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Rules and Regulations

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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.

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

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

DATES: The amendments to part 201 (Regulation A) are effective February 9, 2005. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

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

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

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 3.25 percent to 3.50 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 3.75 percent to 4.00 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the federal funds rate (from 2.25 percent to 2.50 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> The Committee believes that, even after this action, the stance of monetary policy remains accommodative and, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. Output appears to be growing at a moderate pace despite the rise in energy prices, and labor market conditions continue to improve gradually. Inflation and longer-term inflation expectations remain well contained.
>
> The Committee perceives the upside and downside risks to the attainment of both sustainable growth and price stability for the next few quarters to be roughly equal. With underlying inflation expected to be relatively low, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Regulatory Flexibility Act Certification

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

Administrative Procedure Act

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

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

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

Authority and Issuance

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

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

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

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

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

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

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

Federal Reserve Bank	Rate	Effective
Boston	3.50	Feb. 2, 2005.
New York	3.50	Feb. 2, 2005.
Philadelphia	3.50	Feb. 2, 2005.
Cleveland	3.50	Feb. 2, 2005.
Richmond	3.50	Feb. 2, 2005.
Atlanta	3.50	Feb. 2, 2005.
Chicago	3.50	Feb. 2, 2005.
St. Louis	3.50	Feb. 3, 2005.
Minneapolis	3.50	Feb. 2, 2005.
Kansas City	3.50	Feb. 2, 2005.
Dallas	3.50	Feb. 2, 2005.
San Francisco	3.50	Feb. 2, 2005.

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

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

Federal Reserve Bank	Rate	Effective
Boston	4.00	Feb. 2, 2005.
New York	4.00	Feb. 2, 2005.
Philadelphia	4.00	Feb. 2, 2005.
Cleveland	4.00	Feb. 2, 2005.
Richmond	4.00	Feb. 2, 2005.
Atlanta	4.00	Feb. 2, 2005.
Chicago	4.00	Feb. 2, 2005.
St. Louis	4.00	Feb. 3, 2005.
Minneapolis	4.00	Feb. 2, 2005.
Kansas City	4.00	Feb. 2, 2005.
Dallas	4.00	Feb. 2, 2005.
San Francisco	4.00	Feb. 2, 2005.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 3, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–2463 Filed 2–8–05; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Zeranol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Schering-Plough Animal Health Corp. The supplemental NADAs provide for the addition of statements to labeling of subcutaneous implants containing zeranol warning against the use of these products in calves to be processed for veal.

DATES: This rule is effective February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed a supplement to NADA 38–233 for RALGRO (zeranol) and to NADA 141–192 for RALGRO LA (zeranol), two subcutaneous implants/products used in certain classes of cattle or in sheep for improved feed efficiency and/or increased rate of weight gain. The supplemental NADAs provide for the addition of statements to labeling warning against the use of these products in calves to be processed for veal. The supplemental applications are approved as of January 14, 2005, and the regulations are amended in 21 CFR 522.2680 to reflect the approval. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.2680 is amended by revising paragraphs (d)(1)(iii), (d)(2)(iii), (d)(3)(iii), and (d)(4)(iii) to read as follows:

§ 522.2680 Zeranol.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Implant subcutaneously in ear only. Do not use in bulls intended for reproduction or in dairy animals. Do not use before 1 month of age or after weaning in heifers intended for reproduction. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) * * *

(iii) *Limitations.* Implant subcutaneously in ear only. Do not use in breeding animals. Do not implant animals within 40 days of slaughter. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(3) * * *

(iii) *Limitations.* Implant subcutaneously in ear only. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(4) * * *

(iii) *Limitations.* Implant subcutaneously in ear only. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: January 27, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–2451 Filed 2–8–05; 8:45 am]

BILLING CODE 4160–01–S

POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule clarifies regulations relating to the determination of costs to be offset from differential revenue.

DATES: The final rule is effective February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett, (703) 292–3980.

SUPPLEMENTARY INFORMATION: Semipostal stamps are intended to raise funds for specified causes. The difference between the sales price of a semipostal stamp and its postage value (the differential) constitutes a contribution to a specified cause. The Postal Service is permitted to retain an amount from the differential to cover its reasonable administrative costs.

Section 551.8 sets forth the Postal Service's policy to recover from the differential those costs determined to be attributable to the semipostal and that would not normally be incurred for commemorative stamps having similar sales objectives; physical characteristics; and marketing, promotional, and public relations activities. Under current regulations published in 39 CFR 551.8:

(e) Cost items recoverable from the differential revenue may include, but are not limited to, the following:

(1) Packaging costs in excess of the cost to package comparable stamps;

(2) Printing costs of flyers and special receipts;

(3) Costs of changes to equipment;

(4) Costs of developing and executing marketing and promotional plans in excess of the cost for comparable stamps;

(5) Other costs specific to the semipostal stamp that would not normally have been incurred for comparable stamps; and

(6) Costs in paragraph (g) of this section that materially exceed those that would normally have been incurred for comparable stamps.

The final rule deletes the word ''may'' from the introductory paragraph to subsection (e) of 39 CFR 551.8. The deletion of the word ''may'' clarifies that costs that are recovered from the differential include, but are not limited to, packaging costs in excess of those for comparable stamps, printing costs for flyers or special receipts, costs of changes to equipment, costs of developing and executing marketing and promotional plans in excess of those for comparable stamps, and other costs that would not normally have been incurred for comparable stamps.

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

The Amendment

■ For the reasons set out in this document, the Postal Service hereby amends 39 CFR part 551 as follows:

PART 551—SEMIPOSTAL STAMP PROGRAM

■ 1. The authority citation for 39 CFR part 551 continues to read as follows:

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 414, 416.

■ 2. Revise paragraph (e) introductory text in § 551.8 to read as follows:

§ 551.8 Cost offset policy.

* * * * *

(e) Cost items recoverable from the differential revenue include, but are not limited to, the following:

* * * * *

Neva Watson,

Attorney, Legislative.

[FR Doc. 05–2467 Filed 2–8–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7870–2]

South Carolina: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize South Carolina's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on April 11, 2005, unless EPA receives adverse written comment by March 11, 2005. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Thornell Cheeks, South Carolina Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8479. The application can be viewed electronically at *http://www.regulation.gov.* Electronic comments on the application can be made from this site. You may also e-mail your comments to *Cheeks.Thornell@epa.gov.* You can view and copy South Carolina's applications from 9 a.m. to 4 p.m. at the following addresses: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896–4174; and EPA Region 4, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562–8190, John Wright, Librarian.

FOR FURTHER INFORMATION CONTACT: Thornell Cheeks, South Carolina Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8479.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that South Carolina's applications to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Carolina Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Carolina has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions

imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Carolina, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Carolina subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Carolina has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which South Carolina is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has South Carolina Previously Been Authorized For?

South Carolina initially received Final authorization on November 8, 1985, effective November 22, 1985 (50 FR 46437) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on September 8, 1988, effective November 7, 1988 (53 FR 34758), February 10, 1993, effective April 12, 1993 (58 FR 7865), November 29, 1994, effective January 30, 1995 (59 FR 60901), April 26, 1996, effective June 25, 1996 (61 FR 18502), October 4, 2000, effective December 4, 2000 (65 FR 59135) and August 21, 2001, effective October 22, 2001 (66 FR 43798).

G. What Changes Are We Authorizing With Today's Action?

On March 10, 2003 , and September 5, 2003 South Carolina submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. South Carolina's provisions consists of provisions promulgated July 1, 2000 through June 30, 2002, otherwise known as RCRA XI and XII. The rule adoption for the provisions of RCRA XI, and XII covered in this action became effective August 1, 2000. South Carolina Statues at section 150B–21.6 and section 130A–294 allow the South Carolina Department of Environment and Natural Resources to administer the rules governing hazardous waste management. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that South Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant South Carolina Final authorization for the following program changes:

Federal requirements	**Federal Register**	Analogous State authority
Hazardous Air Pollutant Standards; Technical Corrections, Checklist 188, RCRA XI, Non-HSWA.	65 FR 42292–42302, July 10, 2000	SCHWM R.61–79.261.38(c)(2)(iv). SCHWM R.61–79.264.340(b)(1). SCHWM R.61–79.264.340(b)(3). SCHWM R.61–79.270.42(j)(1).
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, Checklist 189, RCRA XI, HSWA Provision.	65 FR 67068–67133, November 8, 2000	SCHWM R.61–79.261.32. SCHWM R.61–79.Appendix VII. SCHWM R.61–79.Appendix VIII. SCHWM R.61–79.268.33(a). SCHWM R.61–79.268.33(b)(intro). SCHWM R.61–79.268.33(b)(1). SCHWM R.61–79.268.33(b)(2). SCHWM R.61–79.268.33(b)(3). SCHWM R.61–79.268.33(b)(4). SCHWM R.61–79.268.33(b)(5). SCHWM R.61–79.268.33(c). SCHWM R.61–79.268.33(d)(intro). SCHWM R.61–79.268.33(d)(1). SCHWM R.61–79.268.33(d)(2). SCHWM R.61–79.268.40/Table.

Federal requirements	Federal Register	Analogous State authority
Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil, Checklist 190, RCRA XI, HSWA Provision.	65 FR 81373–81381, December 26, 2000	SCHWM R.61–79.268.32(a). SCHWM R.61–79.268.32(b)(intro). SCHWM R.61–79.268.32(b)(1)(i). SCHWM R.61–79.268.32(b)(1)(ii). SCHWM R.61–79.268.32(b)(2)(i). SCHWM R.61–79.268.32(b)(2)(ii) SCHWM R.61–79.268.32(b)(3). SCHWM R.61–79.268.32(b)(4). SCHWM R.61–79.268.48(a)Table UTS. SCHWM R.61–79.268.49(d). SCHWM R.61–79.268.32 Appendix III.
Mixed Waste Rule, Checklist 191, RCRA XI, Non-HSWA Provision.	66 FR 27218–27266, May 16, 2001	SCHWM R.61–79.266.210(intro). SCHWM R.61–79.266.210. SCHWM R.61–79.266.220. SCHWM R.61–79.266.225. SCHWM R.61–79.266.230(a). SCHWM R.61–79.266.230(b)(intro). SCHWM R.61–79.266.230(b)(1)–(5). SCHWM R.61–79.266.235. SCHWM R.61–79.266.240(a)(intro). SCHWM R.61–79.266.240(a)(1)(intro). SCHWM R.61–79.266.240(a)(i)–(iii). SCHWM R.61–79.266.240(a)(2). SCHWM R.61–79.266.240(b). SCHWM R.61–79.266.245(a)(intro). SCHWM R.61–79.266.245(a)(1). SCHWM R.61–79.266.245(a)(2)(intro). SCHWM R.61–79.266.245(a)(2)(i)–(iv). SCHWM R.61–79.266.245(b). SCHWM R.61–79.266.250(a)(intro). SCHWM R.61–79.266.250(a)(1)–(4). SCHWM R.61–79.266.250(b). SCHWM R.61–79.266.260.
Mixture and Derived-From Rule, Revisions, Checklist 192A, RCRA Cluster XI, HSWA/non-HSWA.	66 FR 27266–27297, May 16, 2001	SCHWM R.61–79.261.3(a)(2)(iii). SCHWM R.61–79.261.3(a)(2)(iv). SCHWM R.61–79.261.3(c)(2)(i). SCHWM R.61–79.261.3(g)(1). SCHWM R.61–79.261.3(g)(2). SCHWM R.61–79.261.3(g)(2)(i). SCHWM R.61–79.261.3(g)(2)(ii). SCHWM R.61–79.261.3(g)(3). SCHWM R.61–79.261.3(h)(1). SCHWM R.61–79.261.3(h)(2). SCHWM R.61–79.261.3(h)(2)(i). SCHWM R.61–79.261.3(h)(2)(ii). SCHWM R.61–79.261.3(h)(3).
Land Disposal Restrictions Correction, Checklist 192B, RCRA Cluster XI, HSWA.	66 FR 27266–27297, May 16, 2001	SCHWM R.61–79.288 Appendix VII, Table 1.
Change of Official EPA Mailing Address, Checklist 193, RCRA Cluster XI, HSWA/non-HSWA.	66 FR 34374–34376, June 28, 2001	SCHWM R.61–79.260.11(a)(11).
Mixture and Derived-From Rules, Revision II, Checklist 194, RCRA XII, HSWA/Non-HSWA.	66 FR 50332–50334, October 3, 2001	SCHWM R.61–79.261.3(a)(2)(iv). SCHWM R.61–79.261.3(a)(2)(iv)(A). SCHWM R.61–79.261.3(a)(2)(iv)(B). SCHWM R.61–79.261.3(a)(2)(iv)(C). SCHWM R.61–79.261.3(a)(2)(iv)(D). SCHWM R.61–79.261.3(a)(2)(iv)(E). SCHWM R.61–79.261.3(a)(2)(iv)(F). SCHWM R.61–79.261.3(a)(2)(iv)(G). SCHWM R.61–79.261.3(g)(4).

Federal requirements	**Federal Register**	Analogous State authority
Inorganic Chemical Manufacturing Wastes Identification and Listing, Checklist 195, RCRA XII, HSWA/Non-HSWA.	66 FR 58258–58300, November 20, 2001	SCHWM R.61–79.261.4(b)(15). SCHWM R.61–79.261.4(b)(15)(i). SCHWM R.61–79.261.4(b)(15)(ii)–(iv). SCHWM R.61–79.261.4(b)(15)(v). SCHWM R.61–79.261.32. SCHWM R.61–79.Appendix VII. SCHWM R.61–79.268.36(a). SCHWM R.61–79.268.36(b)(intro). SCHWM R.61–79.268.36(b)(1). SCHWM R.61–79.268.36(b)(2). SCHWM R.61–79.268.36(b)(3). SCHWM R.61–79.268.36(b)(4). SCHWM R.61–79.268.36(b)(5). SCHWM R.61–79.268.36(c). SCHWM R.61–79.268.40/Table.
CAMU Amendments, Checklist 196, RCRA XII, HSWA Provision.	67 FR 2962–33029, January 22, 2002	SCHWM R.61–79.261.10. SCHWM R.61–79.264.550(a). SCHWM R.61–79.264.550(b). SCHWM R.61–79.264.551 SCHWM R.61–79.264.551(a)(intro). SCHWM R.61–79.264.552(a). SCHWM R.61–79.264.552(a)(1). SCHWM R.61–79.264.552(a)(1)(i). SCHWM R.61–79.264.552(a)(1)(ii). SCHWM R.61–79.264.552(a)(1)(ii)(A). SCHWM R.61–79.264.552(a)(1)(ii)(B). SCHWM R.61–79.264.552(a)(1)(iii). SCHWM R.61–79.264.552(a)(2). SCHWM R.61–79.264.552(a)(3). SCHWM R.61–79.264.552(a)(3)(i). SCHWM R.61–79.264.552(a)(3)(ii). SCHWM R.61–79.264.552(a)(3)(iii). SCHWM R.61–79.264.552(a)(3)(iv). SCHWM R.61–79.264.552(a)(4). SCHWM R.61–79.264.552(a)(5). SCHWM R.61–79.264.552(b)(1). SCHWM R.61–79.264.552(b)(1)(i). SCHWM R.61–79.264.552(b)(1)(ii). SCHWM R.61–79.264.552(b)(2). SCHWM R.61–79.264.552(c). SCHWM R.61–79.264.552(c)(1). SCHWM R.61–79.264.552(c)(2). SCHWM R.61–79.264.552(c)(3). SCHWM R.61–79.264.552(c)(4). SCHWM R.61–79.264.552(c)(5). SCHWM R.61–79.264.552(c)(6). SCHWM R.61–79.264.552(c)(7). SCHWM R.61–79.264.552(d). SCHWM R.61–79.264.552(d)(1). SCHWM R.61–79.264.552(d)(2). SCHWM R.61–79.264.552(d)(3). SCHWM R.61–79.264.552(e). SCHWM R.61–79.264.552(e)(1). SCHWM R.61–79.264.552(e)(2). SCHWM R.61–79.264.552(e)(3). SCHWM R.61–79.264.552(e)(3)(i). SCHWM R.61–79.264.552(e)(3)(ii). SCHWM R.61–79.264.552(e)(3)(ii)(A). SCHWM R.61–79.264.552(e)(3)(ii)(B). SCHWM R.61–79.264.552(e)(4). SCHWM R.61–79.264.552(e)(4)(i). SCHWM R.61–79.264.552(e)(4)(i)(A). SCHWM R.61–79.264.552(e)(4)(i)(A)(1). SCHWM R.61–79.264.552(e)(4)(i)(A)(2). SCHWM R.61–79.264.552(e)(4)(i)(B). SCHWM R.61–79.264.552(e)(4)(i)(C). SCHWM R.61–79.264.552(e)(4)(ii). SCHWM R.61–79.264.552(e)(4)(iii). SCHWM R.61–79.264.552(e)(4)(iv). SCHWM R.61–79.264.552(e)(4)(iv)(A). SCHWM R.61–79.264.552(e)(4)(iv)(B). SCHWM R.61–79.264.552(e)(4)(iv)(C). SCHWM R.61–79.264.552(e)(4)(iv)(D).

