurs more quickly than those already addressed by the EP planning basis. However, the condition of the plant after such an event could be very different from the usual condition practiced in more conventional nuclear power plant emergency preparedness (EP) drills and exercises. In light of the foregoing and of the post-9/11 threat environment, licensees should exercise and test security-based EP capabilities as an integral part of the licensee's emergency response capabilities.

Suggested question to promote discussion: How can security-based drills and exercises be most effective in training, practicing and assessing coordinated response roles and responsibilities?

Additional Information Related to the Onsite Agenda Items: NRC Bulletin 2005–02, "Emergency Preparedness and Response Actions for Security-based Events," dated July 18, 2005, provides additional information to help attendees understand the above topics. This document is available in ADAMS at number ML051740058 or on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/epreview2005.html.*

Agenda Items—Enhancements in Response to the Post 9/11 Threat Environment (Offsite):

6. Enhanced Offsite Protective Action Recommendations (PARs)

The current PAR guidance contained in Supplement 3, "Criteria for Protective Action Recommendations for Severe Accidents," to NUREG–0654/FEMA–REP–1 (see the NRC website) specifies that the licensee should issue a PAR based on plant conditions that involve actual or projected severe core damage or loss of control of the facility (*i.e.*, at a general emergency). In the event of an emergency classification based on a security event, the NRC is soliciting comments regarding the receipt of a PAR from a licensee at the site area emergency or possibly at the alert classification level.

Suggested questions to promote discussion: (1) What value to public health and safety would a recommendation to "go indoors and monitor the emergency alert system" at a site area emergency classification provide during a security event? (2) What benefits or possible consequences would occur for stakeholders, if such a recommendation were made during a security event?

7. Abbreviated Notifications to Offsite Response Organizations (OROs)

The regulations in Appendix E to 10 CFR part 50 (to see the regulations go to *http://www.nrc.gov/what-we-do/emerg-preparedness/regs-guidance-comm.html*) require the licensee to have the capability to notify responsible ORO personnel within 15 minutes after declaring an emergency. While licensees and OROs are proficient with notification transmission and receipt, the notification process itself takes several minutes for the licensee to fill out the form, obtain authorization, and notify the OROs, perform repeat backs, and verify the notification. The NRC is soliciting offsite officials' comments on the receipt of an abbreviated initial notification to enhance emergency response in the case of a rapidly developing security event.

Suggested questions to promote discussion: (1) What public health and safety benefit would be derived from an abbreviated notification to the ORO during a security event? (2) How could such an abbreviated notification be effectively implemented during an onsite security event?

8. Backup Power to Siren Systems

FEMA is in the process of revising its guidance documents to reflect the technological advances that have taken place since they were originally published. By congressional direction, this guidance will require that all warning systems be operable in the absence of alternating current (AC) supply power. FEMA–REP–10, "Guide for Evaluation of Alert and Notification Systems for Nuclear Power Plants," is currently under revision. Once the revised guidance becomes available, the NRC will be considering regulatory approaches to implement the revised guidance and effect necessary Alert and Notification System (ANS) upgrades.

Suggested question to promote discussion: Should the NRC require that the ANS be operable in the absence of AC power, or are there backup alerting methods that can reliably alert the public in a timely manner under reasonably anticipated conditions that would be an adequate substitution for backup power?

Agenda Item—Protective Action Recommendation Guidance:

Planning Standard 10 CFR 50.47(b)(10) (to review the Planning Standard go to *http://www.nrc.gov/what-we-do/emerg-preparedness/regs-guidance-comm.html*) requires that a range of protective actions be developed for the protection of the public. Guidance related to the implementation of a range of protective actions is provided in Supplement 3 to NUREG–0654/FEMA–REP–1 (see the NRC Web site above) and EPA–400–R–92–001 (see *http://www.nrc.gov/what-we-do/emerg-preparedness/related-information.html*). While each guidance document contains the same basic protective action concepts of evacuation, shelter, and, as a supplement, potassium iodide, the NRC is considering changes to clarify the responsibilities of the licensee to recommend PARs, and State, local, and Tribal officials to make the final decision regarding, which protective action(s) is/are implemented. The NRC is also considering the need to more clearly define sheltering. In addition, the NRC is considering the need to enhance guidance related to the updating and use of evacuation time estimates.

Suggested questions to promote discussion: (1) How can the responsibilities of the licensee and State, local, and Tribal officials be clarified relative to protective actions to protect public health and safety? (2) How can sheltering (for discussions on sheltering see EPA–400–R–92–001, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" can be found on the NRC Web site at: *http://www.nrc.gov/what-we-do/emerg-preparedness/related-information.html*) be more clearly defined? (3) How can guidance related to the updating and use of evacuation time estimates be enhanced?

Additional Information Related to Protective Actions: The following information and electronic addresses are provided to help attendees better understand the topic related to protective actions:

1. NRC Regulatory Issue Summary 2004–13, "Consideration of Sheltering in Licensee's Range of Protective Action Recommendations," August 2, 2004 (ADAMS number ML041210046)

2. NRC Regulatory Issue Summary 2004–13, Supplement 1, "Consideration of Sheltering in Licensee's Range of Protective Action Recommendations," March 10, 2005 (ADAMS number ML050340531)

3. NRC Regulatory Issue Summary 2005–08, "Endorsement of Nuclear Energy Institute (NEI) Guidance 'Range of Protective Actions for Nuclear Power Plant Accidents'," June 6, 2005 (ADAMS number ML050870432)

Background Information for the NREP Parking Lot Issues: On April 11, 2005, at the National Radiological Emergency Preparedness Conference, NRC and FEMA conducted a workshop with State/local/tribal stakeholders, along with licensee representatives. The

workshop, "Emergency Preparedness Enhancements in the Post-9/11 Environment," covered a broad range of EP topics, including proposed 9/11-related enhancements regarding offsite preparedness/response. The workshop was attended by stakeholders nationwide.

During the workshop, EPD staff recorded all comments and questions brought forth by stakeholders in a "Parking Lot." NRC and FEMA promised stakeholders that they would provide responses to these comments and questions. Since NREP, the staff has worked with FEMA to develop responses to the "Parking Lot" comments and questions. This part of the meeting is intended to discuss the NRC/FEMA responses to the NREP "Parking Lot" comments and questions, that will be included on the following Web site on or about August 1: *http://www.nrc.gov/public-involve/public-meetings/epreview2005.html.*

Dated in Rockville, Maryland, the 22nd day of July 2005.

For the Nuclear Regulatory Commission.