Federal requirements	Federal Register	Analogous State authority
		SCHWM R.61–79.264.552(e)(4)(iv)(E). SCHWM R.61–79.264.552(e)(4)(iv)(F). SCHWM R.61–79.264.552(e)(4)(v). SCHWM R.61–79.264.552(e)(4)(v)(A). SCHWM R.61–79.264.552(e)(4)(v)(B). SCHWM R.61–79.264.552(e)(4)(v)(C). SCHWM R.61–79.264.552(e)(4)(v)(D). SCHWM R.61–79.264.552(e)(4)(v)(E). SCHWM R.61–79.264.552(e)(4)(v)(E)(1). SCHWM R.61–79.264.552(e)(4)(v)(E)(2). SCHWM R.61–79.264.552(e)(4)(v)(E)(3). SCHWM R.61–79.264.552(e)(4)(v)(E)(4). SCHWM R.61–79.264.552(e)(4)(v)(E)(5). SCHWM R.61–79.264.552(e)(4)(vi). SCHWM R.61–79.264.552(e)(4)(vii). SCHWM R.61–79.264.552(e)(5). SCHWM R.61–79.264.552(e)(5)(i). SCHWM R.61–79.264.552(e)(5)(ii). SCHWM R.61–79.264.552(e)(5)(iii). SCHWM R.61–79.264.552(e)(6). SCHWM R.61–79.264.552(e)(6)(i). SCHWM R.61–79.264.552(e)(6)(i)(A). SCHWM R.61–79.264.552(e)(6)(i)(B). SCHWM R.61–79.264.552(e)(6)(ii). SCHWM R.61–79.264.552(e)(6)(ii)(A). SCHWM R.61–79.264.552(e)(6)(ii)(B). SCHWM R.61–79.264.552(e)(6)(iii). SCHWM R.61–79.264.552(e)(6)(iii)(A). SCHWM R.61–79.264.552(e)(6)(iii)(B). SCHWM R.61–79.264.552(e)(6)(iii)(C). SCHWM R.61–79.264.552(e)(6)(iii)(D). SCHWM R.61–79.264.552(e)(6)(iii)(E). SCHWM R.61–79.264.552(e)(6)(iii)(F). SCHWM R.61–79.264.552(e)(6)(iv). SCHWM R.61–79.264.552(e)(6)(iv)(A). SCHWM R.61–79.264.552(e)(6)(iv)(A)(1). SCHWM R.61–79.264.552(e)(6)(iv)(A)(2). SCHWM R.61–79.264.552(e)(6)(iv)(A)(3). SCHWM R.61–79.264.552(e)(6)(iv)(A)(4). SCHWM R.61–79.264.552(e)(6)(iv)(A)(5). SCHWM R.61–79.264.552(e)(6)(iv)(B). SCHWM R.61–79.264.552(e)(6)(v). SCHWM R.61–79.264.552(f). SCHWM R.61–79.264.552(f)(1). SCHWM R.61–79.264.552(f)(2). SCHWM R.61–79.264.552(f)(2)(i). SCHWM R.61–79.264.552(f)(2)(ii). SCHWM R.61–79.264.552(g). SCHWM R.61–79.264.552(h). SCHWM R.61–79.264.552(i). SCHWM R.61–79.264.552(j). SCHWM R.61–79.264.552(k). SCHWM R.61–79.264.554(a)(1). SCHWM R.61–79.264.555(a). SCHWM R.61–79.264.555(a)(1). SCHWM R.61–79.264.555(a)(2). SCHWM R.61–79.264.555(a)(2)(i). SCHWM R.61–79.264.555(a)(2)(ii). SCHWM R.61–79.264.555(a)(2)(iii). SCHWM R.61–79.264.555(a)(3). SCHWM R.61–79.264.555(b). SCHWM R.61–79.264.555(c). SCHWM R.61–79.264.555(d). SCHWM R.61–79.264.555(e). SCHWM R.61–79.264.555(e)(1). SCHWM R.61–79.264.555(e)(2). SCHWM R.61–79.264.555(e)(3). SCHWM R.61–79.264.555(e)(4). SCHWM R.61–79.264.555(e)(5). SCHWM R.61–79.264.555(e)(6). SCHWM R.61–79.264.555(f). SCHWM R.61–79.264.555(g).

Federal requirements	Federal Register	Analogous State authority
Hazardous Air Pollutant Standards for Combusters; Corrections, Checklist 197, RCRA XII, HSWA/non-HSWA Provision.	67 FR 6968–6996, February 14, 2002	SCHWM R.61–79.266.100(a). SCHWM R.61–79.266.100(b)(1). SCHWM R.61–79.266.100(d)(1)(i)(B). SCHWM R.61–79.266.100(d)(2)(i). SCHWM R.61–79.266.100(d)(2)(ii). SCHWM R.61–79.266.100(d)(3)(intro). SCHWM R.61–79.266.100(d)(3)(i)(intro). SCHWM R.61–79.266.100(d)(3)(i)(D). SCHWM R.61–79.270.42(j)(1).
Hazardous Air Pollutant Standards for Combusters; Corrections, Checklist 198, RCRA XII, HSWA/non-HSWA Provision.	67 FR 6968–6996, February 14, 2002	SCHWM R.61–79.266.100(a). SCHWM R.61–79.266.100(b)(1). SCHWM R.61–79.266.100(d)(1)(i)(B). SCHWM R.61–79.266.100(d)(2)(i). SCHWM R.61–79.266.100(d)(2)(ii). SCHWM R.61–79.266.100(d)(3)(intro). SCHWM R.61–79.266.100(d)(3)(i)(intro). SCHWM R.61–79.266.100(d)(3)(i)(D). SCHWM R.61–79.270.42(j)(1).

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

South Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which South Carolina is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in South Carolina?

South Carolina is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Catawba Indian Nation. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying South Carolina's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart PP for this authorization of South Carolina's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective April 11, 2005.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 18, 2005.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 05–2457 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 25

[IB Docket No. 99–67; FCC 03–283]

Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted new rules and policies pertaining to portable Global Mobile Personal Communications by Satellite (GMPCS) transceivers, *i.e.*, satellite telephones and other portable transceivers operated by end users for communication via direct radio links with satellites. These devices are used for both voice and data communication and may be used for internet access or other modes of broadband communication. Certain rules contained new information collection requirements and were published in the **Federal Register** on February 6, 2004. This document announces the effective date of these published rules.

DATES: The amendments to 47 CFR 1.1307, 2.1033, 2.1204, 25.129 and 25.132 published at 69 FR 5707, February 6, 2004, became effective on March 8, 2004.

FOR FURTHER INFORMATION CONTACT: William Bell, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0741 or via the Internet at *William.Bell@fcc.gov.*

SUPPLEMENTARY INFORMATION: On July 22, 2004, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 1.1307, 2.1033, 2.1204, 25.129 and 25.132 pursuant to OMB Control No. 3060–1063. Accordingly, the information collection requirements contained in these rules became effective on March 8, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–2503 Filed 2–8–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–153; FCC 04–285]

Ultra-Wideband Transmission Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document responds to two petitions for reconsideration that were filed in response to the Commission's decision to establish regulations for unlicensed ultra-wideband (''UWB'') operation. It also responds to the rule making proposals contained in the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in this docket. The order establishes new rules for wideband unlicensed devices operating in the 5925–7250 MHz, 16.2–17.7 GHz, and 22.12–29 GHz bands.

DATES: Effective March 11, 2005.

FOR FURTHER INFORMATION CONTACT: John Reed (202) 418–2455, Policy and Rules Division, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Report and Order and Second Memorandum Opinion and Order* (''2nd R&O and 2nd MO&O''), FCC 04–285, adopted December 15, 2004, and released December 16, 2004. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. 445 12th Street, Room CY–B402, Washington, DC, (202) 488–5300; FAX (202) 488–5563. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of Second Report and Order

1. On February 14, 2002, the Commission adopted a *First Report and Order* implementing regulations to permit the unlicensed operation of ultra-wideband transmission systems. In response to fourteen petitions for reconsideration, a *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* (''MO&O and FNPRM'') was adopted on February 13, 2003, 69 FR 19746 and 69 FR 19773, April 22, 2003. Specifically, the Commission proposed amendments to four areas of its part 15 regulations. These amendments addressed: (1) The operation of low PRF systems in the 3.1–10.6 GHz band; (2) the measurement procedures applied to frequency hopping vehicular radar systems operating in the 22–29 GHz band; (3) the peak power limits applicable to wide-bandwidth, non-UWB part 15 transmitters; and (4) the elimination of the UWB definition.

2. *Low PRF UWB systems.* In the *FNPRM,* the Commission invited comment on whether to amend the rules to permit the operation of any UWB product under the UWB standards currently designated for hand-held devices as long as the PRF does not exceed 200 kHz and the equipment employs a pulsed or an impulse modulation. In the *2nd R&O,* the Commission declines to amend its rules stating that low PRF systems can have a higher potential for causing interference unless some type of signal processing is incorporated in the victim receiver. The Commission will accommodate the requests from the equipment developers by increasing the peak power emission limit for select frequency bands available under the non-UWB part 15 regulations.

3. *Non-UWB peak power emission limits.* When an average emission limit

is specified for non-UWB devices, the rules also specify a limit on peak power that is 20 dB greater than the average limit. In some cases, peak measurement by a spectrum analyzer requires the application of a pulse desensitization correction factor (''PDCF'') in order to compensate for the analyzer's inability to respond fast enough to measure the true peak for pulse widths narrower than the inverse of the resolution bandwidth. This peak limit may effectively prohibit some wideband operations. Further, a limit on the total peak power level is not well suited to measure the operation of, or represent the interference potential of, transmitters that employ extremely wide bandwidths. For that reason, the Commission proposed in the *FNPRM* to implement the same peak limit that is applied to UWB systems.

4. The total peak power of such a wideband system is not relevant to the interference potential of the device. Rather, it is the potential power in the bandwidth of the victim receiver that is relevant. In the *2nd R&O,* the Commission recognizes that allowing increased peak power levels could have an impact on some radio services and also expresses concerned that allowing higher peak power levels could result in a significant increase in the number of consumer products along with a corresponding increase in interference potential. Thus, it believes that cautious constraints on the permitted frequency bands of operation and the standards for operation within those bands are necessary while it gains experience.

5. The Commission is amending its part 15 rules to permit higher peak emission levels in the 5925–7250 MHz band, indicating that the fixed, fixed-satellite, and mobile systems employed in this band likely incorporate a sufficient level of signal processing to reduce, if not eliminate, their vulnerability to increased peak emission levels, or it is expected that such authorized systems would generally be located in remote areas or with the receiving antennas situated in such a manner that they would not be routinely subject to emissions from nearby part 15 devices. The Commission also is permitting higher peak emission levels in the 16.2–17.7 GHz band but will limit operation within this band to vehicular back-up assistance radars that operate only when the vehicle is in reverse. This will significantly limit the proliferation of such devices and should ensure that harmful interference does not occur to the authorized radio services. Potential equipment manufacturers are forewarned that the 17.3–17.7 GHz portion of the 16.2–17.7 GHz band has been allocated in Region 2 and the United States for the Broadcast Satellite Service, effective April 1, 2007. Once this allocation becomes effective, there is a possibility that the 17.3–17.7 GHz band may become designated as a restricted band and that part 15 fundamental emissions will be prohibited in this portion of the spectrum.

6. A peak EIRP limit of 20 log (RBW/50) dBm is adopted for the 5925–7250 MHz and 16.2–17.7 GHz bands, with RBW, the resolution bandwidth of the measurement instrument, being 1 to 50 MHz. This peak limit applies to the 50 MHz band centered at the frequency at which the highest average emission level occurs. RBW must be no greater than the −10 dB bandwidth of the emission. If frequency hopping or stepped frequency modulation is employed, the frequency hop or step function shall be disabled and the transmitter shall operate continuously on a fundamental frequency to measure the −10 dB bandwidth that is used to determine the maximum RBW that may be employed for the peak emission level. For transmitters operating under these new peak limits, the Commission is adopting the more stringent UWB average emission specifications requested by the National Telecommunications and Information Administration (''NTIA''). These limits and other pertinent standards are shown in the accompanying changes to the rules.

7. *Vehicular radar systems.* In the *FNPRM,* the Commission proposed to permit pulsed frequency hopping vehicular radars to be included under the definition of a UWB device provided the transmitters occupy the minimum required bandwidth within any 10 millisecond period rather than at any instantaneous point in time. However, the Commission is unwilling at this time to classify as a UWB device a frequency hopping transmitter that emits relatively narrowband signals. However, the systems can be accommodated under the non-UWB rules by increasing the peak power emission limit. As requested by NTIA, a frequency hopped vehicular radar system may not operate in the restricted bands. Thus, the frequency band of operation that is being established for this vehicle radar system is 23.12–29.0 GHz, exclusive of the restricted band at 23.6–24.0 GHz. Vehicular radar transmitters operating under these new peak limits also will be subject to limits similar to the UWB average emission specifications, as requested by NTIA. Any type of modulation may be employed. These limits and other pertinent standards are shown in the accompanying changes to the rules.

8. The interference aspects of a transmitter employing frequency hopping, stepped frequency modulation or gating are quite similar, as viewed by a receiver, in that both appear to the receiver to emit for a short period of time followed by a quiet period. Permitting the emissions from frequency hopping systems to be measured with the hopping active could give such systems a competitive advantage by permitting higher instantaneous average power levels than what are allowed for gated systems. Thus, the Commission also is eliminating the requirement that gated or stepped systems operating under this new regulation be tested with the gating or step function turned off. However, no provision is provided to permit transmitters employing swept frequency modulation to perform measurements with the sweep stopped. The Commission also is adopting NTIA's requested measurement procedure requiring that the RMS average and peak emission measurements be repeated with the analyzer in the maximum hold mode until there is no significant increase, i.e., less than 3 dB, in any of the maximum hold values.

9. The UWB regulations for operation in the 22–29 GHz band require vehicular radar systems that employ gating to be measured with the transmitter gated on and should be subject to the same measurement procedures. Thus, the Commission is amending the UWB regulations to permit the emissions from gated vehicular radar systems to be measured with the gating active. However, as requested by NTIA similar provisions are not being applied to UWB systems that employ frequency hopping, stepped frequency or similar modulation techniques.

10. *Clarification of existing non-UWB peak power emission limits.* As proposed in the FNPRM, the Commission is amending 47 CFR 15.35(b) to clarify that the peak power requirement applies to the total peak power produced by the device, unless specifically stated otherwise, and may necessitate the use of a PDCF. This clarification does not result in any changes to the current part 15 standards and should eliminate any confusion on the need to apply a PDCF under certain modulation and measurement conditions.

11. *UWB definition.* In the *FNPRM,* the Commission proposed to eliminate the minimum bandwidth requirement and to permit the operation of any transmission system, regardless of its

bandwidth, as long as it complies with the standards for UWB operation set forth in Subpart F of 47 CFR part 15. However, the Commission has accommodated the narrowband operations sought by the proponents in this proceeding through its amendments to the peak power levels while keeping any further expansion of equipment applications out of the sensitive restricted bands. Because of these changes, there is no necessity at this time to eliminate the UWB minimum bandwidth requirements. Such changes could be disruptive and could further delay the introduction of UWB devices.

Summary of Second Memorandum Opinion and Order

12. The *2nd MO&O* addresses two petitions for reconsideration that were filed in response to the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making.* Cingular, Inc. objected to the presence and level of emissions from UWB devices that may appear in the frequency bands allocated for the Cellular Radiotelephone Service (''cellular'') and for the Personal Communications Services (''PCS''); claimed that the Commission can not legally permit the unlicensed operation of radio frequency (''RF'') devices except as specifically authorized by Congress under 47 U.S.C. 307(e); and claimed that cellular and PCS licensees have exclusive use of the spectrum assigned to their respective operations and that any emissions from UWB devices undermine this exclusivity. The issues raised by Cingular are dismissed or denied, as appropriate. The Satellite Industry Association (''SIA'') argued that the UWB emission limits in the 3650–4200 MHz band used by C-band fixed satellite systems (''FSS'') are excessive and will result in harmful interference. The SIA petition is denied.

Administrative Provisions

13. The Commission will send a copy of this Second Report & Order and Second Memorandum Opinion and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

14. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

15. In this Second Report and Order and Second Memorandum Opinion and Order, we are implementing a change to the rules to facilitate the operation of wideband unlicensed transmitters. We also are responding to two petitions for reconsideration regarding rules that permit the marketing and operation of products incorporating ultra-wideband (''UWB'') technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. With appropriate technical standards, UWB devices can operate on spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently. Further, as noted in the text we have continued to apply conservative limits to the standards applicable for UWB operation, until such time as we gain additional experience, to ensure that harmful interference would not be caused to other radio spectrum users. Further, the changes adopted in this proceeding will not affect any party legally manufacturing or marketing UWB devices. Thus, we expect that our actions do not amount to a significant economic impact. Accordingly, we certify that the rules being adopted in this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

16. The Commission will send a copy of the Second Report and Order and Second Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[6] In addition, the Second Report and Order and Second Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.[7]

17. *Ordering Clauses.* This action is taken pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r), 304 and 307. *It also is ordered* that part 15 of the Commission's Rules and Regulations *is amended* as specified in rule changes, effective 30 days after publication in the **Federal Register**. *It is ordered* that the Petition for Reconsideration from Cingular, Inc., *is denied. It is ordered* that the Petition for Reconsideration from Satellite Industry Association *is dismissed.*

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

19. *It is further ordered* that this proceeding *is terminated.*

List of Subjects 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, title 47 of the Code of Federal Regulations, part 15, is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336 and 544a.

■ 2. Section 15.35 is amended by revising paragraph (b) to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

* * * * *

[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] 15 U.S.C. 632.

[6] See 5 U.S.C. 801(a)(1)(A).

[7] See 5 U.S.C. 605(b).

(b) Unless otherwise specified, on any frequency or frequencies above 1000 MHz, the radiated emission limits are based on the use of measurement instrumentation employing an average detector function. Unless otherwise specified, measurements above 1000 MHz shall be performed using a minimum resolution bandwidth of 1 MHz. When average radiated emission measurements are specified in this part, including average emission measurements below 1000 MHz, there also is a limit on the peak level of the radio frequency emissions. Unless otherwise specified, *e.g.*, see §§ 15.250, 15.252, 15.255, and 15.509–15.519, the limit on peak radio frequency emissions is 20 dB above the maximum permitted average emission limit applicable to the equipment under test. This peak limit applies to the total peak emission level radiated by the device, *e.g.*, the total peak power level. Note that the use of a pulse desensitization correction factor may be needed to determine the total peak emission level. The instruction manual or application note for the measurement instrument should be consulted for determining pulse desensitization factors, as necessary.

* * * * *

■ 3. Section 15.215 is amended by revising paragraph (c), to read as follows:

§ 15.215 Additional provisions to the general radiated emission limitations.

* * * * *

(c) Intentional radiators operating under the alternative provisions to the general emission limits, as contained in §§ 15.217 through 15.257 and in Subpart E of this part, must be designed to ensure that the 20 dB bandwidth of the emission, or whatever bandwidth may otherwise be specified in the specific rule section under which the equipment operates, is contained within the frequency band designated in the rule section under which the equipment is operated. The requirement to contain the designated bandwidth of the emission within the specified frequency band includes the effects from frequency sweeping, frequency hopping and other modulation techniques that may be employed as well as the frequency stability of the transmitter over expected variations in temperature and supply voltage. If a frequency stability is not specified in the regulations, it is recommended that the fundamental emission be kept within at least the central 80% of the permitted band in order to minimize the possibility of out-of-band operation.

■ 4. Section 15.250 is added to read as follows:

§ 15.250 Operation of wideband systems within the band 5925–7250 MHz.

(a) The −10 dB bandwidth of a device operating under the provisions of this section must be contained within the 5925–7250 MHz band under all conditions of operation including the effects from stepped frequency, frequency hopping or other modulation techniques that may be employed as well as the frequency stability of the transmitter over expected variations in temperature and supply voltage.

(b) The −10 dB bandwidth of the fundamental emission shall be at least 50 MHz. For transmitters that employ frequency hopping, stepped frequency or similar modulation types, measurement of the −10 dB minimum bandwidth specified in this paragraph shall be made with the frequency hop or step function disabled and with the transmitter operating continuously at a fundamental frequency following the provisions of § 15.31(m).

(c) Operation on board an aircraft or a satellite is prohibited. Devices operating under this section may not be employed for the operation of toys. Except for operation onboard a ship or a terrestrial transportation vehicle, the use of a fixed outdoor infrastructure is prohibited. A fixed infrastructure includes antennas mounted on outdoor structures, *e.g.*, antennas mounted on the outside of a building or on a telephone pole.

(d) Emissions from a transmitter operating under this section shall not exceed the following equivalent isotropically radiated power (EIRP) density levels:

(1) The radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following RMS average limits based on measurements using a 1 MHz resolution bandwidth:

Frequency in MHz	EIRP in dBm
960–1610	−75.3
1610–1990	−63.3
1990–3100	−61.3
3100–5925	−51.3
5925–7250	−41.3
7250–10600	−51.3
Above 10600	−61.3

(2) In addition to the radiated emission limits specified in the table in paragraph (d)(1) of this section, transmitters operating under the provisions of this section shall not exceed the following RMS average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	−85.3
1559–1610	−85.3

(3) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs and this 50 MHz bandwidth must be contained within the 5925–7250 MHz band. The peak EIRP limit is 20 log (RBW/50) dBm where RBW is the resolution bandwidth in megahertz that is employed by the measurement instrument. RBW shall not be lower than 1 MHz or greater than 50 MHz. The video bandwidth of the measurement instrument shall not be less than RBW. If RBW is greater than 3 MHz, the application for certification filed with the Commission shall contain a detailed description of the test procedure, calibration of the test setup, and the instrumentation employed in the testing.

(4) Radiated emissions at or below 960 MHz shall not exceed the emission levels in § 15.209.

(5) Emissions from digital circuitry used to enable the operation of the transmitter may comply with the limits in § 15.209 provided it can be clearly demonstrated that those emissions are due solely to emissions from digital circuitry contained within the transmitter and the emissions are not intended to be radiated from the transmitter's antenna. Emissions from associated digital devices, as defined in § 15.3(k), *e.g.*, emissions from digital circuitry used to control additional functions or capabilities other than the operation of the transmitter, are subject to the limits contained in subpart B of this part. Emissisons from these digital circuits shall not be employed in determining the −10 dB bandwidth of the fundamental emission or the frequency at which the highest emission level occurs.

(e) Measurement procedures:

(1) All emissions at and below 960 MHz are based on measurements employing a CISPR quasi-peak detector. Unless otherwise specified, all RMS average emission levels specified in this section are to be measured utilizing a 1 MHz resolution bandwidth with a one millisecond dwell over each 1 MHz segment. The frequency span of the analyzer should equal the number of sampling bins times 1 MHz and the sweep rate of the analyzer should equal the number of sampling bins times one millisecond. The provision in § 15.35(c) that allows emissions to be averaged over a 100 millisecond period does not

apply to devices operating under this section. The video bandwidth of the measurement instrument shall not be less than the resolution bandwidth and trace averaging shall not be employed. The RMS average emission measurement is to be repeated over multiple sweeps with the analyzer set for maximum hold until the amplitude stabilizes.

(2) The peak emission measurement is to be repeated over multiple sweeps with the analyzer set for maximum hold until the amplitude stabilizes.

(3) For transmitters that employ frequency hopping, stepped frequency or similar modulation types, the peak emission level measurement, the measurement of the RMS average emission levels, and the measurement to determine the frequency at which the highest level emission occurs shall be made with the frequency hop or step function active. Gated signals may be measured with the gating active. The provisions of § 15.31(c) continue to apply to transmitters that employ swept frequency modulation.

(4) The −10 dB bandwidth is based on measurement using a peak detector, a 1 MHz resolution bandwidth, and a video bandwidth greater than or equal to the resolution bandwidth.

(5) Alternative measurement procedures may be considered by the Commission.

■ 5. Section 15.252 is added to read as follows:

§ 15.252 Operation of wideband vehicular radar systems within the bands 16.2–17.7 GHz and 23.12–29.0 GHz.

(a) Operation under this section is limited to field disturbance sensors that are mounted in terrestrial transportation vehicles. Terrestrial use is limited to earth surface-based, non-aviation applications. Operation within the 16.2–17.7 GHz band is limited to field disturbance sensors that are used only for back-up assistance and that operate only when the vehicle is engaged in reverse.

(1) The −10 dB bandwidth of the fundamental emission shall be located within the 16.2–17.7 GHz band or within the 23.12–29.0 GHz band, exclusive of the 23.6–24.0 GHz restricted band, as appropriate, under all conditions of operation including the effects from stepped frequency, frequency hopping or other modulation techniques that may be employed as well as the frequency stability of the transmitter over expected variations in temperature and supply voltage.

(2) The −10 dB bandwidth of the fundamental emission shall be 10 MHz or greater. For transmitters that employ frequency hopping, stepped frequency or similar modulation types, measurement of the −10 dB minimum bandwidth specified in this paragraph shall be made with the frequency hop or step function disabled and with the transmitter operating continuously at a fundamental frequency following the provisions of § 15.31(m).

(3) For systems operating in the 23.12–29.0 GHz band, the frequencies at which the highest average emission level and at which the highest peak level emission appear shall be greater than 24.075 GHz.

(4) These devices shall operate only when the vehicle is operating, *e.g.*, the engine is running. Operation shall occur only upon specific activation, such as upon starting the vehicle, changing gears, or engaging a turn signal. The operation of these devices shall be related to the proper functioning of the transportation vehicle, *e.g.*, collision avoidance.

(b) Emissions from a transmitter operating under this section shall not exceed the following equivalent isotropically radiated power (EIRP) density levels:

(1) For transmitters operating in the 16.2–17.7 GHz band, the RMS average radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following EIRP limits based on measurements using a 1 MHz resolution bandwidth:

Frequency in MHz	EIRP in dBm
960–1610	−75.3
1610–16,200	−61.3
16,200–17,700	−41.3
Above 17,700	−61.3

(2) For transmitters operating in the 23.12–29.0 GHz band, the RMS average radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following EIRP limits based on measurements using a 1 MHz resolution bandwidth:

Frequency in MHz	EIRP in dBm
960–1610	−75.3
1610–23,120	−61.3
23,120–23,600	−41.3
23,600–24,000	−61.3
24,000–29,000	−41.3
Above 29,000	—61.3

(3) In addition to the radiated emission limits specified in the tables in paragraphs (b)(1) and (b)(2) of this section, transmitters operating under the provisions of this section shall not exceed the following RMS average EIRP limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	−85.3
1559–1610	−85.3

(4) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs and this 50 MHz bandwidth must be contained within the 16.2–17.7 GHz band or the 24.05–29.0 GHz band, as appropriate. The peak EIRP limit is 20 log (RBW/50) dBm where RBW is the resolution bandwidth in MHz employed by the measurement instrument. RBW shall not be lower than 1 MHz or greater than 50 MHz. Further, RBW shall not be greater than the −10 dB bandwidth of the device under test. For transmitters that employ frequency hopping, stepped frequency or similar modulation types, measurement of the −10 dB minimum bandwidth specified in this paragraph shall be made with the frequency hop or step function disabled and with the transmitter operating continuously at a fundamental frequency. The video bandwidth of the measurement instrument shall not be less than RBW. The limit on peak emissions applies to the 50 MHz bandwidth centered on the frequency at which the highest level radiated emission occurs. If RBW is greater than 3 MHz, the application for certification shall contain a detailed description of the test procedure, the instrumentation employed in the testing, and the calibration of the test setup.

(5) Radiated emissions at or below 960 MHz shall not exceed the emission levels in § 15.209.

(6) Emissions from digital circuitry used to enable the operation of the transmitter may comply with the limits in § 15.209 provided it can be clearly demonstrated that those emissions are due solely to emissions from digital circuitry contained within the transmitter and the emissions are not intended to be radiated from the transmitter's antenna. Emissions from associated digital devices, as defined in § 15.3(k) , *e.g.*, emissions from digital circuitry used to control additional functions or capabilities other than the operation of the transmitter, are subject to the limits contained in subpart B of this part. Emissions from these digital circuits shall not be employed in determining the −10 dB bandwidth of

the fundamental emission or the frequency at which the highest emission level occurs.

(c) Measurement procedures:

(1) All emissions at and below 960 MHz are based on measurements employing a CISPR quasi-peak detector. Unless otherwise specified, all RMS average emission levels specified in this section are to be measured utilizing a 1 MHz resolution bandwidth with a one millisecond dwell over each 1 MHz segment. The frequency span of the analyzer should equal the number of sampling bins times 1 MHz and the sweep rate of the analyzer should equal the number of sampling bins times one millisecond. The provision in § 15.35(c) that allows emissions to be averaged over a 100 millisecond period does not apply to devices operating under this section. The video bandwidth of the measurement instrument shall not be less than the resolution bandwidth and trace averaging shall not be employed. The RMS average emission measurement is to be repeated over multiple sweeps with the analyzer set for maximum hold until the amplitude stabilizes.

(2) The peak emission measurement is to be repeated over multiple sweeps with the analyzer set for maximum hold until the amplitude stabilizes.

(3) For transmitters that employ frequency hopping, stepped frequency or similar modulation types, the peak emission level measurement, the measurement of the RMS average emission levels, the measurement to determine the center frequency, and the measurement to determine the frequency at which the highest level emission occurs shall be made with the frequency hop or step function active. Gated signals may be measured with the gating active. The provisions of § 15.31(c) continue to apply to transmitters that employ swept frequency modulation.

(4) The −10 dB bandwidth is based on measurement using a peak detector, a 1 MHz resolution bandwidth, and a video bandwidth greater than or equal to the resolution bandwidth.

(5) Alternative measurement procedures may be considered by the Commission.

■ 6. Section 15.515 is amended by adding a new paragraph (g) to read as follows:

§ 15.515 Technical requirements for vehicular radar systems.

* * * * *

(g) The emission levels from devices operating under the provisions of this section that employ gated transmissions may be measured with the gating active. Measurements made in this manner shall be repeated over multiple sweeps with the analyzer set for maximum hold until the amplitude stabilizes.

■ 7. Section 15.521 is amended by revising paragraph (d) to read as follows:

§ 15.521 Technical requirements applicable to all UWB devices.

* * * * *

(d) Within the tables in §§ 15.509, 15.511, 15.513, 15.515, 15.517, and 15.519, the tighter emission limit applies at the band edges. Radiated emission levels at and below 960 MHz are based on measurements employing a CISPR quasi-peak detector. Radiated emission levels above 960 MHz are based on RMS average measurements over a 1 MHz resolution bandwidth. The RMS average measurement is based on the use of a spectrum analyzer with a resolution bandwidth of 1 MHz, an RMS detector, and a 1 millisecond or less averaging time. Unless otherwise stated, if pulse gating is employed where the transmitter is quiescent for intervals that are long compared to the nominal pulse repetition interval, measurements shall be made with the pulse train gated on. Alternative measurement procedures may be considered by the Commission.

* * * * *

[FR Doc. 05–2505 Filed 2–8–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

Docket No. 050201021–5021–01

RIN 0660-AA15

Repeal of Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Final Rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is repealing its regulations governing reimbursement to federal entities by the private sector as a result of reallocation of frequency spectrum. The agency is taking this action in accordance with the Commercial Spectrum Enhancement Act which repealed the provision in the NTIA Organization Act under which the agency promulgated these regulations. The Commercial Spectrum Enhancement Act established a fund within the Department of Treasury through which money will be provided to federal agencies for the costs incurred in relocating their radio communications systems.

DATES: These rules become effective on February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Milton Brown, Deputy Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Room 4713, Washington, DC 20230; telephone: (202) 482–1816; facsimile: (202) 501–8013; or electronic mail: mbrown@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2002, the National Telecommunications and Information Administration (NTIA) issued a final rule entitled ''Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems'' (Mandatory Reimbursement Rules).[1] These regulations implemented a provision of Pub. L. No. 105–261, which required private sector licensees to reimburse federal agencies for the costs associated with relocating from or modifying the radio frequencies used by agencies' communications systems to accommodate the private sector licensees' use of the radio spectrum.[2] That law also directed NTIA to issue regulations to implement its requirements.

II. Repeal of the Mandatory Reimbursement Rules

On December 23, 2004, the President signed into law Public Law No. 108–494, the Commercial Spectrum Enhancement Act.[3] Among other purposes, this Act struck the provision in the NTIA Organization Act requiring private sector licensees to reimburse federal agencies' relocation costs, and in its stead, created a new fund within the Department of Treasury through which federal agencies would be reimbursed for such costs and directed NTIA to take certain actions to implement the new reimbursement and relocation plan. Because the new law strikes the authorization underpinning the Mandatory Reimbursement Rules and eliminates any obligation on private

[1] *See* 67 Fed. Reg. 41,182 (2002) (The rules were codified at 47 C.F.R. Part 301.)

[2] *See* Pub.L.No. 105-261, 112 Stat. 1920, 2132 (1998), amending section 113(g) of the NTIA Organization Act (codified at 47 U.S.C. § 923(g)).

[3] Pub.L.No. 108-494, 118 Stat. 3896, 3992 (2004).

sector licensees with respect to reimbursement, NTIA is repealing its regulations.

To the extent that NTIA must take action to implement the new reimbursement and relocation plan with respect to federal agencies, it will do so in consultation with the Interdepartment Radio Advisory Committee (IRAC),[4] the Federal Communications Commission, and the Office of Management and Budget. Any procedures developed during that process will appear in the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management, which provides the rules governing federal agencies' use of the radio spectrum.[5]

III. Other Information

The Commercial Spectrum Enhancement Act repeals the statutory authorization for the Mandatory Reimbursement Rules thereby eliminating NTIA's authority to implement these rules. Thus, NTIA must repeal these rules. Under these circumstances, providing prior notice and an opportunity for public comment on whether to repeal these rules would serve no useful purpose. As a result, under authority at 5 U.S.C. § 553(b)(B), NTIA finds good cause to waive such procedures. Moreover, the rules have not been utilized since their promulgation, and thus, no federal agency's or private sector entity's interest will be adversely affected by their repeal. Further, and for the same reason, NTIA finds good cause pursuant to 553(d)(3) to waive the requirement of a 30-day delay in effect for this rule. Thus, this rule is effective February 9, 2005.

Executive Order 12866

The repeal of the Mandatory Reimbursement Rules is not a significant regulatory action as defined by Executive Order 12866.

Executive Order 13312

The repeal of the Mandatory Reimbursement Rules do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required under 5 U.S.C. § 553 or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Thus, no regulatory flexibility analysis is required and none has been prepared.

Paperwork Reduction Act

This action contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Lists of Subjects in 47 CFR Part 301

Classified information, Communications common carriers, Communications equipment, Defense communications, Federal buildings and facilities, Radio, Satellites, Telecommunications.

PART 301—[REMOVED AND RESERVED]

For the reasons stated above, 47 CFR Chapter III is amended by removing and reserving Part 301 pursuant to authority contained in Pub. L. No. 108–494.