Nader L. Mamish,

Director, Emergency Preparedness Directorate, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. E5–4011 Filed 7–27–05; 8:45 am]

BILLING CODE 7590–01–P

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 17Ab2–1, SEC File No. 270–203, OMB Control No. 3235–0195.

Form CA–1, SEC File No. 270–203, OMB Control No. 3235–0195.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ab2–1 and Form CA–1: Registration of Clearing Agencies

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitate modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Securities Exchange Act of 1934 ("Exchange Act"), (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently approximately ten registered clearing agencies and five clearing agencies that have been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $18,000.

Written 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 will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: July 13, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4016 Filed 7–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 1, 2005:

A closed meeting will be held on Thursday, August 4, 2005, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (6), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (4), (5), (6), (7), (8), 9(ii) and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Thursday, August 4, 2005, will be:

Regulatory matter regarding a financial institution;

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 26, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–15103 Filed 7–26–05; 3:49 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52101; File No. SR–CBOE–2004–86]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Modified ROS Opening Procedure

July 21, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On July 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[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 Substance of the Proposed Rule Change

The Exchange proposes to revise the modified Rapid Opening System ("ROS") opening procedure set forth in CBOE Rule 6.2A.03 to provide a greater opportunity for market participants to respond to order imbalances in the electronic book and to move the cut-off time for the submission of all orders for participation in the modified ROS opening procedure from 8:28 a.m. (CT) to 8:25 a.m. (CT). Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 6.2A. Rapid Opening System

This rule has no applicability to series trading on the CBOE Hybrid Opening System. Such series will be governed by Rule 6.2B.

(a)—(d) No change.

* * * Interpretation and Policies:

.01–.02 No change.

.03 Modified ROS Opening Procedure For Calculation of Settlement Prices of Volatility Indexes.

All provisions set forth in Rule 6.2A and the accompanying interpretations and policies shall remain in effect unless superseded or modified by this Rule 6.2A.03. To facilitate the calculation of a settlement price for futures and options contracts on volatility indexes, the Exchange shall utilize a modified ROS opening procedure for any index option series with respect to which a volatility index is calculated (including any index option series opened under Rule 6.2A.01). This modified ROS opening procedure will be utilized only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month.

The following provisions shall be applicable when the modified ROS opening procedure set forth in this Rule 6.2A.03 is in effect for an index option with respect to which a volatility index is calculated:

(i) [a]*A*ll orders (including public customer, broker-dealer, Exchange Market-Maker and away Market-Maker and specialist orders), other than contingency orders, will be eligible to be placed on the Electronic Book for those option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the ROS opening price calculation for the applicable index option series[;].

(ii) [a]*A*ll Market-Makers, including any LMMs and SMMs, if applicable, who are required to log on to ROS or RAES for the current expiration cycle shall be required to log on to ROS during the modified ROS opening procedure if the Market-Maker is physically present in the trading crowd for that index option class[;].

(iii) [i]*I*f the ROS system is implemented in an option contract for which LMMs have been appointed, the LMMs will collectively set the Autoquote values that will be used by ROS[;].

(iv) ROS contracts to trade for that index option series will be assigned equally, to the greatest extent possible, to all logged-on Market-Makers, including any LMMs and SMMs if applicable[;].

(v) All index option orders for participation in the modified ROS opening procedure that are related to positions in, or a trading strategy involving, volatility index options or futures, and any change to or cancellation of any such order

(A) must be received prior to 8:00 a.m. (CT), and

(B) may not be cancelled or changed after 8:00 a.m. (CT), unless the order is not executed in the modified ROS opening procedure and the cancellation or change is submitted after the modified ROS opening procedure is concluded (provided that any such order may be changed or cancelled after 8:00 a.m. (CT) and prior to 8:25 a.m. (CT) in order to correct a legitimate error, in which case the member submitting the change or cancellation shall prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and shall file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange).

In general, the Exchange shall consider index option orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2A.03(v) if the orders possess the following three characteristics:

(i) The orders are for options series with the expiration month that will be used to calculate the settlement price of the applicable volatility index option or futures contract.

(ii) The orders are for options series spanning the full range of strike prices in the appropriate expiration month for options series that will be used to calculate the settlement price of the applisable volatility index option or futures contract, but not necessarily every available strike price.

(iii) The orders are for put options with strike prices less than the "at-the-money" strike price and for call options with strike prices greater than the "at-the-money" strike price. The orders may also be for put and call options with "at-the-money" strike prices.

Whether index option orders are related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2A.03(v) depends upon specific facts and circumstances. Order types other than those provided above may also be deemed by the Exchange to fall within this category of orders if the Exchange determines that to be the case

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated July 1, 2005 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety.

based upon the applicable facts and circumstances.

The provisions of this Rule 6.2A.03(v) may be suspended by two Floor Officials in the event of unusual market conditions.

(v*i*) [a]*All other index option* orders for participation in the modified ROS opening procedure, and any change to or cancellation of any such order, must be received prior to *8:25 a.m.* [8:28 a.m.] (C[S]T) in order to participate at the ROS opening price for *the applicable* [that] index option series[;].

(vii) [a]*All* orders for participation in the modified ROS opening procedure must be submitted electronically, except that Market-Makers on the Exchange's trading floor may submit paper tickets for market orders only[; and].

(viii) [until the Exchange implements a] *The* ROS system [change that] *shall* automatically generate[s] cancellation orders *immediately prior to the opening of the applicable index option series* for Exchange Market-Maker, away Market-Maker, specialist, and broker dealer orders which remain on the Electronic Book following the modified ROS opening procedure[, any such orders that were entered in the Electronic Book but were not executed in the modified ROS opening procedure must be cancelled immediately following the opening of the applicable option series].

(ix) Any imbalance of contracts to buy over contracts to sell in the applicable index option series, or vice versa, as indicated on the Electronic Book, will be published as soon as practicable after 8 a.m. (CT) and thereafter at approximately 8:20 a.m. (CT) on days that the modified ROS opening procedure is utilized.

* * * * *

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Current CBOE Rule 6.2A.03 sets forth certain procedures that modify the normal operation of ROS[4] on the final settlement date of futures and options contracts on volatility indexes.[5] The final settlement date of futures and options contracts on volatility indexes occurs on the Wednesday that is immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire ("Settlement Date"). The proposed rule change would implement additional procedures for certain option orders that are entered on the Exchange's electronic book on the Settlement Date.

The modified ROS opening procedure permits all orders (including public customer, broker-dealer, CBOE market-maker and away market-maker and specialist orders), other than contingency orders, to be eligible to be placed on the book on the Settlement Date solely for the purpose of the modified ROS opening procedure. These orders may be placed on the book in those index option contract months whose prices are used to derive the volatility indexes on which options and futures are traded. For example, since the launch of futures on the CBOE Volatility Index ("VIX futures"), market participants actively trading in VIX futures have taken advantage of the modified ROS opening procedure to place SPX option orders on the book on the Settlement Date to unwind hedge strategies involving SPX options that were initially entered into upon the purchase or sale of VIX futures. In particular, the commonly-used hedge for VIX futures involves holding a portfolio of the SPX options that will be used to calculate the settlement value of the VIX futures contract on the Settlement Date. Traders holding hedged VIX futures positions to settlement can be expected to trade out of their SPX options on the Settlement Date. Traders who hold short, hedged VIX futures would liquidate that hedge by selling their SPX options; while traders holding long, hedged VIX futures would liquidate their hedge by buying SPX options. In order to seek convergence with the VIX futures final settlement value, these traders would be expected to liquidate their hedges by submitting market orders or limit orders[6] in the appropriate SPX option series during the SPX opening on the Settlement Date of the VIX futures contract. To the extent (i) traders who are liquidating hedges predominately are on one side of the market (*e.g.*, seek to buy the particular SPX options) and (ii) those traders' orders predominate over other orders during the SPX opening on Settlement Date, trades to liquidate hedges may contribute to an order imbalance during the SPX opening on Settlement Date. The purpose of the proposed rule filing is to implement changes to the modified ROS opening procedure that are intended to encourage additional participation in the modified ROS opening procedure among market participants who may wish to place off-setting orders against the imbalances. Information regarding the imbalances would be published on the Exchange's Web site at least two times prior to 8:25 a.m. (CT) on the Settlement Date. The first publication will occur as soon as practicable after 8 a.m. (CT) and the second publication will occur approximately at 8:20 a.m. (CT).

To encourage more participation in the volatility index futures and options settlement process, proposed CBOE Rule 6.2A.03(v) would require that all index option orders for participation in the modified ROS opening that are related to positions in, or a trading strategy involving, volatility index options or futures, and any changes or cancellations to these orders, be received prior to 8 a.m. (CT). Under the proposed rule change, in general, the

[4] ROS is the Exchange's automated system for opening certain classes of options at the beginning of the trading day or for re-opening those classes of options during the trading day. The procedures related to ROS are set forth in CBOE Rule 6.2A. The modified ROS opening procedure set forth in Rule 6.2A.03 modifies the general ROS opening procedures for index options that are used to calculate a volatility index to facilitate the settlement of futures contracts and options contracts on those volatility indexes.

[5] Volatility indexes provide investors with up-to-the-minute market estimates of expected near-term volatility of the prices of a broad-based group of stocks by extracting volatilities from real-time index option bid/ask quotes. Volatility indexes are calculated using real-time quotes of the nearby and second nearby index puts and calls on established broad-based market indexes. For example, the CBOE Volatility Index measures the near-term volatility of options on the S&P Index ("SPX") and the CBOE DJIA Volatility Index measures the near-term volatility of options on the Dow Jones Industrial Average ("DJX"). Futures contracts on the CBOE Volatility Index and the CBOE DJIA Volatility Index are currently trading on the Exchange's wholly-owned subsidiary, CBOE Futures Exchange, LLC. The Commission has approved for trading on the Exchange option contracts on volatility indexes and the Exchange may also list those contracts for trading.

[6] The Exchange understands that some market participants choose to unwind their hedges using limit orders to ensure that the hedge is effected at a certain price.

Exchange would consider index option orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of proposed CBOE Rule 6.2A.03(v) if the orders possess the following three characteristics:

(i) The orders are for options series with the expiration month that will be used to calculate the settlement price of the applicable volatility index option or futures contract.

(ii) The orders are for options series spanning the full range of strike prices in the appropriate expiration month for options series that will be used to calculate the settlement price of the applicable volatility index option or futures contract, but not necessarily every available strike price.

(iii) The orders are for put options with strike prices less than the "at-the-money" strike price and for call options with strike prices greater than the "at-the-money" strike price. The orders may also be for put and call options with "at-the-money" strike prices.

Whether index option orders are related to positions in, or a trading strategy involving, volatility index options or futures for purposes of proposed CBOE Rule 6.2A.03(v) depends upon specific facts and circumstances. Under the proposed rule change, order types other than those provided above may also be deemed by the Exchange to fall within this category of orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.

The proposed rule change also provides a limited exception that would permit cancellations and changes to these booked orders solely to correct a legitimate error (*e.g.*, side, size, symbol, price or duplication of an order). Under the proposed rule change, the member submitting the change or cancellation would be required to prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and would be required to file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange. In addition, two Floor Officials would have the ability to suspend proposed CBOE Rule 6.2A.03(v) in the event of unusual market conditions. For example, if a significant market event occurs between 8 a.m. (CT) and 8:25 a.m. (CT), Floor Officials may determine to suspend the rule provision in the interest of maintaining a fair and orderly market so that limit orders placed in the book to unwind hedged volatility index futures positions are not unfairly disadvantaged as a result of a significant market move that would result in limit orders going unexecuted.[7]

Separately, the Exchange proposes to move the cut-off time for the submission of all orders for participation in the ROS opening on Settlement Date mornings from 8:28 a.m. (CT) to 8:25 a.m. (CT). Lead Market-Makers, who collectively set the Autoquote values for the SPX options on the Settlement Date, have noted to the Exchange that they desire additional time to review the order imbalances on the book in order to set the Autoquote values that are used in the modified ROS opening procedure. The Exchange believes that the earlier cut-off time will be beneficial to all index option classes that are used to settle volatility index futures and options.

The Exchange notes that since the last day of trading in volatility index futures in the applicable expiring month occurs on the day before Settlement Date, holders of open volatility index futures are generally aware before 8 a.m. (CT) of the related index option series that they would need to place on the book in order to adequately unwind their hedges. Therefore, the Exchange believes the index option market participants who would be subject to these proposed rules would not be materially affected by the 8 a.m. (CT) cut-off time.

The Exchange also notes that it has filed with the Commission surveillance procedures to monitor whether index option orders that are subject to the proposed rule change are submitted for placement on the electronic book in accordance with the proposed rule.

In addition, the Exchange is making certain technical changes to current CBOE Rule 6.2A.03 to change the time standards reflected in the rule from CST to CT, since Chicago is in the Central Time zone. The Exchange is also revising the rule language in current CBOE Rule 6.2A.03(viii) to reflect that the Exchange has recently implemented a system change to ROS that automatically generates cancellation orders for Exchange market-maker, away market-maker, specialist, and broker dealer orders which remain on the electronic book following the modified ROS opening procedure. Therefore, members will no longer need to submit cancellations for these orders following the opening of the applicable index option series.