Dated: February 4, 2005.

Michael D. Gallagher,

Assistant Secretary for Communications and Information Administration.

[FR Doc. 05–2514 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004–18905; Notice 2]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration.

SUMMARY: This notice denies petitions for reconsideration submitted by the Alliance of Automobile Manufacturers (Alliance) of the August 20, 2004, final rule on advanced air bag provisions in the occupant crash protection standard. We are denying the first petition because it references a test procedure that the agency has not yet proposed, for which an effective date will be proposed when a Lower Anchors and Tethers for Children (LATCH) seat installation procedure is published. We are denying the second petition because we have previously responded to the same issue and no new data have been presented.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264. Fax: (202) 493–2739. *For legal issues:* Christopher Calamita, Office of Chief Counsel, at (202) 366–2992. Fax: (202) 366–3820. You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant crash protection, specifies performance requirements for the protection of vehicle occupants in crashes (49 CFR 571.208). On May 12, 2000, we published an interim final rule that amended FMVSS No. 208 to require advanced air bags (65 FR 30680; Docket No. NHTSA 00–7013; Notice 1) (Advanced Air Bag Rule). Among other things, the rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and amended FMVSS No. 208 to require that future air bags be designed to minimize such risk. The Advanced Air Bag Rule established a rigid barrier crash test with a 5th percentile adult female test dummy, as well as several low risk deployment and out-of-position (OOP) tests using a range of dummy sizes and a number of specified child restraint systems (CRSs).

The agency received multiple petitions for reconsideration to the Advanced Air Bag Rule. Petitioners raised a large number of concerns about the various test procedures in their written submissions. To address these issues adequately, the agency held a technical workshop so that we could better understand the specific concerns and better determine if the test procedures needed refinement.[1] The

[4] The IRAC is an advisory commmittee comprised of the federal agencies using the radio spectrum. The IRAC provides spectrum management advice and support to the Assistant Secretary for Communications and Information and NTIA Administrator.

[5] The NTIA Manual is available on NTIA's website at http://www.ntia.doc.gov/osmhome/redbook/redbook.html.

[1] The workshop was held on December 6, 2000, at NHTSA's Vehicle Research and Test Center in East Liberty, Ohio. Representatives of 18 vehicle manufacturers and 13 seat, sensor, and dummy manufacturers attended the workshop. Five different vehicles were used as test vehicles. Some of the five had been provided by manufacturers

Continued

agency then addressed each petition in a **Federal Register** notice published on December 18, 2001, and made several changes to the Advanced Air Bag Rule (66 FR 65376; Docket No. NHTSA 01–11110). These changes included a number of refinements to the test dummy positioning procedures in the barrier tests and the low risk deployment tests. The December 2001 final rule also amended the list of CRSs contained in Appendix A by removing from the list CRSs no longer in production, and adding other CRSs.

On November 19, 2003, the agency published a final rule that responded, in part, to petitions for reconsideration of the amendments made in the December 2001 final rule (68 FR 65179; Docket No. NHTSA 03–16476, Notice 1). Various seat and dummy positioning procedures were amended. The November 19, 2003, final rule also amended the list of CRSs in Appendix A. Specifically, effective September 1, 2004, we removed three rear-facing CRSs from Subpart B of the appendix and added two LATCH compliant CRSs to Subpart C. The preamble to the final rule also addressed the issue of lead time for changes to Appendix A.

On August 20, 2004, the agency published a final rule that responded to petitions for reconsideration of the amendments made in the November 19, 2003, final rule (69 FR 51598; Docket No. NHTSA 04–18905). The majority of the petitions were denied. However, we clarified two detailed points related to dummy positioning in OOP tests and extended the effective date for the LATCH seats added to Appendix A to September 1, 2006.

II. Petitions for Reconsideration

A. Effective Date Revision—Appendix A

The Alliance petitioned ''NHTSA to provide at least 1-year of lead time between the issuance of a compliance test procedure and the effective date of changes to Appendix A that would add child restraints equipped with LATCH lower attachments.'' While the Alliance strongly supports the development of a procedure for the installation of LATCH seats, as stated in the Alliance petition on the November 19, 2003, final rule, it contended that ''artificially tight installations of LATCH equipped child restraints in a compliance test could cause some occupant classification systems to misclassify the child restraint (but not in typical real-world usage).'' The petition stated that ''vehicle manufacturers and their suppliers need substantial lead-time to evaluate their systems and potentially redesign and incorporate into production suppression systems that can meet the test procedures that are to be developed.''

B. Future Appendix A Revisions

In addition, the Alliance petitioned NHTSA to provide at least two years of lead time for any future revisions to Appendix A. The Alliance expects that there will be a major update of the Appendix to add many LATCH-equipped CRSs. The Alliance stated that ''at least 2-years of lead time would help vehicle manufacturers and their suppliers to design and develop suppression systems that will meet the LATCH compliance test procedures that are to be developed.''

III. Response to Petitions

A. Effective Date Revision—Appendix A

We are denying the Alliance petition for one year of lead time between the issuance of a LATCH CRS installation compliance test procedure and the effective date of changes to Appendix A that would add CRSs equipped with LATCH lower attachments. In the August 20, 2004, final rule (69 FR 51598) the agency stated:

> To ensure the robustness of automatic suppression systems, a manufacturer must be able to certify that the system operates under conditions representative of real world use. This includes operation when used with CRS designs that have been sold for almost two years. However, as the Alliance noted, the agency does not yet have a compliance test procedure in place for testing seats installed by means of the LATCH anchorages. Therefore, the effective date for the LATCH equipped CRSs in Appendix A is extended until September 1, 2006. By that time, the agency will have developed a compliance test procedure for securing a LATCH-equipped CRS to a vehicle using the lower anchor attachments.

We are denying the petition because it presupposes that the agency will not publish a test procedure in a time sufficient to allow ample notice and lead time. When the Notice of Proposed Rulemaking (NPRM) for the LATCH procedure is issued, the agency will have an opportunity to propose an effective date of the procedure or of the CRSs to which the procedure would apply. To do this in advance of the NPRM publication is premature.

B. Future Appendix A Revisions

We are also denying the Alliance petition to provide at least two years of lead time for any future proposed revisions to Appendix A. In the December 18, 2001, final rule we noted that, generally, a 1-year lead time will be provided for amendments to Appendix A, but stressed the importance of establishing a list that is representative of real world usage (66 FR 65390). In response to the December 18, 2001, final rule, Mitsubishi petitioned the agency for a 2-year lead time for additions to Appendix A. In the preamble to the November 19, 2003, final rule the agency provided an extensive discussion of the lead time for additions to Appendix A (68 FR 65188).

> Additionally, the one year lead time is consistent with the agency's intent that occupant detection systems be robust and able to detect any CRS, including those that are relatively new to the market. However, in recognition that manufacturers need to know what CRSs will be included as they design their new models, we have decided to slightly change our position on lead time by making any changes to Appendix A effective for the next model year introduced one year after publication of the final rule modifying Appendix A. (Consistent with our past practice, for this purpose, the model year begins on September 1 of the prior calendar year.) This will result in a one to two year lead time. For example, if Appendix A were updated March 1, 2004, the revised appendix would become effective September 1, 2005, a period of eighteen months after publication. We believe this approach will allow manufacturers to tie their certification to the automatic suppression requirements with the introduction of a new model year.

Therefore, the agency has committed to providing at least one year of lead time, plus any additional time up to the next September 1st, so as to have the requirements to assure compliance using the new CRSs become effective at the beginning of a model year. The current petition for reconsideration for two years of lead time provides no new information that would cause the agency to reconsider our position on this issue.

IV. Conclusion

NHTSA received two petitions for reconsideration to the August 20, 2004, FMVSS No. 208 final rule from the Alliance. The Alliance requested that any lead time between the issuance of a compliance test procedure to install LATCH seats and the effective date of changes to Appendix A be at least one year. They further requested a two year lead time for any future revision to Appendix A. We are denying these petitions.

The first petition is denied as premature, since the agency can and will propose an appropriate lead time when the LATCH test procedure is published. The second petition is denied because NHTSA addressed the exact same issue in the preamble to the November 19, 2003, final rule, and no new data have been presented that

because they were experiencing particular problems with the existing test procedures in those vehicles.

would lead us to change our previous determination.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: February 3, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–2469 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–5025–18; I.D. 020205H]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,415 square nautical miles (nm^2) (4,853.3 km^2), east of Portsmouth, NH for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours February 11, 2005, through 2400 hours February 25, 2005.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 30, 2005, an aerial survey reported a sighting of four right whales in the proximity 43°07′ N. lat. and 68°35′ W. long. This position lies east of Portsmouth, NH. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bounded by the following coordinates:

43° 26′N., 69° 01′W. (NW Corner)
43° 26′N., 68° 10′W.
42° 48′N., 68° 10′W.
42° 48′N., 69° 01′W.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps with the Northeast multispecies' Cashes Ledge Closure Area and the Harbor Porpoise Take Reduction Plan's Offshore Closure Area. This DAM action does not supersede the multispecies closures found at 50 CFR 648.81 or the Harbor Porpoise Take

Reduction Plan regulations found at 50 CFR 229.33.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 11, 2005, through 2400 hours February 25, 2005, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 3, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–2529 Filed 2–4–05; 3:41 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202339–4339–01; I.D. 020405B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to fully use the 2005 pollock interim total allowable catch (TAC) specified for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 6, 2005, until 2400 hrs, A.l.t. March 10, 2005.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on January 29, 2005 (70 FR 5062, February 1, 2005).

NMFS has determined that approximately 2,740 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § § 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the 2005 pollock interim TAC for Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the fishery for pollock in Statistical Area 630.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: February 4, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–2528 Filed 2–4–05; 3:41 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 26
Wednesday, February 9, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19960; Directorate Identifier 2004–CE–47–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–34 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 93–24–14, which applies to all The New Piper Aircraft, Inc. (Piper) PA–34 series airplanes. AD 93–24–14 currently requires you to repetitively replace the bolt and stack up that connect the upper drag link to the nose gear trunnion. This proposed AD is the result of many service difficulty reports related to the collapse or inadvertent retraction of the nose landing gear (NLG). Consequently, this proposed AD would retain the actions required in AD 93–24–14 until the actions of the proposed AD would begin, require you to inspect the NLG and components of the NLG using new procedures for rigging the nose gear installation, and require you to replace unserviceable parts. We are also issuing this proposed AD to detect, correct, and prevent future failure in certain components of the NLG, lack of cleanliness of the NLG due to inadequate maintenance, or lack of lubricant in the NLG or NLG components. This failure of the NLG could lead to loss of control of the airplane during take-off, landing, or taxiing operations.

DATES: We must receive any comments on this proposed AD by April 11, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida, 32960.

To view the comments to this proposed AD, go to http://dms.dot.gov. This is docket number FAA–2004–19960.

FOR FURTHER INFORMATION CONTACT: Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19960; Directorate Identifier 2004–CE–47–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19960. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication 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 this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Has FAA taken any action to this point? Several incidents where the nose landing gear (NLG) on The New Piper Aircraft, Inc. (Piper) PA–34 series airplanes collapsed caused us to issue AD 93–24–14, Amendment 39–8762 (58 FR 65115, December 13, 1993). AD 93–24–14 currently requires the repetitive replacement of the bolt and stack up that connect the upper drag link to the nose gear trunnion on all Piper PA–34 series airplanes.

What has happened since AD 93–24–14 to initiate this proposed action? The FAA has received 188 service difficulty reports (SDRs) related to the NLG on Piper PA–34 series airplanes. There are 72 SDRs that describe the collapse or inadvertent retraction of the NLG.

A review of the SDRs related to the NLG and the collapse or inadvertent retraction of the NLG found that one or more of the following conditions could result in collapse of the NLG:

—nose gear steering control excessive travel and the disengagement of the tiller roller;
—failure or out of tolerances of the retraction links and bolts;
—crack(s) in the nose gear trunnion;
—failure of the nose gear upper drag link attach bolt;
—failure of the nose gear retraction link retention spring;
—out of rig and failure of the nose gear down lock link assembly;
—failure of the nose gear actuator mounting bracket and its attachments;
—failure of the attachment of the retraction link to the actuator mounting bracket;
—lack of lubricant in the NLG or NLG components; or
—lack of cleanliness of the NLG or the NLG components.

The exact cause of the collapse or inadvertent retraction of the NLG cannot be determined.

Consequently, Piper took the following actions to prevent future failure of the NLG:

—modified certain components to improve their long-term service life;
—corrected and clarified the rigging procedures for the nose gear installation; and
—revised the periodic inspection requirements of the applicable maintenance manuals.

What is the potential impact if FAA took no action? Failure in certain components of the NLG, a lack of cleanliness of the NLG, or a lack of lubricant in the NLG or the NLG components could result in failure of the NLG. This failure of the NLG could lead to loss of control of the airplane during take-off, landing, or taxiing operations.

Is there service information that applies to this subject? The New Piper Aircraft, Inc. has issued Service Bulletin No. 1123A, dated November 30, 2004.

What are the provisions of this service information? The service bulletin includes procedures for:

—inspecting the NLG and the NLG components;
—rigging of the nose gear installation; and
—replacing older parts of the NLG with new modified parts having improved service life.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? 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. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would supersede AD 93–24–14 with a new AD that would incorporate the actions in Piper Service Bulletin No. 1123A, dated November 30, 2004.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 2,047 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed inspections and the rigging of the nose gear installation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
9 workhours × $65 per hour = $585	No cost for parts	$585	2,047 × $585 = $1,197,495.

We estimate the following costs to do all the necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need these replacements:

Labor cost	Parts cost	Total cost per airplane
44 workhours × $65 per hour = $2,860	$920 (only if cracks or damage found in the NLG)	$2,860 + $920 = $3,780.

What is the difference between the cost impact of this proposed AD and the cost impact of AD 93–24–14? The cost estimate in 1993 was for approximately 1,893 airplanes on the U.S. Registry and the cost estimate for the proposed AD is approximately 2,047 airplanes on the U.S. Registry. Therefore, there is an initial cost difference of $81,158 (154 airplanes × $527 per airplane) between that originally calculated in 1993 and what is proposed now. The difference of 154 airplanes could be attributed to the following:

—additional airplanes manufactured since 1993;
—additional airplanes brought into the United States and added to the U.S. Registry; and
—improved tools for calculating the number of U.S. registered aircraft in 2004/2005 compared to 1993.

Additionally, there are the costs of doing any necessary replacements based on the results of the proposed inspections.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

Would this proposed AD impact various entities? 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.

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2004–CE–47–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 Airworthiness Directive (AD) 93–24–14, Amendment 39–8762 (58 FR 65115, December 13, 1993), and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. FAA–2004–19960; Directorate Identifier 2004–CE–47–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by April 11, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 93–24–14, Amendment 39–8762.

What Airplanes Are Affected by This AD?

(c) This AD affects Models PA–34–200, PA–34–200T, and PA–34–220T airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of service difficulty reports related to the collapse or inadvertent retraction of the nose landing gear (NLG). The actions specified in this AD are intended to detect, correct, and prevent future failure in certain components of the NLG, lack of cleanliness of the NLG due to inadequate maintenance, or lack of lubricant in the NLG or NLG components. This failure of the NLG could lead to loss of control of the airplane during take-off, landing, or taxiing operations.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Replace the bolt and stack up that connects the upper drag link to the nose gear trunnion with new parts of the following: (i) Piper part number (P/N) 400 274 (AN7–35) bolt; (ii) Piper P/N 407 591 (AN960–716L) washer, as applicable; (iii) Piper P/N 407 568 (AN960–716); (iv) Piper P/N 404 396 (AN320–7) nut; and (v) Piper P/N 424 085 cotter pin.	Within the next 100 hours time-in-service (TIS) after January 28, 1994 (the effective date of AD 93–24–14), unless already done within the last 400 hours TIS before January 28, 1994 (compliance with AD 93–24–14). Repetitively replace thereafter at intervals not to exceed 500 hours TIS. Continue to repetitiveely replace until the actions in paragraph (e)(2) and (e)(3) of this AD begin.	Follow Figure 1 of this AD.
(2) Do the inspections, replacements, and other corrective actions specified in Table 1 ''Specified Maintenance'' of Piper Service Bulletin No. 1123A, dated November 30, 2004.	Within the next 100 hours TIS after the effective date of this AD, unless already done, Repetitively inspect thereafter at the intervals referenced in the Inspection Time column of the *INSTRUCTIONS* paragraph in Piper Service Bulletin No. 1123A, dated November 30, 2004.	Follow The New Piper Aircraft, Inc. Service Bulletin No. 1123A, dated November 30, 2004.
(3) Do any necessary corrective actions as a result of the actions specified in Table 1 ''Specified Maintenance'' of Piper Service Bulletin No. 1123A, dated November 30, 2004.	Before further flight after any action required by paragraph (e)(2) of this AD.	Follow The New Piper Aircraft, Inc. Service Bulletin No. 1123A, dated November 30, 2004.