2. Statutory Basis

The Exchange believes the proposed rule change will improve the modified ROS opening procedure by exposing for a longer period of time order imbalances resulting from the unwinding of hedged volatility index futures positions. The Exchange believes this will allow market participants a greater opportunity to review these order imbalances and to place off-setting orders in the book, thereby resulting in the reflection of additional market participant interest in the applicable index option opening. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts 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 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange 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

[7] *Id.*

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

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–CBOE–2004–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2004–86. 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 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 Number SR–CBOE–2004–86 and should be submitted on or before August 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4018 Filed 7–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52111; File No. SR–CBOE–2005–52]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of Its Prospective Fee Reduction Program

July 22, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by CBOE. 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

CBOE proposes to amend its Fees Schedule to extend the Prospective Fee Reduction Program through the close of the current Exchange fiscal year on December 31, 2005. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

CHICAGO BOARD OPTIONS EXCHANGE, INC. FEES SCHEDULE

[MAY 23]*JUNE 30*, 2005

1.–4. Unchanged.

Footnotes: (1)–(16) Unchanged.

5.–18. Unchanged.

19. PROSPECTIVE FEE REDUCTION PROGRAM

Fee reductions will be in effect August 1, 2004 *through December 31, 2005* under the following scenarios:

If CBOE volume exceeds predetermined average contracts per day (CPD) thresholds at the end of any month on a fiscal year-to-date (YTD) basis, Market-Maker and DPM transaction and floor brokerage fees will be reduced in the subsequent month according to the schedule presented below:

FY05 YTD avg. CPD	Fees discount (percent)	Equities market-maker reductions	QQQQ/*SPDR*/Index market-maker/*DPM* reductions	*Equities* DPM trans. fees reductions	Floor brokerage reductions
1,300,000	10	$.022	$.024	$.012	$.004
1,400,000	15	.033	.036	.018	.006
1,500,000	20	.044	.048	.024	.008
1,600,000	25	.055	.060	.030	.010
1,700,000	30	.066	.072	.036	.012
1,800,000	35	.077	.084	.042	.014
1,900,000	40	.088	.096	.048	.016
2,000,000	45	.099	.108	.054	.018

20.–23. Unchanged.

Remainder of Fee Schedule—Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to continue the Prospective Fee Reduction Program ("Program") through the close of the current Exchange fiscal year on December 31, 2005.[3] No other changes to the Program are proposed. The current Program took effect on August 1, 2004.[4] The Program is intended to reduce Market-Maker and DPM transaction fees in periods of high volume. As before, the Exchange will continue to monitor its financial results to determine whether the Program should be continued, modified, or eliminated in the future.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–52. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–52 and should be submitted on or before August 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4019 Filed 7–27–05; 8:45 am]

BILLING CODE 8010–01–P

[3] The Exchange also proposes certain minor clarifying changes to the table headings in section 19 of the Fees Schedule to reconcile those headings with a previous rule change. *See* Securities Exchange Act Release No. 51027 (January 12, 2005), 70 FR 3407 (January 24, 2005). CBOE represents that the instant proposed rule change imposes no new fees or fees reductions. Telephone conversation between Steve L. Kuan, Special Counsel, Division of Market Regulation, Commission, and Jaime Galvan, Assistant Secretary, CBOE, on July 14, 2005.

[4] *See* Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52104; File No. SR–DTC–2005–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Enhancement of the SMART/Track Service

July 21, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 29, 2005, The Depository Trust Company ("DTC") 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 primarily by DTC. 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

DTC proposes to add a new Agency Lending Disclosure feature to its SMART/Track service. The new feature will enable securities agent lenders to disclose to securities borrowers information regarding the principal lenders of securities loans.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. DTC has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 2003, the Commission approved a proposed rule change that allowed DTC to activate its Universal Hub (now known as SMART/Track) messaging service. The service was designed to provide participants with an automated, electronic mechanism to notify and to acknowledge stock loan recalls.[3] In 2004, the Commission approved a second rule change that added a Corporate Action Liability Notification Service to SMART/Track. This addition provided participants with an automated, electronic mechanism to notify, acknowledge, and maintain corporate action liability information.[4]

In order to address the Commission's concerns about transparency in securities lending transactions, the Industry Agent Lending Task Force ("Task Force") recently released a proposal in that outlined how and what information agent lenders should disclose about the allocation of loans to broker-dealer borrowers.[5] The disclosure proposal focused on the need for borrowers to be able to monitor their credit exposures and calculate their required regulatory capital charges on a principal-lender basis. Currently, borrowers do not always know the underlying counterparties or principal lenders on a loan-by-loan basis because agent lenders frequently reveal open securities loans at the gross level and not at the principal level. Without this information, borrowers cannot determine their credit exposure on any given day or calculate the applicable capital charges.

The Task Force and its working groups have collaborated with the securities industry to identify the data that agent lenders should provide to enable borrowers to monitor their credit exposure and to calculate their capital requirements for securities executed under securities lending agreements. The Task Force asked DTC, in its role as an industry utility, to develop a central communications facility for the transmission of agency lending data between agent lenders and borrowers. DTC has actively participated in these efforts as a member of the Task Force's Infrastructure Working Group and has developed SMART/Track for Agency Lending Disclosure.[6]

SMART/Track for Agency Lending Disclosure will provide a communications interface between agent lenders and borrowers that will enable them to transmit periodic and daily files of principal lender data either through a vendor or directly to SMART/Track. By providing a single point of access, vendors, individual agent lenders, and borrowers will no longer have to build or maintain bilateral links to transmit loan information.

By transmitting agency lending data files, SMART/Track for Agency Lending Disclosure will essentially be acting as a "post office." That is, it will only validate the header and trailer of the files to verify that it can successfully deliver the file to the designated counterparty. DTC will not edit or validate the data contained within the files and will not be responsible for any such data.

SMART/Track will maintain and update a table that identifies the relationship between vendors and agent lenders and borrowers so that users will not have to keep track of the relationship between their counterparties and a vendor, if any. SMART/Track will also contain tools that will help users track the status of messages.

In addition to providing a communications facility for transmitting periodic and daily files for loan data, the Task Force asked DTC to provide a mechanism to assign unique identifiers to those principal lenders that do not have U.S. tax identification numbers. While most principal lenders have a nine-digit U.S. tax identification number, there is a small universe of lenders that do not. SMART/Track will create and maintain a table of unique identifiers. Agent lenders and borrowers as well as vendors will be able to search the table to determine if DTC has assigned a unique identifier to a principal lender. If DTC has not previously assigned a unique identifier to a principal lender, agent lenders and borrowers will be able to request that DTC does so.

SMART/Track for Agency Lending Disclosure will be subject to DTC's general standard of liability for information services, which is responsibility for gross negligence and willful misconduct. Furthermore, although the service will be available primarily to DTC participants, agent lenders that are not DTC participants will be able to use SMART/Track for Agency Lending Disclosure by signing a user agreement.[7]

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will promote important disclosure relating to securities loans arranged by agent lenders and will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control of DTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has discussed this rule change proposal with the Task Force, with which DTC has worked closely in developing the SMART/Track for Agency Lending Disclosure. DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii)[8] of the Act and Rule 19b–4(f)(4)[9] thereunder because it effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in DTC's control or for which DTC is responsible and does not significantly affect DTC's or its participants' respective rights or obligations. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 50029 (July 15, 2004), 69 FR 43870 (July 22, 2004) [File No. SR–DTC–2003–10].

[4] Securities Exchange Act Release No. 50887 (Dec. 20, 2004), 69 FR 77802 (Dec. 28, 2004) [File No. SR–DTC–2004–11].

[5] Refer to the Task Force's Web site at *http://www.agencylending.capco.com* and *http://www.agencylending.capco.com/documents/Taskforce%20wide%20documents/Agent%20Lender%20Disclosure%20(final%20final).doc.*

[6] The SMART/Track for Agency Lending Disclosure Procedures are attached as Exhibit 5 to DTC's proposed rule filing.

[7] The form user agreement is attached as Exhibit 2 to DTC's proposed rule filing.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

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–DTC–2005–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–DTC–2005–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2005–06 and should be submitted on or before August 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4013 Filed 7–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52110; No. SR–OCC–2005–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Conform Its Year-End Financial Reporting Deadline Applicable to Clearing Members Primarily Regulated as Futures Commission Merchants With the Commodity Futures Trading Commission's Regulations

July 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 14, 2005, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would conform OCC's year-end financial reporting deadline applicable to clearing members primarily regulated as Futures Commission Merchants ("FCM") with the Commodity Futures Trading Commission's ("CFTC") Regulation 1.10(b)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC Rule 306, Interpretation .02 currently provides that a clearing member that is not fully registered with the SEC as a broker-dealer but that is registered with the CFTC as an FCM must file its annual audited financial report on Form 1–FR–FCM with OCC within 60 days of the end of its fiscal year unless OCC consents to an extension.[3] However, under CFTC Regulation 1.10(b)(ii), an FCM has up to 90 days after the close of its fiscal year to file that report with the CFTC. Clearing members that comply with CFTC Regulation 1.10(b)(ii) have requested that OCC conform its year-end financial reporting deadline to CFTC's to provide a consistent filing requirement.

OCC believes the proposed rule change is consistent with Section 17A of the Act,[4] as amended, because the change is designed to facilitate the establishment of coordinated facilities for clearance and settlement of transactions by conforming OCC's rules to the CFTC financial reporting obligation. The proposed rule change is not inconsistent with the existing rules of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(4)[6] thereunder because it does not adversely affect the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] This 60-day deadline mirrors the year-end financial reporting deadline applicable to broker-dealers.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(4).

safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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–OCC–2005–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–OCC–2005–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. 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–OCC–2005–11 and should be submitted on or before August 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4017 Filed 7–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52083; File No. SR–PCX–2005–67]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Relating to Exchange Fees and Charges

July 20, 2005.

On May 6, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to modify the list of eligible strategies that apply to Option Strategy Executions retroactive to January 1, 2005. The proposed rule change was published for comment in the **Federal Register** on June 14, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[5] and the rules and regulations thereunder because it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the Exchange's proposal to retroactively modify certain transaction fees associated with its short-term interest spread transactions should allow the PCX to continue to attract liquidity and conform the Exchange's fees and rates to those previously approved under the Option Strategy Execution rate plan.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change, (SR–PCX–2005–67) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4014 Filed 7–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52095; File No. SR–Phlx–2005–46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to the Extension of a Pilot Program Relating to Transaction Charges Applicable to Linkage "P" and "P/A" Orders

July 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 15, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

---

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51795 (June 7, 2005), 70 FR 34511.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for a one-year period, a pilot relating to transaction fees included in the Exchange's schedule of dues, fees and charges applicable to the execution of Principal Acting as Agent Orders ("P/A Orders")[3] and Principal Orders ("P Orders")[4] sent to the Exchange pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Plan").[5] The Exchange proposes to extend the pilot through July 31, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July, 2004, the Exchange established, on a one-year pilot basis, a fee of $.45 per contract for inbound P Orders (the "pilot").[6] Subsequently, in February, 2005, the Exchange modified the pilot by (i) reducing the transaction charge for inbound P Orders from $.45 per contract to $.15 per contract, and (ii) establishing a transaction charge of $.15 per contract for inbound P/A Orders.[7] The purpose of the proposed rule change is to extend the pilot for one year, through July 31, 2006.

Thus, the Exchange's current schedule of dues, fees and charges includes a transaction charge of $.15 per contract applicable to Linkage P/A Orders and P Orders sent to the Exchange pursuant to the Plan. The pilot is scheduled to expire on July 31, 2005. The Exchange proposes to extend the current pilot for an additional one-year period, through July 31, 2006.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is it is an equitable allocation of reasonable fees among Exchange 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. 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–Phlx–2005–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–46 and should be submitted on or before August 18, 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 is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[10] and, in particular, with the requirements of Section 6(b) of the Act[11] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Commission further opportunity to

[3] A P/A Order is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[4] A P Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. *See* Exchange Rule 1083(k)(ii).

[5] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange, Inc. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc., and Boston Stock Exchange, Inc. joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[6] *See* Securities Exchange Act Release No. 50125 (July 30, 2004), 69 FR 47479 (August 5, 2004) (SR–Phlx–2004–44).

[7] *See* Securities Exchange Act Release No. 51257 (February 25, 2005), 70 FR 10736 (March 4, 2005) (SR–Phlx–2005–10).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerating approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Phlx and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [14] that the proposed rule change (SR–Phlx–2005–46) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4015 Filed 7–27–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10135 and #10136]

Alabama Disaster Number AL–00001

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1593–DR), dated 07/10/2005.

Incident: Hurricane Dennis.

Incident Period: 07/10/2005 and continuing through 07/16/2005.

DATES: *Effective Date:* 07/16/2005.

Physical Loan Application Deadline Date: 09/08/2005.