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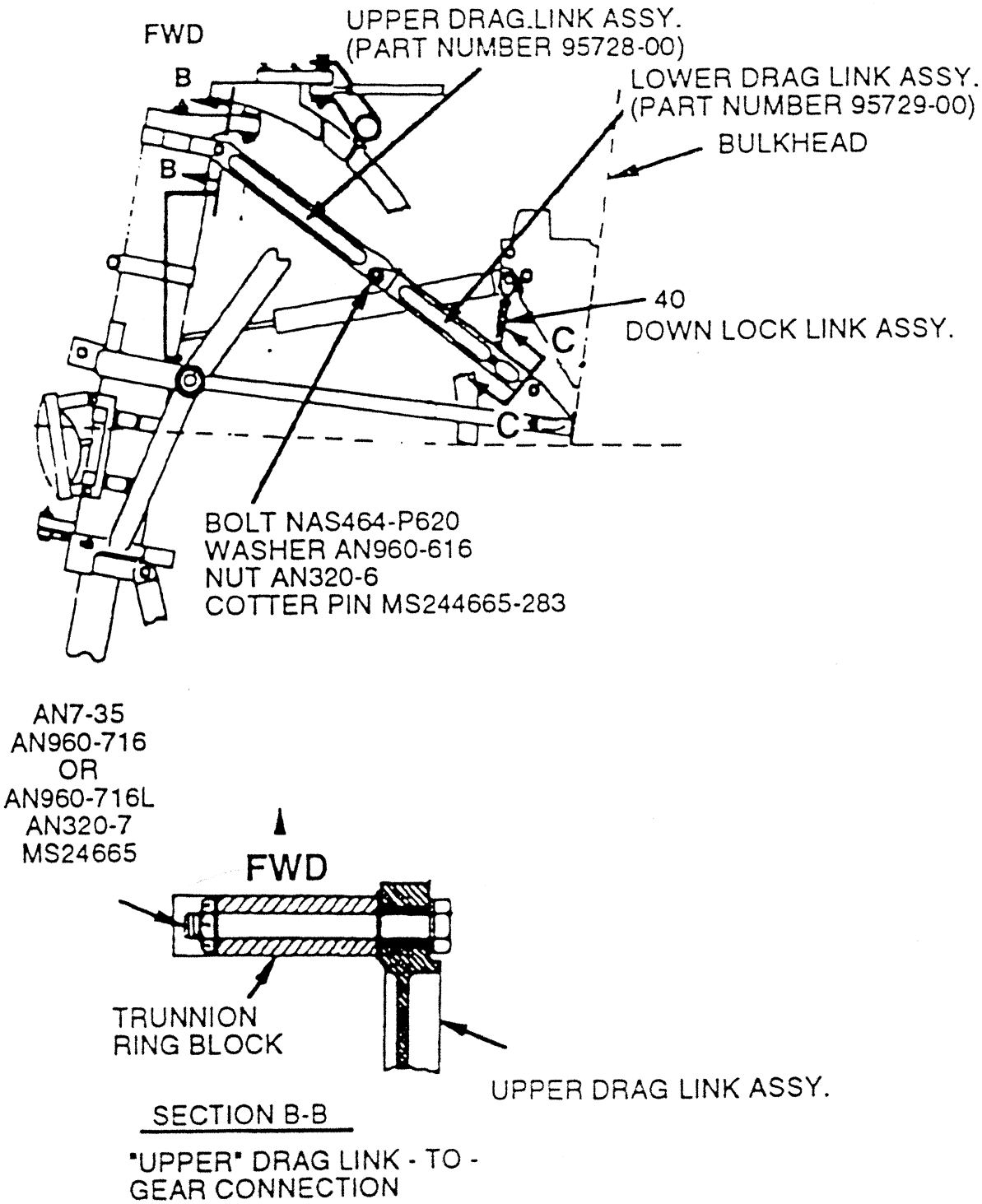

Figure 1

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Note 1: Paragraph 2. Modified Components of the INSTRUCTIONS section of The New Piper Aircraft, Inc. Service Bulletin No. 1123A, dated November 30, 2004, specifies modified parts that you may install for improved service life.

Note 2: The Actions column of the table in paragraph (e) of this AD may include one or a combination of these actions: replacement, repair, adjustment, alignment, cleaning, lubricating, or other action.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Hassan Amini, Aerospace Engineer, FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida, 32960. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19960.

Issued in Kansas City, Missouri, on February 1, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2374 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19961; Directorate Identifier 2004–CE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–502, AT–502A, AT–502B, and AT–503A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2002–26–05, which applies to certain Air Tractor, Inc. (Air Tractor) Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. AD 2002–26–05 lowers the safe life for the wing lower spar cap for Models AT–502, AT–502A, AT–502B, and AT–503A airplanes and those that incorporate or have incorporated Marburger Enterprises, Inc. winglets. AD 2002–26–05 also requires you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification to detect and correct any crack in a bolthole before it extends to the modified center section of the wing and report the results of this inspection to the Federal Aviation Administration (FAA). Since we issued AD 2002–26–05, we have determined that additional airplanes should be added to the applicability section. We also developed an alternative method of compliance (AMOC) to the requirements of AD 2002–26–05. This proposed AD retains the action required in AD 2002–26–05, adds additional airplanes to the applicability, and includes an AMOC. We are issuing this proposed AD to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap could result in the wing separating from the airplane during flight.

DATES: We must receive any comments on this proposed AD by April 5, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA–2004–19961.

FOR FURTHER INFORMATION CONTACT: Direct all questions to:

—For the airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

—For airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19961; Directorate Identifier 2004–CE–48–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19961. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication 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 this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Has FAA taken any action to this point? On January 2, 2003, we issued AD 2002–26–05, Amendment 39–12991 (6 FR 18), which applies to certain Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. AD 2002–26–05 supersedes AD 2002–11–03.

Reports of several cracks originating in the outboard ⅜-inch hole of the main spar lower cap on Air Tractor Models AT–502, AT–502A, and AT–502B airplanes at hours time-in-service (TIS) lower than the established safe life caused us to issue AD 2002–11–03, Amendment 39–12764 (67 FR 38371, June 4, 2002).

We issued AD 2002–11–03 to lower the safe life for the wing lower spar cap established in AD 2001–10–04 R1 on Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes and further reduce the safe life for airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

Additional field inspections revealed wings with cracks below the safe life limits established in AD 2002–11–03 for Air Tractor Models AT 502, AT–502B, and AT–503A airplanes. This caused us to issue AD 2002–26–05.

In addition, the applicability section of AD 2002–11–03 covered only Models AT–502A and AT–502B serial number airplanes that were already manufactured. The applicability did not account for airplanes manufactured after the issuance of the AD.

AD 2002–26–05 currently requires the following on certain Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes:

—maintaining the original requirements from AD 2002–11–03 for a lowered safe life, inspection, replacement/modification, and reporting the results to FAA;

—further lowering the safe life for the wing lower spar cap established in AD 2001–11–03 for Models AT–502, AT–502B, and AT–503A airplanes; and

—expanding the applicability of Models AT–502A and AT–502B airplanes to account for future manufactured airplanes.

You must do these actions in accordance with Snow Engineering Service Letter #197 or #205, both Revised March 26, 2001, as applicable.

What has happened since AD 2002–26–05 to initiate this proposed AD action? Since we issued AD 2002–26–05, FAA has identified additional airplanes that need to be added to the applicability. We have also developed an alternative method of compliance (AMOC) to the actions of AD 2002–26–05.

What is the potential impact if FAA took no action? If not detected and corrected, fatigue cracks in the wing lower spar cap could cause the wing to separate from the airplane during flight.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? 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. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would supersede AD 2002–26–05 with a new AD that would retain the actions required in AD 2002–26–05, add additional airplanes to the applicability, and incorporate an AMOC to the actions required by AD 2002–26–05.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects approximately 350 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	No parts required for inspection.	$130	$130 × 350 = $45,500.

We estimate the following costs to do the proposed replacement/modification:

Labor cost	Parts cost	Total cost per airplane
120 workhours × $65 per hour = $7,800.	Approximately $3,700	$7,800 + $3,700 = $11,500

What is the difference between the cost impact of this proposed AD and the cost impact of AD 2002–26–05? The only difference is the change in the applicability to add later-manufactured airplanes to the proposed AD. There is no difference in cost to do the actions required by this proposed AD.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

Would this proposed AD impact various entities? 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.

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2004-CE–48-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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–26–05, Amendment 39–12991 (68 FR 18, January 2, 2003), and by adding a new AD to read as follows:

Air Tractor, Inc.: Docket No. FAA–2004–19961; Directorate Identifier 2004–CE–48–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by April 5, 2005.

What Other ADs Are Affected By This Action?

(b) This AD supersedes AD 2002–26–05, Amendment 39–12991.

What Airplanes Are Affected by This AD?

(b) This AD applies to certain Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. Use paragraph (c)(1) of this AD for airplanes that do not incorporate and never have incorporated winglets. Use paragraph (c)(4) of this AD for certain AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

(1) The following presents airplanes (certificated in any category) that are affected by this AD, along with the new safe life (presented in hours time-in-service (TIS)) of the wing lower spar cap for all affected airplane models and serial numbers:

Model	Serial numbers	Safe Life
AT–502	all serial numbers beginning with 502–0003	1,650 hours TIS.
AT–502A	all serial numbers beginning with 502A–0158	1,650 hours TIS.
AT–502B	502B–0187 through 502B–0654, except 502B–0643	1,650 hours TIS.
AT–502B	502B–0643 and all serial numbers beginning with 502B–0655	2,100 hours TIS.
AT–503A	all serial numbers beginning with 503A–0067	1,650 hours TIS.

(2) If piston powered aircraft have been converted to turbine power, you must use the limits for the corresponding serial number turbine-powered aircraft.

(3) Aircraft that have been modified to install lower spar caps, either part number 21026–1/-2, 21078–1/-2, or 21094–1/-2, should use the limits for Model AT–502B airplanes, serial number 0643 and all serial numbers beginning with 0655.

(4) The following presents airplanes (certificated in any category) that could incorporate or could have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA. Use the winglet usage factor in the table below, the safe life specified in paragraph (a)(1) of this AD, and the instructions included in the Appendix to this AD to determine the new safe life of these airplanes:

Model	Serial numbers	Winglet usage factor
AT–502	502–0003 through 502–0236	1.6
AT–502A	502A–0158 through 502A–0238	1.6
AT–502A	all serial numbers beginning with 502–0239	1.2
AT–502B	all serial numbers beginning with 502B–0187	1.2

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following unless you do the alternative method of compliance (AMOC) in Appendix 2 of this AD:

Actions	Compliance	Procedures
(1) Modify the applicable aircraft records (logbook) as follows to show the reduced safe life for the wing lower spar cap (use the information from paragraphs (c)(1) and (c)(4) of this AD and Appendix 1 to this AD, as applicable): (i) Incorporate the following into the Aircraft Logbook "In accordance with AD **–**–** (or AD 2002–26–05, as applicable): the wing lower spar cap is life limited to _____." Insert the applicable safe life number from the applicable tables in paragraphs (c)(1) and (c)(4) of this AD and Appendix 1 to this AD. (ii) If, as of the time of the logbook entry requirement of paragraph (e)(1)(i) of this AD, your airplane is over or within 50 hours of the safe life, an additional 50 hours TIS is allowed to do the replacement/modification.	*For airplanes previously affected by AD 2002–26–05:* Do the logbook entry within the next 10 hours TIS after January 15, 2003 (the effective date of AD 2002–26–05). *For airplanes not previously affected by AD 2002–26–05:* Do the logbook entry within the next 10 hours TIS after effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the aircraft records as specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Do the actual replacement/modification following the applicable Snow Engineering Service Letter #197 or #205, both revised March 26, 2001, or following the applicable sheet of Snow Engineering Modification—Wing Centersplice—502, Drawing Number 20989. The owner/operator may not do the replacement/modification, unless he/she holds the proper mechanic authorization.
(2) You may eddy-current inspect the wing lower spar cap instead of doing the replacement/modification. The inspection schedule and procedures are included in Appendix 2 to this AD.	Inspection schedule included as part of the AMOC in Appendix 2 to this AD.	Procedures included as part of the AMOC in Appendix 2 to this AD.
(3) Eddy-current inspect the wing lower spar cap in order to detect any crack before it extends to the modified center section of the wing and repair any crack or replace the wing section. The inspection must be done by one of the following: (i) A Level 2 or Level 3 inspector that is certified for eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or (ii) A person authorized to do AD work who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.	Immediately before the replacement/modification required when you reach the new safe life. For airplanes that had this replacement/modification done following either AD 2001–10–04 or AD 2001–10–04 R1: do this inspection and any necessary corrective action within the next 400 hours TIS after June 14, 2002 (the effective date of AD 2002–11–03), unless already done (have the mechanic who did the work mark the logbooks accordingly).	Following the applicable Snow Engineering Service Letter #197 or #205, both revised March 26, 2001, or following Snow Engineering Process Specification Number 197, revised June 4, 2002.
(4) Report to FAA any cracks detected as the result of each inspection required by paragraph (e)(3) of this AD on the form in Figure 1 of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Send the report within 10 days after the inspection required in paragraph (e)(3) of this AD only if cracks are found.	If cracks are found, send the form (Figure 1 of this AD) to FAA, Fort Worth Airplane Certification Office, Attn: Rob Romero, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

Note: Upon completion of the replacement/modification required by this AD, the safe life of the new/modified wing spar is limited to the applicable hours listed in paragraph (c)(1) of this AD. This new life limit starts at the time of the replacement/modification.

BILLING CODE 4910–13–P

DOCKET NO. FAA-2004-19961 INSPECTION REPORT	
1. Inspection Performed By:	2. Phone:
3. Aircraft Model:	4. Aircraft Serial Number:
5. Engine Model Number:	6. Aircraft Total TIS:
7. Wing Total TIS:	8. Lower Spar Cap TIS:
9. Has the lower spar cap been inspected before? (Eddy-current, Dye penetrant, magnetic particle, ultrasound) ☐ Yes ☐ No	9a. If yes, Date: _____ Inspection Method: _____ Lower Spar Cap TIS: _____ Cracks found? ☐ Yes ☐ No
10. Has there been any major repair or alteration performed to the spar cap? ☐ Yes ☐ No	10a. If yes, specify (Description and TIS)
11. Date of AD inspection: _____	
12. Inspection Results: NOTE: Indicate only if cracks are found.	12a. ☐ Left Hand ☐ Right Hand
12b. Crack Length: _____	12c. Does drilling hole to next larger size remove all traces of the crack(s)? ☐ Yes ☐ No
12d. Corrective Action Taken:	

Figure 1 of paragraph (e)(4) of this AD

BILLING CODE 4910–13–C

May I Request a Different Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19.

(1) Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Fort Worth or Los Angeles Airplane Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact:

(2) For the airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

(3) For airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

(4) Alternative methods of compliance approved in accordance with AD 2002–26–05, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL–401, Washington, DC, or on the Internet at http://dms.dot.gov. The docket number is FAA–2004–19961.

Appendix 1 to Docket No. FAA–2004–19961 (as Retained From AD 2002–26–05)

The following provides procedures for determining the safe life for Models AT–502, AT–502A, and AT–502B airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA.

What if I removed the Marburger winglets prior to further flight after the effective date of this AD or prior to the effective date of this AD?

1. Review your airplane's logbook to determine your airplane's time-in-service (TIS) with winglets installed per Marburger Enterprises STC SA00490LA. This includes all time spent with the winglets currently installed and any previous installations where the winglet was installed and later removed.

Example: A review of your airplane's logbook shows that you have accumulated 350 hours TIS since incorporating the Marburger STC. Further review of the airplane's logbook shows that a previous owner had installed the STC and later removed the winglets after accumulating 150 hours TIS. Therefore, your airplane's TIS with the winglets installed is 500 hours.

If you determine that the winglet STC has never been incorporated on your airplane, then your safe life is presented in paragraph (c)(1) of this AD. Any future winglet installation will be subject to a reduced safe life per these instructions.

2. Determine your airplane's unmodified safe life from paragraph (c)(1) of this AD.

Example: Your airplane is a Model AT–502B, serial number 0292. From paragraph (c)(1) of this AD, the safe life of your airplane is 1,650 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

3. Determine the winglet usage factor from paragraph (c)(4) of this AD.

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (c)(4) of this AD, your winglet usage factor is 1.2.

4. Adjust the winglet TIS to account for the winglet usage factor. Multiply the winglet TIS (result of Step 1 above) by the winglet usage factor (result of Step 3 above).

Example: Winglet TIS is 500 hours × a winglet usage factor of 1.2. The adjusted winglet TIS is 600 hours.

5. Calculate the winglet usage penalty. Subtract the winglet TIS (result of Step 1 above) from the adjusted winglet TIS (result of Step 4 above).

Example:
Adjusted winglet TIS − the winglet TIS = winglet usage penalty.
(600 hours) − (500 hours TIS) = (100 hours TIS).

6. Adjust the safe life of your airplane to account for winglet usage. Subtract the winglet usage penalty (result of Step 5 above) result from the unmodified safe life from paragraph (c)(1) of this AD (result of Step 2 above).

Example:
Unmodified safe life − winglet usage penalty = adjusted safe life.
(1,650 hours TIS) − (100 hours TIS) = (1,550 hours TIS).

7. If you remove the winglets from your airplane prior to further flight or no longer have the winglets installed on your airplane, the safe life of your airplane is the adjusted safe life (result of Step 6 above). Enter this number in paragraph (e)(1)(i) of this AD and the airplane logbook.

What if I have the Marburger winglet installed as of the effective date of this AD and plan to operate my airplane without removing the winglet?

1. Review your airplane's logbook to determine your airplane's TIS without the winglets installed.

Example: A review of your airplane's logbook shows that you have accumulated 1,500 hours TIS, including 500 hours with the Marburger winglets installed. Therefore, your airplane's TIS without the winglets installed is 1,000 hours.