EIDL Loan Application Deadline Date: 04/10/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Disaster Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Alabama, dated 07/10/2005, is hereby amended to establish the incident period for this disaster as beginning 07/10/2005 and continuing through 07/16/2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–14913 Filed 7–27–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10137 and #10138]

Florida Disaster Number FL–00005

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1595–DR), dated 07/10/2005.

Incident: Hurricane Dennis.

Incident Period: 07/10/2005 and continuing .

DATES: Effective Date: 07/20/2005.

Physical Loan Application Deadline Date: 09/08/2005.

EIDL Loan Application Deadline Date: 04/10/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 07/10/2005 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Dixie, Taylor

Contiguous Counties: Florida

Gilchrist, Lafayette, Levy, Madison

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–14914 Filed 7–27–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to terminate waiver of the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering terminating the waiver of the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing based on our recent discovery of a small business manufacturer for this class of products. Terminating this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program to provide the products of small business manufacturers or processors on such contracts.

DATES: Comments and sources must be submitted on or before August 15, 2005.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems. The first coding

[13] 15 U.S.C. 78s(b)(2).

[14] *Id.*

[15] 17 CFR 200.30–3(a)(12).

system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on July 15, 2004 to waive the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing. In response, on July 30, 2004, SBA published in the **Federal Register** a notice of intent to the waiver of the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing.

SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to this notice, comments were received from interested parties. SBA had determined from these sources that there were no small business manufacturers of this class of products, and therefore granted the waiver of the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing, NAICS 339920.

Recently, SBA discovered the existence of a small business manufacturer of this class of products. Accordingly, based on the available information, SBA has determined that there is a small business manufacturer of this class of products, and is therefore considering terminating the class waiver of the Nonmanufacturer Rule for Sporting and Athletic Goods Manufacturing, NAICS 339920.

Authority: 15 U.S.C. 637(a)(17).

Dated: July 22, 2005.

Nancyellen Gentile,

Acting Associate Administrator for Government Contracting.

[FR Doc. 05–14916 Filed 7–26–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0548]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assess the effectiveness of current procedures used in conducting hearing.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 26, 2005.

ADDRESSES: Submit written comments on the collection of information to Sue Hamlin (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *sue.hamlin@mail.va.gov*. Please refer to "OMB Control No. 2900–0548" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 565–5686.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Generic Clearance for Board of Veterans' Appeals Customer Satisfaction with Hearing Survey, VA Form 0745.

OMB Control Number: 2900–0548.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0745 is completed by appellants at the conclusion their hearing with the Board of Veterans' Appeals. The appellant's participation is voluntary, anonymous and will have no bearing on the outcome of his or her appeal. The data collected will be used to assess the effectiveness of current hearing procedures used in conducting hearings and to develop better methods of serving veterans and their families.

Affected Public: Individuals or households.

Estimated Annual Burden: 86 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 859.

Dated: July 19, 2005.

By direction of the Secretary.

Denise McLamb,

Records Management Service.

[FR Doc. E5–4006 Filed 7–27–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0568]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0568."

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0568" in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OM) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OM)'s functions, including whether the information will have practical utility; (2) the accuracy of (OM)'s estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Submission of School Catalog to the State Approving Agency.

OMB Control Number: 2900–0568.

Type of Review: Extension of a currently approved collection.

Abstract: Accredited and non accredited educational institutions, with the exceptions of elementary and secondary schools, must submit copies of their catalog to State approving agency when applying for approval of a new course. State approval agencies use the catalog to determine what courses can be approved for VA training. VA pays educational assistance to veterans, persons on active duty or reservists, and eligible persons pursuing an approved program of education. Educational assistance is not payable when claimants pursue unapproved courses.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 9, 2005, at pages 6926–6927.

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

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

Dated: July 19, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–4007 Filed 7–27–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521) this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0060."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0060" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Claim for One Sum Payment (Government Life Insurance), VA Form 29–4125.

b. Claim for Monthly Payments (National Service Life Insurance), VA Form 29–4125a.

c. Claim for Monthly Payments (United States Government Life Insurance, (USGLI)), VA Form 29–4125k.

OMB Control Number: 2900–0060.

Type of Review: Extension of a currently approved collection.

Abstract: Beneficiaries of deceased veterans must complete VA Form 29–4125 to apply for proceeds of the veteran's Government Insurance policies. If the beneficiary desires monthly installment in lieu of one lump payment he or she must complete VA Forms 29–4125a and 29–4125k. VA uses the information to determine the claimant's eligibility for payment of insurance proceeds and to process monthly installment payments.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 28, 2005 at pages 15688–15689.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,787 hours.

a. VA Form 29–4125—8,200 hours.
b. VA Form 29–4125a—462 hours.
c. VA Form 4125k—125 hours.

Estimated Average Burden Per Respondent:

a. VA Form 29–4125—6 minutes.
b. VA Form 29–4125a—15 minutes.
c. VA Form 4125k—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 84,350.

a. VA Form 29–4125—82,000
b. VA Form 29–4125a—1,850
c. VA Form 4125k—500

Dated: July 19, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–4008 Filed 7–27–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0594]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management

Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–2900–0594." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0594" in any correspondence.

Title: Election to Apply Selected Reserve Services to either Montgomery GI Bill—Active Duty or to the Montgomery GI Bill—Selected Reserve—38 CFR 21.7042 and 21.7540.

OMB Control Number: 2900–0594.

Type of Review: Extension of a previously approved collection.

Abstract: Reservist who participant in the Montgomery GI Bill—Active Duty and served on active duty for two years followed by six years in the Selected Reserve must elect to apply the selected reserved credit either toward the Montgomery GI Bill—Active Duty or toward the Montgomery GI Bill—Selected Reserve benefits. Reservists must make this election in writing, which will take effect when the individual either negotiates a check or receives education benefits via direct deposit or electronic funds transfer under the program elected. VA uses the election to determine which benefit is payable based on the individual's Selected Reserve service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 9, 2005, at page 6926.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,668 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: July 19, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–4009 Filed 7–27–05; 8:45 am]

BILLING CODE 8320–01–P

Reader Aids

Federal Register

Vol. 70, No. 144

Thursday, July 28, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF.links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JULY

37985–38570 1
38571–38750 5
38751–39172 6
39173–39410 7
39411–39638 8
39639–39904 11
39905–40184 12
40185–40634 13
40635–40878 14
40879–41128 15
41129–41340 18
41341–41604 19
41605–41934 20
41935–42250 21
42251–42484 22
42485–43016 25
43017–43256 26
43257–43624 27
43625–43738 28