2. Determine your airplane's unmodified safe life from paragraph (c)(1) of this AD.

Example: Your airplane is a Model AT–502B, serial number 0292. From paragraph (c)(1) of this AD, the safe life of your airplane is 1,650 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

3. Determine the winglet usage factor from paragraph (c)(4) of this AD.

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (c)(4) of this AD, your winglet usage factor is 1.2.

4. Determine the potential winglet TIS. Subtract the TIS without the winglets installed (result of Step 1 above) from the unmodified safe life (result of Step 2 above).

Example:
Unmodified safe life − TIS without winglets = Potential winglet TIS.
(1,650 hours TIS) − (1,000 hours TIS) = (650 hours TIS).

5. Adjust the potential winglet TIS to account for the winglet usage factor. Divide the potential winglet TIS (result of Step 4 above) by the winglet usage factor (result of Step 3 above).

Example:
Potential winglet TIS ÷ Winglet usage factor = Adjusted potential winglet TIS.
(650 hours TIS) ÷ (1.2) = (542 hours TIS).

6. Calculate the winglet usage penalty. Subtract the adjusted potential winglet TIS (result of Step 5 above) from the potential winglet TIS (result of Step 4 above).

Example:
Potential winglet TIS − Adjusted potential winglet TIS = Winglet usage penalty.
(650 hours TIS) − (542 hours TIS) = (108 hours TIS).

7. Adjust the safe life of your airplane to account for the winglet installation. Subtract the winglet usage penalty (result of Step 6 above) from the unmodified safe life from paragraph (c)(1) of this AD (result of Step 2 above).

Example:
Unmodified safe life − Winglet usage penalty = Adjusted safe life.
(1,650 hours TIS) − (108 hours TIS) = (1,542 hours TIS).

8. Enter the adjusted safe life (result of Step 7 above) in paragraph (e)(1)(i) of this AD and the airplane logbook.

What if I install or remove the Marburger winglet from my airplane in the future?

If, at anytime in the future, you install or remove the Marburger winglet STC from your airplane, you must repeat the procedures in this Appendix to determine the airplane's safe life.

Appendix 2—Alternative Method Of Compliance (AMOC) to Docket No. FAA–2004–19961

Optional Inspection Program

For all airplanes listed in this AD; except for Model AT–502B airplanes, serial number 0643 and all serial numbers beginning with 0655; you may begin a repetitive inspection interval program as an alternative to the safe

life requirement of this AD with the following provisions:

1. Upon accumulating 1,600 hours time-in-service (TIS), inspect the outboard two lower spar cap bolt holes following Snow Engineering Process Specification PS 197, dated June 4, 2002.

2. Repeat these inspections at intervals of (as applicable):

a. 800 hours TIS (all serial numbers except as noted in b).

b. 600 hours TIS (serial numbers AT502B–0187 through AT502B–0618 that do not have the part number 20998–1/-2 web plate installed).

c. If the outboard two lower spar cap bolt holes have been cold worked following Snow Engineering Service Letter # 233 or #234, both dated May 18, 2004, then you may double (1,600 hours TIS or 1,200 hours TIS, as applicable) the inspection interval (*See* Note 1—re: mid cycle cold work).

3. If at any time a crack is found, and:

a. If the crack indication goes away by drilling the hole to the next larger size, then you may modify your center splice following Snow Engineering Drawing 20989. After modification, proceed to step 5.

b. If the crack indication does not go away, then you must replace your lower spar caps before further flight.

4. For all serial numbers, upon accumulating 4,000 hours TIS, you must modify your center splice connection following ATI drawing 20989, unless previously done. Prior to the modification perform an eddy-current inspection following PS #197 (See Note 2).

5. Upon accumulating 1,600 hours TIS after modification, inspect the outboard two lower spar cap bolt holes following Snow Engineering Process Specification PS 197.

6. Repeat the inspection at intervals of:

a. 800 hours TIS; or

b. 1,600 hours TIS if the outboard two lower spar cap bolt holes have been cold worked following Snow Engineering Service Letter #233 or #234, both dated May 18, 2004 (*See* Note 1).

c. If at any time a crack is found, you must replace before further flight your lower spar caps, splice blocks, and wing attach angles and hardware.

7. Upon accumulating 8,000 hours TIS, you must replace before further flight your lower spar caps, splice blocks, and wing attach angles (P/N 20693–1) and associated hardware.

Note 1: If you decide to cold work your bolt holes following Snow Engineering Service Letter #233 or #234, both dated May 18, 2002, at a TIS that does not coincide with a scheduled inspection following this AD, then inspect at the time of cold working and then begin the 1,600/1,200 hour TIS inspection intervals.

Note 2: If you have modified your airplane prior to accumulating 4,000 hours TIS, then you may continue to fly your airplane past modification + 4,000 hours TIS provided you cut your inspection intervals in half. Upon accumulating 8,000 hours TIS, you must comply with step 7 above. See example:

Example: An AT–502B had the two-part modification installed at 3,000 hours TIS and the bolt holes have not been cold worked. The first inspection would occur at 4,600 hours TIS, followed by inspections at 5,400, 6,200 and 7,000 hours TIS. This airplane may continue to fly if inspected again at 7,400 and 7,800 hours TIS (this is at 400 hour TIS intervals instead of 800 hours TIS intervals). Upon accumulating 8,000 hours TIS, you must modify the wing following Step 7 above.

8. If you have elected to use repetitive inspections in this AMOC instead of the safe life, you must make a logbook entry as follows:

''Following AD 2002–26–05, at XXXX {insert hours TIS} hours TIS an eddy-current inspection has been performed. As of now, the safe life listed in the AD no longer applies to this airplane. This airplane must be eddy-current inspected at intervals not to exceed {800/600/1,200/1,600 as applicable} hours TIS.''

For Model AT–502B airplanes, serial number 0643 and all serial numbers beginning with 0655, you may extend your safe life as an alternative to the safe life requirement of AD 2002–26–05, as follows:

1. Upon accumulating 2,100 hours TIS, perform an eddy-current inspection of the outboard two bolt holes of the lower spar wing center splice following PS #197, dated June 4, 2002.

2. If no cracks are found, then you may fly an additional 1,000 hours TIS.

3. You must replace the lower spar caps before further flight if cracks are found or upon accumulating the additional 1,000 hours TIS, whichever occurs first.

Issued in Kansas City, Missouri, on February 3, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2507 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 33]

RIN 1513–AA97

Proposed Establishment of the Niagara Escarpment Viticultural Area (2004R–589P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the ''Niagara Escarpment'' viticultural area in Niagara County, New York. We designate viticultural areas to allow bottlers to better describe the origin of wines and to allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before April 11, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 33, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov.* Federal e-rulemaking portal; follow instructions for submitting comments.

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call (202) 927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, P.O. Box 18152, Roanoke, VA 24014; telephone (540) 344–9333.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Niagara Escarpment Petition

Michael VonHeckler of Warm Lake Estate Vineyard and Winery petitioned TTB for the establishment of an American viticultural area to be called ''Niagara Escarpment'' in Niagara County, New York. The proposed area runs in a narrow, 28-mile long band from the Niagara River at Lewiston in the west, through the towns of Lockport and Gasport, to Johnson Creek in the east. According to the petitioner, the proposed area contains about 18,000 acres and has approximately 400 acres of established vineyards.

Name Evidence

The proposed Niagara Escarpment viticultural area derives its name from the Niagara Escarpment, a limestone ridge that runs for more than 650 miles through the Great Lakes region. The Niagara Escarpment forms a horseshoe that begins near Rochester, New York, continues west through southern Ontario, Lake Huron, and the upper peninsula of Michigan, and ends in eastern Wisconsin. The Niagara Escarpment enters Niagara County in the east near the village of Johnson Creek and then runs west through the middle of the county along State Route 104 to the town of Lewiston. At the county's western end, the escarpment forms the Niagara River Gorge, and, at the head of the gorge, the escarpment forms the cliff over which the Niagara Falls plunge.

To demonstrate that the proposed viticultural area is known locally and nationally as ''Niagara Escarpment,'' the petitioner submitted several excerpts from government and travel Internet sites that discuss the Niagara Escarpment in Niagara County. These included:

- A page on the Institute for Local Governance and Regional Growth Web site that discusses how the Niagara River flows over the Niagara Escarpment creating Niagara Falls. (See *http://www.regional-institute.buffalo.edu/regi/natu.*)
- Vintage New York's Web site states that the prime vineyard sites in western New York are ''bordered by the Niagara River on the west, Lake Ontario on the north and the Niagara escarpment on the south.'' (See *http://www.vintagenewyork.com/regions/erie.*)
- The Niagara Tourism and Convention Corporation's Web site notes that Niagara Landing Wine Cellars, a Niagara County winery, is ''located at the base of the Niagara Escarpment.'' (See *http://www.niagara-usa.com/attractions/niagaralanding.*)
- The Western New York Regional Information Network's Town of Cambria Web site describes the town as an agricultural town ''divided in the middle by the Niagara Escarpment.'' (See *http://www.wnyrin.com/c_niag/welc/juri/juri_cambt.*)

In addition, a July 26, 2004, Toronto Star newspaper article on New York wineries included with the petition discusses the Niagara Escarpment, and notes that:

> Ontario wine lovers are keenly aware of the Niagara Escarpment, and ''the Bench'' creating a special microclimate for grape growing in Niagara. Well, guess what: It comes up in New York State on the other side of the lake, in Lockport, north of Lewiston.

Although the Niagara Escarpment continues westward from Niagara County for several hundred miles, the petitioner notes that most of its length runs through Canada or the waters of the Great Lakes. The petitioner adds that remaining areas through which the escarpment runs, the upper peninsula of Michigan and eastern Wisconsin, are not known as grape growing areas.

Boundary Evidence

The geography of the Niagara Escarpment defines the boundary of the proposed viticultural area, according to the petitioner. He states that the steepness of the Niagara Escarpment makes it topographically distinct from the Ontario Plain, which extends from the south shore of Lake Ontario to the escarpment's base, and the Huron Plain, which begins at the escarpment's crest and extends southward past the Niagara County line. Both plains are relatively flat, with slopes of less than 20 feet per mile, according to the ''Soil Survey of Niagara County, New York (1972)'', a report submitted with the petition.

In contrast, the Niagara Escarpment has a steep slope of 106 to 317 feet per mile. The southern and northern boundaries of the proposed Niagara Escarpment viticultural area encompass the escarpment's north-facing slope between the 600- and 400-foot elevation lines, which, the petitioner states, generally delineate the slope's top and bottom within the proposed viticultural area.

The Niagara River, which forms the international boundary between the United States and Canada, marks the western boundary of the proposed viticultural area. The portion of the Niagara Escarpment that extends west of the Niagara River into the Canadian province of Ontario is included in the Niagara Peninsula viticultural area designated by the Government of Canada.

In the eastern end of Niagara County, a portion of Johnson Creek, south of the village of the same name, forms the eastern boundary of the proposed viticultural area. East of the creek, elevations at the base of the Niagara Escarpment climb from 400 to 500 feet, and its slope becomes much narrower and steeper, according to the petitioner and the ''Soil Survey of Niagara County, New York.'' The petitioner states that these changes in the escarpment's topography make it less desirable for wine grape production east of Johnson Creek, and, for this reason, the petitioner did not include the

escarpment east of Johnson Creek within the proposed viticultural area.

Growing Conditions

Topography and Soils

According to the petitioner, the topography and soils of the proposed area create distinct conditions for grape growing than those in surrounding areas. He notes that the Ontario and Huron Plains are nearly flat with deep soils that can harbor excessive water and nutrients. In contrast, the petition notes, the Niagara Escarpment has rather shallow soils with poor nutrient content, and has sufficient slope (2–6%) to allow for drainage. The petitioner states that that the conditions found in the proposed area—well drained soils, a steady but moderate water supply, and restricted mineral content—result in superior pigment and flavor compounds in the resultant wine. On the other hand, he states, the conditions of the surrounding areas—poor drainage and high nutrient content—result in less pigmentation, diluted flavors, and lower quality wine.

As evidence of these soil differences, the petitioner cites the ''Soil Survey of Niagara County, New York.'' The survey states that the central portion of Niagara County, along the escarpment, contains the Hilton-Ovid-Ontario soil association. It describes this association as ''deep, well-drained to somewhat poorly drained soil.'' In contrast, the survey states that the Ontario Plain north of the escarpment contains the Rhinebeck-Ovid-Madalin association, which it describes as having ''deep, somewhat poorly drained to very poorly drained soils.'' The Huron Plain south of the escarpment contains the Odessa-Lakemont-Ovid association, which the survey also describes as having ''deep, somewhat poorly drained to very poorly drained soils.''

Climate

According to the petitioner, the location of the proposed Niagara Escarpment viticultural area in relation to Lake Ontario creates a microclimate conducive to grape growing. He states that the maritime influence of Lake Ontario on the Niagara Escarpment allows for sufficient growing season heat accumulation in what is otherwise a cool climate. The ''Soil Survey of Niagara County, New York,'' notes that Lake Ontario greatly influences the climate of Niagara County, and it states that ''in fall the lake waters are a source of heat that reduces cooling at night and increases the length of [the] freeze-free growing season.''

The climatic relationship between Lake Ontario and the Niagara Escarpment is discussed in greater detail in ''Site Selection for Grapes in the Niagara Peninsula,'' a publication issued by the Horticultural Research Institute of Ontario to assist grape growers in Canada's Niagara Peninsula in selecting the best vineyard sites. The petitioner notes that this publication's climate information can be applied to the proposed viticultural area, which is adjacent to the Niagara Peninsula and shares Lake Ontario and the Niagara Escarpment with it.

According to the site selection publication, a unique airflow pattern affects the land between Lake Ontario and the crest of the escarpment. While the land warms quickly on warm days and cools rapidly on cool nights, the lake's temperature changes more slowly. Therefore, in the spring the lake's temperature is cooler than the temperature of the adjacent land, while in the fall it is warmer. In the fall, air rises as it is warmed by the lake, drawing cooler air in from the lakeshore and creating offshore breezes. As a result, the site selection publication states, ''the air now above the lake is warmed, rises and flows back over the land, creating a circular heat-pump effect.'' In addition, the publication notes, ''the pattern airflow is altered by the slope of the land. With steep slopes, cold air drainage is rapid. Flat areas or depressions tend to accumulate cold air and become 'frost pockets.' '' For areas between the lake and the escarpment, this airflow pattern minimizes frost conditions and increases heat accumulation, thereby extending the proposed viticultural area's growing season, according to the petition. Areas south of the escarpment, the petition notes, do not benefit from this effect and are more prone to frost damage.

On the other hand, the lake's airflow pattern cools the adjacent land in the spring and early summer. Areas within two miles of the lakeshore can have a two-week delay in bud break due to the cooling effect of the lake. Also, daytime temperatures are often cooler because of the lake's air currents. The site selection publication notes that ''most grape cultivars require a long, warm season and fruit quality is sometimes poor close to the lake because of lower day temperatures.'' The proposed viticultural area, however, is between 6 and 8 miles from Lake Ontario. The proposed area therefore experiences little or no delay in bud break or cooler daytime temperatures due to the lake's influence, according to the petitioner.

In sum, the petitioner states that this climate evidence shows that the proposed Niagara Escarpment viticultural area has an extended ripening season when compared to grapes grown outside its boundary. In contrast, the petitioner notes that areas north of the escarpment experience cooling spring temperatures that retard growth, while areas south of the escarpment are more prone to fall frost damage.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Niagara Escarpment,'' will be recognized as a name of viticultural significance. Consequently, wine bottlers using ''Niagara Escarpment'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. On the other hand, we do not believe that any single part of the proposed viticultural name standing alone, such as ''Niagara,'' would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full ''Niagara Escarpment'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new

label. Accordingly, if a new label or a previously approved label uses the name ''Niagara Escarpment'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Niagara Escarpment viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, climatic, boundary and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Niagara Escarpment viticultural area on brand labels that include the words ''Niagara Escarpment'' as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Although TTB believes that only the full name ''Niagara Escarpment'' should be considered to have viticultural significance upon establishment of the proposed new viticultural area, we also invite comments from those who believe that ''Niagara'' standing alone would have viticultural significance upon establishment of the area. Comments in this regard should include documentation or other information supporting the conclusion that use of ''Niagara'' on a wine label could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Niagara Escarpment viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 927–8525. Faxed comments must—

(1) Be on 8.5 by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must'

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5 by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our librarian at the above address or by telephone at (202) 927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice and any posted comments, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Amend subpart C by adding § 9. _____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9. _____ Niagara Escarpment.

(a) *Name.* The name of the viticultural area described in this section is

''Niagara Escarpment''. For purposes of part 4 of this chapter, ''Niagara Escarpment'' is a term of viticultural significance.

(b) *Approved Maps.* The five United States Geological Survey (USGS) 1:25,000 scale, topographic maps used to determine the boundaries of the Niagara Escarpment viticultural area are titled—

(1) Lewiston, New York–Ontario, 1980;

(2) Ransomville, New York, 1980;

(3) Cambria, New York, 1980;

(4) Lockport, New York, 1980; and

(5) Gasport, New York, 1979.