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7913 41931
7914 45253
Executive Orders:
12139 (Amended by EO 13383) 41933
12735 (See EO 13382) 38567
12938 (Amended by EO 13382) 38567
12949 (Amended by EO 13383) 41933
13094 (See EO 13382) 38567
13348 (See Notice of July 19, 2005) 41935
13382 38567
13383 41933
Administrative Orders:
Memorandums:
Memorandum of April 21, 2005 (Amended by Memorandum of July 1, 2005) 41341
Memorandum of June 29, 2005 39173
Memorandum of July 1, 2005 41341
Memorandum of July 21, 2005 (Assignment of Reporting Functions) 43249
Memorandum of July 21, 2005 (Assignment of Certain Functions Under Section 337 of the Tariff Act of 1930) 43251
Notices:
Notice of July 19, 2005 41935
Presidential Determinations:
No. 2005-26 of July 4, 2005 40181
No. 2005-27 of July 4, 2005 40183
No. 2005-28 of July 12, 2005 41929
No. 2005-29 of July 14, 2005 42251
No. 2005-30 of July 14, 2005 43257

5 CFR

Ch. XIV 41605
831 42253
842 42253

7 CFR

56 42254
70 42254
226 43259
305 41092
318 40879
319 ..... 40879, 41092
400 41822
780 43262
946 41129
955 41605
981 43270
983 ..... 39905, 40185, 42256
1469 41608
4274 38571
4280 41264
Proposed Rules:
97 40921
246 43332
319 39194
868 39199
925 42513
944 42513
1033 43335
2902 38612

9 CFR

77 42259
93 41608
94 41608
95 41608
Proposed Rules:
391 41635
590 41635
592 41635

10 CFR

72 ..... 40879, 42485
110 ..... 37985, 41937
625 39364
Proposed Rules:
20 43646
32 43646
72 ..... 40924, 42513
150 43646

11 CFR

114 41939
Proposed Rules:
100 42282
106 42282
300 42282

12 CFR

201 39411
620 40635
621 40635
650 40635
651 40635
652 40635
653 40635
654 40635

655.....40635
1731.....43625

Proposed Rules:
Ch. VII 39202, 40924

13 CFR

Proposed Rules:
106.....39667

14 CFR

11.....40156
21.....40166
23.....37994, 43273
25.....39908, 39910
36.....38742, 41610
39 .....38573, 38575, 38578, 38580, 38751, 38753, 38755, 39412, 39559, 39639, 39642, 39644, 39647, 39651, 39912, 40187, 40651, 40656, 41944, 41946, 41948, 42148, 42262, 42267, 42269, 43017, 43020, 43022, 43024, 43025, 43029, 43032, 43036, 43628, 43631
43.....40872
71 .....37997, 38740, 39175, 39914, 39915, 39916, 39917, 41610, 41611, 41613, 41948, 41949, 41950
73.....38740
91 .....38742, 40168, 41610
93.....39610
97.....39652, 43039
121 .....40156, 40168, 41134
125.....40168
129.....40168
382.....41482

Proposed Rules:
39 .....38625, 38627, 38630, 38632, 38636, 38817, 38819, 38821, 38823, 39204, 39433, 39435, 41350, 41352, 41354, 42003, 42005, 42008, 42282, 42515, 43343, 43659
71 .....38053, 38055, 38056, 38826, 39973

15 CFR

740.....41094, 43041
742.....41094, 43041
743.....41094, 43041
772.....41094, 43041
774 .....41094, 41952, 43041

Proposed Rules:
303.....38828
710.....42010
711.....42010
712.....42010
713.....42010
714.....42010
715.....42010
716.....42010
717.....42010
718.....42010
719.....42010
720.....42010
721.....42010
722.....42010
723.....42010
724.....42010
725.....42010
726.....42010
727.....42010
728.....42010
729.....42010

16 CFR

310.....43273

Proposed Rules:
23.....38834

17 CFR

230.....42150
232.....42456, 43558
239.....42150, 43558
240 .....40614, 42150, 42456
249 .....42150, 42456, 43558
259.....43558
269.....43558
270.....39390, 43558
274.....43558

Proposed Rules:
36.....39672
37.....39672
38.....39672
39.....39672
40.....39672

18 CFR

35.....38757

Proposed Rules:
35.....40941
131.....40941
154.....40941
157.....40941
250.....40941
281.....40941
284.....40941
300.....40941
341.....40941
342.....40943
344.....40941
346.....40941
347.....40941
348.....40941
375.....40941
385.....40941

19 CFR

Proposed Rules:
101.....38637
122.....38637

20 CFR

1.....41340
30.....41340
345.....42488
404.....38582, 41954
416.....41135
646.....40870
701.....43224
703.....43224

Proposed Rules:
320.....42517
404.....43590
405.....43590
416.....39689, 43590
422.....43590
604.....42474

21 CFR

Ch. I.....40880
20.....41956
73.....42271, 43043
101.....41958
520 .....40880, 41139, 43045
522.....39918
524.....43046
529.....41139
556.....39918
558.....41958
1308.....43633

Proposed Rules:
Ch. I.....41356
310.....40232
341.....40232, 40237

22 CFR

126.....39919

23 CFR

Proposed Rules:
630.....39892

24 CFR

200.....43242

25 CFR

124..... 40660, 41963

26 CFR

1 .....39653, 39920, 40189, 40661, 40663, 41343, 43635
26.....41140
301.....40669, 41144
602 .....39920, 40189, 40663

Proposed Rules:
1 .....38057, 39695, 40675
31.....38057
35.....40675
54.....40675
301.....40675, 41165

27 CFR

9 .....37998, 38002, 38004

Proposed Rules:
4.....38058

28 CFR

549.....43047

Proposed Rules:
16.....39696, 43661
32.....43078
45.....39206
541.....43093

29 CFR

4022.....40881
4044.....40881

Proposed Rules:
1404.....39209, 42011
1610.....38060

30 CFR

250.....41556

Proposed Rules:
934.....38639

31 CFR

Ch. V.....38256

32 CFR

321.....38009

Proposed Rules:
285.....40249
504.....42012
631.....41641

33 CFR

100 .....38010, 39654, 39656, 40882, 43050
110.....40885
117 .....38593, 38594, 40887
155.....41614
156.....41614
165 .....38013, 38015, 39176, 39923, 40885, 40888, 41343, 41345, 42489, 42491, 42493, 43281, 43636

Proposed Rules:
100 .....39697, 43345, 43347
117.....41648, 42017
165.....40944
167.....38061

34 CFR

230.....38017

36 CFR

7.....38759

Proposed Rules:
228.....43349

37 CFR

2.....38768
7.....38768
201.....38022
251.....38022
252.....38022
257.....38022
258.....39178
259.....38022