(c) *Boundary.* The Niagara Escarpment viticultural area is located in Niagara County, New York. The area's boundaries are defined as follows—

(1) On the Lewiston map, south of the village of Lewiston within the Brydges State Artpark, begin on the east bank of the Niagara River at the mouth of Fish Creek; then

(2) Proceed north along the east bank of the Niagara River about 0.6 mile to the northern boundary of the Brydges State Artpark; then

(3) Proceed east along the northern boundary of the Brydges State Artpark about 0.8 mile to the park's northeast corner, and continue east in a straight line a short distance to the Robert Moses Parkway; then

(4) Proceed north along the Robert Moses Parkway about 0.25 mile to Ridge Road, and then east on Ridge Road (State Route 104) about 0.15 mile to the road's first intersection with the 400-foot contour line; then

(5) Continue easterly along the 400-foot contour line, through the Ransomville map (crossing Model City Road, Dickersonville Road, and State Route 429) and the Cambria map (crossing Baer Road, Plank Road, and State Route 93/270), and pass onto the Lockport map to the contour line's junction with Sunset Drive; then

(6) Proceed north on Sunset Drive 0.3 mile to its intersection with Stone Road, then east on Stone Road about 1.25 miles (crossing Eighteenmile Creek) to the intersection of Stone, Purdy, and Old Niagara Roads, and continue east along Old Niagara Road about 0.4 mile to its first intersection with the 400-foot contour line; then

(7) Proceed northeasterly along the 400-foot contour line to its first junction with Slayton Settlement Road, proceed east on Slayton Settlement Road to Day Road, and then proceed north on Day Road to its first junction with the 400-foot contour line; then

(8) Proceed easterly along the 400-foot contour line, pass onto the Gasport map (crossing Humphrey and Orangeport Roads), and continue to the contour line's junction with Quaker Road; then

(9) Proceed north on Quaker Road about 0.4 mile to its intersection with State Route 104, and then east on State Route 104 to its intersection with Johnson Creek (at the village of Johnson Creek); then

(10) Proceed south along Johnson Creek (crossing the Erie Canal), to the creek's junction with Mountain Road; then

(11) Proceed west on Mountain Road to its intersection with Gasport Road, then south on Gasport Road to its intersection with Mill Road, then west on Mill Road to its intersection with Kayner Road, then north on Kayner Road 0.65 mile to its junction with the 600-foot contour line; then

(12) Proceed westerly along the 600-foot contour line (crossing Cottage Road) to its junction with State Route 31, and continue west on State Route 31, passing onto the Lockport map and crossing the Erie Canal within the city of Lockport, to the intersection of State Route 31 and Upper Mountain Road; then

(13) Proceed north-northwesterly on Upper Mountain Road 0.65 mile and then northerly on Sunset Drive 0.25 mile to the junction of Sunset Drive and the 600-foot contour line; then

(14) Proceed westerly along the 600-foot contour line, continuing through the Cambria map (crossing State Route 93/270 and then Blackman and Baer Roads), through the Ransomville map (crossing State Route 429 just north of Pekin and then crossing Black Nose Spring and Model City Roads), and, passing onto the Lewiston map, continue westward along the contour line (through the Escarpment, Ramsey Ridge, and Lewiston Heights subdivisions), to the contour line's junction with Mountain View Drive (just east of State Highway 104 near the Niagara Falls Country Club); then

(15) Proceed west along Mountain View Drive a short distance to its intersection with State Route 104, and then proceed south on State Route 104 to its junction with Fish Creek; then

(16) Proceed westerly along Fish Creek and return to the beginning point on the east bank of the Niagara River at the mouth of Fish Creek.

Signed: February 2, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–2489 Filed 2–8–05; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME NO. R03–OAR–2004–DC–0010; FRL–7870–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Metropolitan Washington DC 1-Hour Ozone Attainment Demonstration Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the attainment demonstration State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. severe 1-hour ozone nonattainment area (the Washington area). EPA is proposing to approve the attainment demonstration SIP revisions submitted by the State of Maryland for the Washington area contingent upon the State submitting an approvable SIP revision for certain penalty fees, required by the Clean Air Act (the Act), prior to the time EPA issues a final rule on Maryland's attainment demonstration. In the alternative, EPA is proposing to disapprove the attainment demonstration SIP revision submitted by the State of Maryland for the Washington area. In the event we issue a final rule disapproving Maryland's attainment demonstration for the State's failure to satisfy the Act's penalty fee provisions, EPA is also proposing to issue a protective finding to preclude a ''conformity freeze'' pursuant to the transportation conformity rule. These revisions are being proposed in accordance with the Act.

DATES: Written comments must be received on or before March 11, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0010 by one of the following methods:

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

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

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

D. Mail: R03–OAR–2004–DC–0010, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to R03–OAR–2004–DC–0010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in an the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230, Baltimore, Maryland 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA.

The use of the term ''the States'' or of the term ''the three States'' in this document refers to the State of Maryland, the Commonwealth of Virginia and the District of Columbia.

Outline

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I. The Action EPA Is Proposing Today

The EPA is proposing approval of the attainment demonstration SIP revisions submitted by the District of Columbia (the District), and the Commonwealth of Virginia for the Washington area. In the case of the State of Maryland, EPA is proposing to approve the attainment demonstration SIP revision for the Washington area contingent upon Maryland submitting an approvable SIP revision to satisfy the section 185 of the Act for certain penalty fees, prior to the time EPA issues a final rule on the attainment demonstration; and, in the alternative, EPA is proposing to disapprove the attainment demonstration SIP revision submitted by the State of Maryland for the Washington area. In the event we issue a final rule disapproving Maryland's attainment demonstration for the State's failure to satisfy the Act's section 185 penalty fee provisions, EPA is proposing to issue a protective finding for the 2005 motor vehicle emissions budgets to preclude a ''conformity freeze'' pursuant to the transportation conformity rule, and is proposing to limit the duration such disapproval is in effect for only as long as the Maryland SIP lacks the section 185 penalty fee requirements or as long as those penalty fee requirements remain applicable under the Act. The following table identifies the submittal dates and amendment dates for these plans:

TABLE 1.—ATTAINMENT DEMONSTRATION AND VMT OFFSET PLANS

	DC	MD [1]	VA
Initial submittal dates	September 5, 2003	September 2, 2003	August 19, 2003.

TABLE 1.—ATTAINMENT DEMONSTRATION AND VMT OFFSET PLANS—Continued

	DC	MD [1]	VA
Amended submittal dates	February 25, 2004	February 19, 2004	February 25, 2004.

[1] Maryland SIP revisions 03–05 and 04–01.

Hereafter the SIP revisions listed in Table 1 of this document will be called the ''2004 SIP Revisions.'' The 2004 SIP revisions include an attainment demonstration and 2005 attainment motor vehicle emissions budgets (MVEBs) for purposes of transportation conformity.

The States' 2004 SIP revision submittals also included the post 1999–2005 rate of progress (ROP) plans, the VMT Offset SIPs, revisions to the 1990 base year emissions inventory, certain transportation control measures (TCMs) (namely those TCMs identified in Appendix J of the SIP revision submittals), a suite of nonregulatory control measures, and the contingency measures plans for both ROP and attainment for the Washington area. Those revisions are the subjects of separate rulemaking actions. On December 23, 2004 (69 FR 76889), EPA proposed approval of the suite of nonregulatory control measures. On January 12, 2005 (70 FR 2085), EPA published a notice of proposed rulemaking (NPR) regarding the post 1999–2005 ROP plan, the VMT Offset SIP, revisions to the 1990 base year emissions inventory, certain TCMs, and the contingency measures plans for both ROP and attainment. The NPR published on January 12, 2005 also proposed approval of the States' post 1996–1999 ROP plans for the Washington area. (*See* 70 FR 2085, January 12, 2005)

II. Background

A. What Is the Washington DC 1-Hour Ozone Nonattainment Area?

The Metropolitan Washington severe 1-hour ozone nonattainment area (the Washington area) is comprised of the entire District of Columbia (the District), a portion of Maryland (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), and a portion of Virginia (Alexandria, Arlington County, Fairfax, Fairfax County, Falls Church, Manassas, Manassas Park, Prince William County, and Stafford County).

B. What Previous Action Has EPA Taken on Attainment Demonstrations for the Washington Area?

On January 3, 2001 (66 FR 586), the EPA approved the States' post 1996–1999 ROP plans, earlier versions of their attainment demonstration plans (those submitted during 1998 and 2000, which have been withdrawn by the states and superceded by the plans that are the subject of this rulemaking) and an attainment date extension for the Washington area. A petition for review of that final rule was filed by the Sierra Club. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Court) ruled on the petition and vacated our January 3, 2001 approval of the States' attainment demonstrations, their 1996–1999 ROP plans and the attainment date extension. (*See Sierra Club* v. *Whitman,* 294 F.3d 155, 163 (DC Cir. 2002) (''*Sierra Club I*''). With respect to the attainment date extension, the Court said that the EPA was without authority to extend the Washington area's attainment deadline unless it also ordered the area to be reclassified as a ''severe'' area. The Court also found that the attainment demonstration and ROP plans were deficient because neither SIP revision contained approved contingency measures as required by sections 172(c)(9) and 182(c)(9) of the Act. *Id.* at 164. Furthermore, the Court determined that in addition to a 9 percent reduction in baseline emissions post 1996–1999, an area with an attainment date in 2005 must include a ROP plan that demonstrates additional ROP to 2005. *Id.* at 163. Lastly, although the Court upheld the EPA's definition of reasonably available control measures (RACM), the Court remanded this matter to the EPA to determine which measures, if any, are RACM to be implemented by the States in this case. *Id.* at 162–63.

On January 24, 2003 (68 FR 3410), EPA published a final action determining that the Washington area failed to attain the November 15, 1999 ozone attainment deadline for serious areas and reclassifying the Washington area to severe ozone nonattainment. On April 17, 2003 (68 FR 19106), EPA conditionally approved the States' 1996–1999 ROP plans and earlier versions (those submitted during 1998 and 2000) of the attainment demonstration plans, contingent upon the States fulfilling commitments they made to submit the additional elements required of those SIP revisions for a severe area. A petition for review of that final rule was filed by the Sierra Club. The petition alleged, among other things, that EPA could not lawfully conditionally approve the SIPs due to a lack of specificity in the States' commitment letters, that EPA should require the 1996–1999 ROP to be revised to use the latest mobile sources emission factor model and that the photochemical grid modeling supporting the attainment demonstration did not meet the requirements of the CAA. On February 3, 2004, the Court issued an opinion to vacate our rule conditionally approving the attainment demonstrations and 1996–1999 ROP plans insofar as that the court found our grant of conditional approval defective. The Court denied the petition for review in all other respects. *See Sierra Club* v. *EPA,* 356 F.3d at 301–07 (DC Cir. 2004) (''*Sierra Club II*'').[2] On April 23, 2004, the Court issued its mandate thereby relinquishing jurisdiction over the 1996–1999 ROP plans and the attainment demonstration SIP revisions, and remanding them back to EPA.

Effective as of the April 23, 2004 date the Court issued its mandate for its February 3, 2004 ruling, all three States withdrew their attainment demonstration SIP revisions which had been submitted during 1998 and 2000, specifically the SIP revisions listed in Table 2 of the April 17, 2003, final rule (68 FR 19107). The States withdrew these earlier versions of the attainment demonstration SIP revisions because the they had submitted revised attainment demonstration SIP revisions with a RACM analysis, post-1999 ROP plans demonstrating ROP for 2002 and 2005, VMT offset plans and contingency measures plans that superceded the earlier submissions.

C. What Agencies and Organizations Developed the Attainment Demonstration for the Washington Area?

The District, Virginia and Maryland must collectively demonstrate

[2] On April 16, 2004, the Court issued an order slightly revising the February 3, 2004, opinion to address a petition for rehearing filed by the Sierra Club, but otherwise leaving its decision to vacate and remand the conditional approval to EPA intact. *Sierra Club* v. *EPA,* 356 F.3d 296, 301–304 (DC Cir. 2004), *amended by* No. 03–1084, 2004 WL 877850 (DC Cir. Apr. 16, 2004).

attainment of the 1-hour ozone NAAQS in the Washington area buy no later than November 15, 2005. These jurisdictions, under the auspices of the Metropolitan Washington Air Quality Committee (MWAQC), with the assistance of the Metropolitan Washington Council of Governments (COG), collaborated on a coordinated attainment demonstration for the Washington area. The MWAQC includes state and local elected officials and representatives of the DC Department of Health (DoH), the Maryland Department of the Environment (MDE), the Virginia Department of Environmental Quality (VADEQ) and the National Capital Region Transportation Planning Board (TPB). The Act provides for interstate coordination for multi-state nonattainment areas. Because an attainment demonstration establishes motor vehicle emission budgets (MVEBs) for transportation improvement plans, the municipal planning organizations (MPO), which is mainly the TPB, have historically been involved in air quality planning in the Washington area. Although the plan was developed by a regional approach, the District, Maryland and Virginia are each required to submit the attainment demonstration to the EPA as a revision to its SIP.

D. What Is the Time Frame for Taking Action on These Washington Area SIP Revisions?

Under the CAA, the EPA is to take final action on a State's submission no later than 12 months after the submission is determined or deemed complete. On May 3, 2004, EPA issued a letter to each of the three States deeming the States' February 2004 SIP revisions complete. EPA must conduct a comment period of thirty-days on the content of our proposed action for the attainment demonstration SIP revisions before issuing a final rule. Before issuing a final rule, EPA must consider and prepare a response to all relevant public comments received during the comment period. In the event we issue any final rule to disapprove, EPA must also forward such a final rule to the Office of Management and Budget (OMB) for review. EPA's believes we have sufficient time to accomplish these tasks and complete rulemaking on the States' attainment demonstration SIPs for the Washington area by May 3, 2005.

III. The Requirements of an Attainment Demonstration and Framework for Approving the Attainment Demonstration SIP

A. What Is the Basis for the Attainment Demonstration SIP?

The Act requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. *See* 44 FR 8202, Feb. 8, 1979. Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. *See* Section 107(d)(4) of the Act; 56 FR 56694, Nov. 6, 1991. The CAA further required that ozone nonattainment areas be classified based on the area's design value, as marginal, moderate, serious, severe or extreme. *See* section 181(a) of the Act. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007.

Under section 182(c)(2) and (d) of the CAA, states with nonattainment areas classified as severe are required to submit demonstrations of how they would attain the 1-hour standard and how they would achieve the 9 percent ROP reduction in VOC emissions for each three-year period until the attainment year (in some cases, NO_X emission reductions can be substituted for the required VOC emission reductions). The Washington area is classified as severe and its attainment date is November 15, 2005. As stated previously, EPA is proposing action on the attainment demonstration SIPs submitted by the District, Maryland, and Virginia as part of the SIP revision submittals listed in Table 1.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Attainment demonstration SIP also establish and identify MVEBs for transportation conformity purposes. Transportation conformity is a process for ensuring that States consider the effects of emissions associated with new or improved federally-funded roadways on attainment of the standard. As described in section 176(c)(2)(A) of the Act, attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation plans and projects conform to the attainment SIP.

B. What Are the Requirements of a Modeled Attainment Demonstration?

The EPA provides that States may rely upon a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment. In order to have a complete modeling demonstration submission, States submit the required modeling analysis and identify any additional evidence that EPA should consider in evaluating whether the area will attain the standard. The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 1-hour ozone NAAQS. *See* U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). *See* also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). While the CAA section 182(c) requires that the attainment demonstration for serious and severe areas ''must be based upon photochemical grid modeling,'' the phrase ''based upon'' does not necessarily require that attainment demonstrations ''rest solely on grid modeling.'' *See Sierra Club II* at 301–07 (upholding EPA's approval of the modeling from the earlier versions of the Washington area attainment demonstration plans submitted during 1998 and 2000, which is identical to the modeling contained in the plans that are

the subject of this rulemaking [3]). When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the State can rely on and EPA will consider factors such as other modeled attainment tests (*e.g.*, a rollback analysis); other modeled outputs (*e.g.*, changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value); actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis.

In 1999, EPA issued additional guidance that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. When reviewing a SIP, EPA must make a reasonable determination that the control measures adopted more likely than not will lead to attainment. *See* ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711, November 1999.

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review (MCR) as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, an attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The MCR requirement is discussed further in subsequent sections of this document.

C. What Are the Requirements for Reasonably Available Control Measures?

Section 172(c)(1) of the Act requires SIPs to contain RACM, including reasonably available control technology (RACT), as expeditiously as practicable. EPA has provided guidance interpreting the RACM requirements of section 172(c)(1) of the Act. *See* 57 FR 13498, 13560, April 16, 1992. In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, the guidance indicates that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. *See* ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. The EPA guidance with regard to the implementation of the RACM requirements of Section 172(c)(1) has been upheld in *Sierra Club I,* 294 F.3d at 163.

D. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?

In addition to the modeling analysis and RACM, the EPA has identified the following key elements which must be present in order for the EPA to approve the 1-hour attainment demonstration SIPs. In the following section of this document, these elements are first listed (and briefly described), and then each is subsequently described in more detail.

CAA Measures and Measures Relied on in the Modeled Attainment Demonstration—In order for EPA to approve the attainment plan, the SIP must include approved rules for all measures mandated by the Act for the specific area's classification, including contingency measures should the area fail to attain by the required date, and RACM. Measures that may not be specifically mandated under the Act for the Washington area's severe classification, but that the States relied on in the attainment demonstration plan for which we are proposing approval must also be SIP approved.

NO_X reductions consistent with the modeling demonstration—On January 10, 1997 (62 FR 1420), EPA began the process to issue a SIP call to require States to implement the reductions in nitrogen oxides (NO_X) necessary to address the ozone transport problem by publishing a notice of intent that articulated this goal. On November 7, 1997 (62 FR 60319), published the NPR for the NO_X SIP call. The EPA published a final rulemaking for the NO_X SIP Call on October 27, 1998 (63 FR 57356). The 1-hour attainment demonstration for the Washington area relies, in part, on the NO_X SIP Call reductions for purposes of determining the boundary conditions of the modeling domain.