Proposed Rules:
201.....41650
202.....42286
270.....43364
2563.....41650

38 CFR

Proposed Rules:
3.....39213

40 CFR

51.....39104, 39413
52 .....38023, 38025, 38028, 38029, 38774, 38776, 39658, 39926, 40193, 40195, 41146, 41963, 42495
62.....39927
63 .....38554, 38780, 39426, 39662, 40672
80.....40889
81.....38029
85.....40420
86.....40420
89.....40420
90.....40420
91.....40420
92.....40420
94.....40420
180 .....38780, 38785, 38786, 40196, 40199, 40202, 40899, 41618, 41619, 43283, 43284, 43292, 43298, 43309, 43313
261.....42499
271.....42273
300 .....38789, 39180, 41625, 43052
372.....39931
799.....39624, 39630
1039.....40420
1048.....40420
1051.....40420
1065.....40420
1068.....40420
1506.....41148

Proposed Rules:
52 .....38064, 38068, 38071, 38073, 38837, 38839, 38840, 39974, 40946, 41166, 41652,

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 28, 2005

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Almonds grown in—
California; published 7-27-05
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Yellowfin sole; published 7-28-05
Marine mammals:
Incidental take permits—
Atlantic Large Whale Take Reduction Plan; published 7-26-05
ENERGY DEPARTMENT
Research misconduct policy; published 6-28-05
JUSTICE DEPARTMENT
Drug Enforcement Administration
Schedules of controlled substances:
Pregabalin; placement into Schedule V; published 7-28-05
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Grob-Werke; published 6-14-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Onions grown in—
Idaho and Oregon; comments due by 8-2-05; published 6-3-05 [FR 05-11023]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Pine shoot beetle; comments due by 8-5-05; published 6-6-05 [FR 05-11150]
AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]
AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Intermediary Relending Program; comments due by 8-4-05; published 7-5-05 [FR 05-13144]
AGRICULTURE DEPARTMENT
Rural Utilities Service
Intermediary Relending Program; comments due by 8-4-05; published 7-5-05 [FR 05-13144]
COMMERCE DEPARTMENT
International Trade Administration
Watches, watch movements, and jewelry:
Duty exemption allocations—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 8-5-05; published 7-6-05 [FR 05-13284]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 8-1-05; published 6-2-05 [FR 05-10990]
Groundfish; comments due by 8-1-05; published 6-16-05 [FR 05-11918]
West Coast States and Western Pacific fisheries—
Pacific coast groundfish; comments due by 8-4-05; published 7-5-05 [FR 05-13178]
COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]
DEFENSE DEPARTMENT
Acquisition regulations:
Competition requirements for Federal supply schedules and multiple award contracts; comments due by 8-1-05; published 6-2-05 [FR 05-10911]
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]
Federal Acquisition Regulation (FAR):
Alaskan Native Corporations and Indian tribes; small business credit; comments due by 8-2-05; published 6-3-05 [FR 05-10935]
EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]
ENERGY DEPARTMENT
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]
ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]
Electronic tariff filings; software availability and testing; comment deadline, electronic format manual availability, and technical conference; comments due by 8-1-05; published 5-6-05 [FR 05-09072]
Electronic tariff filings; software availability and testing; comments due by 8-1-05; published 7-15-05 [FR 05-13908]
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Organic chemical manufacturing; miscellaneous; comments due by 8-1-05; published 7-1-05 [FR 05-13054]
Air programs:
Outer Continental Shelf regulations—
California; consistency update; comments due by 8-5-05; published 7-6-05 [FR 05-13276]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Washington; comments due by 8-1-05; published 7-1-05 [FR 05-12946]
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 8-1-05; published 7-1-05 [FR 05-13032]
California; correction; comments due by 8-1-05; published 7-1-05 [FR 05-13052]
Maryland; cornments due by 8-5-05; published 7-6-05 [FR 05-13281]
Minnesota; comments due by 8-1-05; published 7-1-05 [FR 05-13059]
New Jersey; comments due by 8-1-05; published 7-1-05 [FR 05-13056]
Texas; comments due by 8-5-05; published 7-6-05 [FR 05-13279]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 3071/P.L. 109–38

To permit the individuals currently serving as Executive Director, Deputy Executive Directors, and General Counsel of the Office of Compliance to serve one additional term. (July 27, 2005; 119 Stat. 408)

Last List July 26, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Public Laws

109th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 109th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 109th Congress for $317 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 6/05

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Now Available Online

through

GPO Access

A Service of the U.S. Government Printing Office

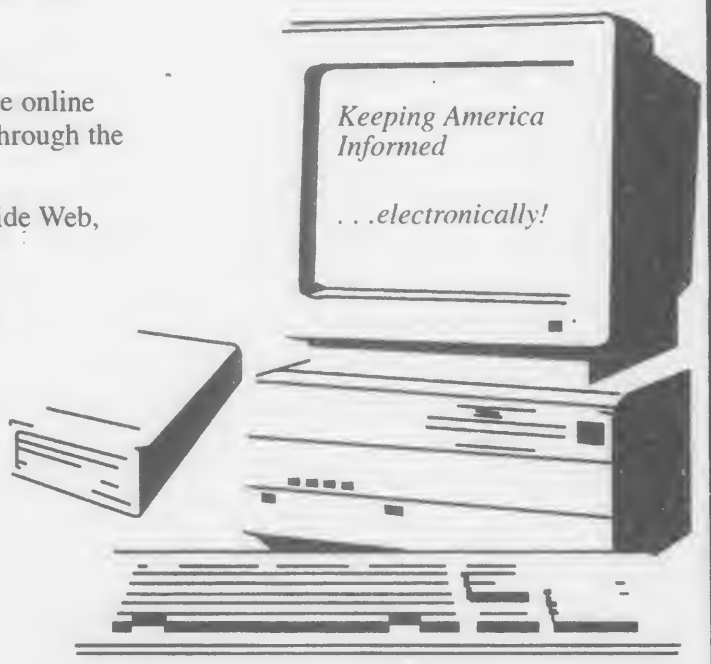
Federal Register

Updated Daily by 6 a.m. ET

Easy, Convenient, FREE

Free public connections to the online Federal Register are available through the GPO Access service.

To connect over the World Wide Web, go to the Superintendent of Documents' homepage at http://www.gpoaccess.gov/nara



For further information, contact the GPO Access User Support Team:

Voice: (202) 512–1530 (7 a.m. to 5 p.m. Eastern time).
Fax: (202) 512–1262 (24 hours a day, 7 days a week).
Internet E-Mail: gpoaccess@gpo.gov

(Rev. 7/04)

Printed on recycled paper