Motor vehicle emissions budgets (MVEBs)—The attainment plan must establish and identify MVEBs determined by EPA be consistent with the attainment strategy.

Tier 2/Sulfur program benefits where needed to demonstrate attainment—The attainment plan includes the reductions expected from the EPA's Tier 2 tailpipe and low sulfur-in-fuel standards which are assumed in the attainment demonstration and accounted for in the MVEBs.

Mid-Course Review (MCR)—The attainment plan includes an enforceable commitment to conduct a MCR and evaluation based on air quality and emission trends. Such a MCR would show whether the adopted control measures are sufficient to reach

[3] EPA believes that the States were not required to redo the photochemical modeling. The 2004 SIP revisions provide for a greater percent reduction from the base year emissions than did the reductions in the superceded 1998 and 2000 SIP revisions, which form the basis for the photochemical grid modeling analysis. It is important to note that the modeling demonstration analyses predict that the Washington area will attain the 1-hour ozone standard by November 15, 2005 even *without* any of the severe area measures submitted with the superceding 2004 SIP revisions.

attainment by the area's attainment date, or that additional control measures are necessary.

Contingency Measures—The attainment plan for a serious or worse area must include specific measures to reduce emissions if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date.

1. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration

The States must adopt the control measures and other mandated programs required under the CAA for a given area's classification. Further, the States may adopt control measures that go beyond those measures mandated by the CAA because additional emission reductions are needed to demonstrate attainment. For purposes of fully approving a State's attainment SIP, that State needs to submit rules, as SIP revisions, for all VOC and NO_X controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration. EPA must approve all of the VOC and NO_X reduction measures relied on for attainment (as well as all the measures required to demonstrate ROP and the ROP plans themselves), in order for EPA to issue a final rule fully approving the attainment plan as meeting section 182(c)(2) of the CAA. The information in Table 2 is a summary of the CAA requirements that must be met for each severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the CAA.

TABLE 2.—CAA REQUIREMENTS FOR 1-HOUR OZONE AREAS CLASSIFIED AS SEVERE WITH AN ATTAINMENT DATE OF 2005

—New Source Review (NSR) for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) requires an offset ratio of 1.3:1 and a major source size applicability definition of 25 tons per year (tpy) sources.
—Reasonably Available Control Technology (RACT) for major sources VOC and NO_X with a major source size definition of 25 tpy sources.
—Enhanced Inspection and Maintenance (I/M) program.
—15 percent volatile organic compound reduction (VOC) plans.
—Emissions inventory.
—Emission statements.
—Attainment demonstration/RACM.
—3 percent per year ROP plan through attainment date.
—Clean fuel fleet program or a substitute measure (*e.g.,* national low emission vehicle program (NLEV).
—Enhanced Monitoring—Photochemical Assessment Monitoring Stations (PAMS).
—Stage II vapor recovery.
—Contingency Measures for failure to attain/failure to make ROP.
—VMT Offset SIP.
—The SIP revision to enforce the penalty fees pursuant to CAA section 185.

As explained previously, the applicable case law for the Washington area requires that the post-1996 plan for an area with an attainment date of November 15, 2005 must demonstrate ROP through November 15, 2005. *See Sierra Club I,* 294 F.3d at 163. In addition, EPA can only approve an ROP or attainment demonstration if EPA also approves a plan containing contingency measures to be implemented in the event the area fails to demonstrate ROP or attain the standard (the contingency measures plan). Under the *Sierra Club II,* the elements for the Washington area that need to be approved prior to or concurrently with the attainment demonstration include specific enforceable measures to offset growth in vehicle emissions (commonly referred to as the VMT offset SIP), RACT for additional major sources, the attainment demonstration to show attainment by no later than November 15, 2005, changes to the new source review (NSR) permitting programs to increase the offset ratio to a minimum of 1.3 to 1 and lower the major source applicability threshold to 25 tons per year, and a plan to enforce the penalty fees pursuant to section 185 of the Act (commonly referred to as the section 185 penalty fee SIP). *Sierra Club II,* 356 F.3d at 301.

As we discuss later in this document, the SIP revision to enforce the penalty fees pursuant to CAA section 185 is the only element for which we believe any one of the three States may have a deficiency, since we have not received a submission from Maryland meeting this requirement. The SIP revision to enforce the penalty fees pursuant to CAA section 185 is not a control measure to demonstrate timely attainment. Nor is it a contingency measure of either the attainment demonstration or any ROP plan. We have concluded that all of the other elements have already been approved into the States' SIPs or have been proposed for approval with an anticipated final approval date on or before the anticipated final approval date for this rulemaking.

2. NO_X Reductions Consistent With the Modeling Demonstration

On January 10, 1997 (62 FR 1420), EPA began the process to issue a SIP call to require States to implement the reductions in NO_X necessary to address the ozone transport problem by publishing a notice of intent that articulated this goal. On November 7, 1997 (62 FR 60319), published the NPR for the NO_X SIP call. The EPA published a final rulemaking for the NO_X SIP Call on October 27, 1998 (63 FR 57356). To address transport, the NO_X SIP Call established NO_X emissions budgets for 23 jurisdictions to reduce emissions in upwind States that significantly contribute to nonattainment problems. The emission reductions achieved through the states' plans (submitted and approved by EPA pursuant to the NO_X SIP Call) reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries.

For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. The 1-hour attainment demonstration for the Washington area relies, in part, on the NO_X SIP Call reductions for purposes of determining the boundary conditions of the modeling domain. Emission reductions assumed in the attainment demonstrations are modeled to occur both within the State and in upwind States; thus, intrastate reductions as well as reductions in other States impact the boundary conditions.

3. Motor Vehicle Emissions Budgets (MVEBs)

The attainment demonstration SIPs must identify the motor vehicle emissions that will be produced in the attainment year and demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. These estimates of motor vehicle emissions are known as the MVEBs, and are used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). The EPA believes that appropriately identified MVEBs are a necessary part of an attainment demonstration SIP.

4. Tier 2/Sulfur Program Benefits

On February 10, 2000 (65 FR 6698), EPA published a final rule promulgating a major, comprehensive program

designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under this program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide.

The final rule was supported by 1-hour ozone modeling and monitoring information that support the EPA's conclusion that the Tier 2/Sulfur program is necessary to help areas attain the 1-hour NAAQS. *See* 64 FR 35112, June 30, 1999 and 64 FR 57827, October 27, 1999. Under the final rule, NO_X and VOC emission reductions (as well as other reductions not directly relevant for attainment of the 1-hour ozone standard) would occur beginning in the 2004 ozone season.

5. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitored data to determine if the prescribed control strategy is on track to achieve the emission reductions and air quality improvements needed to attain the 1-hour NAAQS for ozone as expeditiously as practicable but by no later than the statutory dates. The three States have each submitted an enforceable commitment to perform a MCR as part of their attainment demonstration plans.

6. Contingency Measures

The SIP for a serious or worse area must include specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date and provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. See CAA sections 172(c)(9) and 182(c)(9). The three States have each submitted a contingency measures plan for the attainment demonstrations. EPA has proposed to approve those contingency measures plans. *See* 70 FR 2085, January 12, 2005.

IV. EPA's Review and Analysis of the Attainment Demonstration

A. The Modeling Demonstration

The following is a summary of our analysis of the local modeling and WOE. A more detailed description of the District's and the state submittals and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document and is included in the E-Docket for this rulemaking.

1. Analysis of the Modeling for the Local Modeling Domain

The CAA requires that serious areas and above perform photochemical grid modeling to help determine the emission reductions of VOC and NO_X necessary to achieve the attainment of the 1-hour ozone standard. Maryland, Virginia and the District of Columbia fulfilled this requirement through the application of the Urban Airshed Model, Version 4 (UAM-IV) for the Washington area and through the use of the modeling results from the ozone transport assessment group (OTAG) application of the Urban Airshed Model, Version 5 (UAM-V). The ozone attainment demonstration for the Washington area contains local scale modeling that fulfills EPA recommended modeling procedures. It is noted that Maryland, Virginia and the District modeled two episodes rather than the three recommended by EPA. EPA modeling guidance specifies that a total of three episodes be modeled from at least two meteorological regimes. Given the severe nature of the episodes modeled, even if one more episode was modeled, the two episodes that were modeled (July 15–16, 1991 & July 18–20, 1991), due to their severity, would almost certainly be the controlling episodes in the determination of the emission reductions needed in the Washington area for attainment. The two episodes that were modeled also represent the most frequently occurring meteorological conditions conducive to high ozone in the Washington area. It should also be pointed out that three episodes were analyzed in the design value rollback analysis performed using the modeling results from EPA's NO_X SIP Call Supplemental Notice of Proposed Rulemaking (SNPR) (63 FR 25901, May 11, 1998).

When the emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 22 parts per billion (ppb) from the modeled peak concentrations in the 1988 and 1991 base cases. The attainment year inventory used in the photochemical grid modeling was based upon a 29 percent reduction in NO_X emissions and a 32 percent reduction in VOC emissions. When the average modeled ozone reduction is applied to the peak measured concentration for July 16 (137 ppb) and July 19 (132 ppb), the resulting concentrations are 115 ppb and 110 ppb, respectively. This indicates attainment for these days. However, when the modeled ozone reduction is applied to the peak monitored level on July 20 (178 ppb), the resulting concentration is 156 ppb. Because the ozone forming potential rank is very high for July 20, 1991 (12th most severe day out of a 46 year period covered by that study with an average reoccurrence of once every 4–5 years) this type of day is not likely to occur often enough to be a major causative factor for nonattainment, especially since the emission controls modeled in this attainment demonstration should eliminate ozone exceedances for all but the most meteorologically severe days.

EPA's analysis of model performance indicates that the local modeling for the Washington area systematically over-predicts ozone concentrations. The local 1991 base case modeling predicts peak concentrations in the Washington area of 167–198 ppb while ozone monitors in the same area during the same time period show peak concentrations ranging from 132 ppb to 178 ppb. This indicates that the model is over-predicting the actual ozone concentrations by an average of 19 percent. When model over-prediction (approximately 19 percent) is accounted for in both of the July 1991 episodes, the local scale modeled peak concentrations become 120 ppb for July 16th, 111 ppb for July 19th and 142 ppb for July 20th. The adjusted peak concentration for two out of the three primary episode days indicates attainment. The adjusted concentration for July 20th does not indicate attainment at 142 ppb. However, a concentration of 142 ppb on July 20, 1991 is only 5 ppb greater than the concentration that would be consistent with attainment (137 ppb) according to EPA's alternative attainment test guidance.[4] Furthermore, when the area's design value in the base modeling period (1991) is adjusted for the air quality improvement predicted in the attainment year by the local-scale modeling, according to the screening test described in EPA's guidance entitled ''Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS'', the result is a 2005 projected design value of 119 ppb. These local-scale modeling results are close enough to attainment to warrant the consideration of weight-of-evidence arguments that support the demonstration of attainment.

[4] Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996).

2. Weight of Evidence (WOE) Analyses

A WOE determination is a diverse set of technical analyses performed to assess the confidence one has in the modeled results and to help assess the adequacy of a proposed strategy when the outcome of local scale modeling is close to attainment.

The three States provided WOE arguments in their attainment demonstration plans to further corroborate that it is likely their attainment demonstrations contained sufficient local measures for the Washington area to attain the 1-hour ozone standard by the statutory date of November 15, 2005. In the 2004 SIP revisions, the States augmented with additional evidence the same WOE analysis used in the now superceded and withdrawn attainment demonstration plans submitted during 1998 and 2000 (the court in *Sierra Club II* upheld EPA's use of this particular WOE analysis. *See* 356 F.3d at 307) This additional evidence includes a demonstration that the 2004 SIP revisions provide for a larger percent reduction of 1990 base line emissions than the now withdrawn attainment demonstration plans submitted during 1998 and 2000. The States and the District used EPA-developed design value adjustment factors based on regional scale modeling performed for the NO_X SIP Call SNPR. These adjustment factors were used to adjust the 1996 area design values. The analysis showed all area adjusted design values below the level needed for attainment (124 ppb).

Because the local modeling for the Washington area showed some peak concentrations above levels deemed consistent with attainment, we conducted an analysis to determine what additional local emission reductions, if any, would be needed to support ozone attainment in the Washington area. Our analysis determined that the Washington area would not need any additional emission reductions beyond those contained in the area attainment demonstration plan to ensure attainment of the 1-hour ozone NAAQS.

The States evaluated the effect of the changes to the base year and future inventories have on the relative reduction in emissions provided by the controlled 2005 attainment year emissions in comparison to that percentage change modeled in the photochemical grid modeling. EPA has reviewed this analysis, and determined that the percent reduction from the base year emissions provided by the ROP plan is greater than the reductions assumed in the photochemical grid modeling as follows:

(a) A 38 percent reduction in 1990 NO_X emissions by 2005 from on-road mobile sources whereas the photochemical grid modeling assumed a 25 percent reduction;

(b) A 67 percent reduction in 1990 VOC emissions by 2005 from on-road mobile sources whereas the photochemical grid modeling assumed a 50.8 percent reduction;

(c) An overall 43.5 percent reduction in 1990 NO_X emissions by 2005 from all sources (point plus area plus nonroad plus on-road) whereas the photochemical grid modeling assumed an overall 33.1 percent reduction; and

(d) An overall 42.8 percent reduction in 1990 VOC emissions by 2005 from all sources (point plus area plus nonroad plus on-road) whereas the photochemical grid modeling assumed an overall 31.7 percent reduction.

These changes result from inclusion of all the measures in the Post 1996–1999 and Post 1999–2005 ROP plans. The projected 2005 year NO_X emissions levels resulting from measures for which EPA is proposing to credit towards the 2005 target of the ROP plans is 491.4 tons/day versus a 2005 ROP target level of 539 tons/day of NO_X. EPA has proposed to approve the ROP plans. *See* 70 FR 2085, January 12, 2005.

EPA believes that where a State relies on changes in emissions from the base year to an attainment or maintenance year inventory to estimate using photochemical grid modeling relative changes in monitored ozone levels, the State may rely upon a previous photochemical modeling analysis when the State demonstrates that the relative emission reductions between the base year and the attainment or maintenance year are the same or greater using MOBILE6 than they were using MOBILE5. In any case, if using the latest planning assumptions for emissions estimates results in changes to other emissions categories (*e.g.*, point or area emissions), the demonstration would apply to the entire inventory, rather than just the on-road mobile inventory. *See* Joint Memorandum dated January 18, 2002, From John S. Seitz, Director, Office of Air Quality Planning & Standards, and Margo Tsirigotis Oge, Director of Office of Transportation and Air Quality, ''Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity''. EPA concludes that the 2004 SIP revisions demonstrate that the reduction in emissions by 2005 relative to the 1990 base year emissions are far greater than that assumed in the photochemical grid modeling and thus the States may rely upon the prior modeling analysis.

3. Attainment and Transport

Boundary condition sensitivity modeling was performed for the Washington area using OTAG Base 1C and Run I boundary conditions. The OTAG Base 1C boundary conditions reflect the boundary conditions that will result from the implementation of all Clean Air Act mandated controls. OTAG Run I boundary conditions closely approximate the boundary conditions that will result from CAA measures and the additional emission reductions anticipated from the NO_X SIP Call. The Washington area model runs with OTAG Base 1C boundary conditions were compared to the runs with OTAG Run I boundary conditions. The model run with OTAG Run I boundary conditions show a 5 to 10 ppb reduction in peak ozone concentrations in areas with modeled peak concentrations above 124 ppb. A 5 to 10 ppb increase in ozone concentrations would increase projected design values based upon local modeling over 124 ppb and would increase future predicted exceedances beyond the range consistent with attainment. The District's, Maryland's and Virginia's submittals for the Washington area demonstrate attainment of the 1-hour ozone standard by including in their analysis the reduction of ozone and ozone precursor transport that will result from regional NO_X controls.

4. Control Strategies in the Attainment Demonstration

The attainment demonstration describes the emission reduction credits that the Washington area jurisdictions are claiming toward their attainment demonstration. Just as for ROP plans, we can credit reductions in the attainment demonstration for rules promulgated by the EPA and for state measures approved into SIP. The control measures used in the attainment demonstration for the Washington area are listed in Table 3 of this document and described in more detail in the TSD for this rulemaking.

TABLE 3.—2002 AND 2005 VOC AND NO_X EMISSION REDUCTIONS FROM MEASURES IN THE ATTAINMENT DEMONSTRATION FOR THE WASHINGTON AREA

[Tons/Day]

Line No.	Measure	2002 reductions		2005 reductions	
		VOC	NO_X	VOC	NO_X
1	Tiers 1 & 2 FMVCP, Reformulated Gasoline (On-road), Federal Heavy Duty Diesel Engines rule, NLEV & Enhanced Inspection and Maintenance.	56.0	44.9	80.5	85.8
2	Reformulated Gasoline (Nonroad/Off-road)	2.7	.....	2.9	.....
3	Surface Cleaning/Decreasing	9.3	.....	9.8	.....
4	Autobody Refinishing	9.3	.....	9.8	.....
5	AIM	16.7	.....	17.5	.....
6	Consumer Products	4.1	.....	4.3	.....
7	Seasonal Open Burning Ban	7.4	1.6	7.4	1.6
8	Graphics Arts	3.8	.....	4.0	.....
9	Landfill Regulations	2.4	.....	2.5	.....
10	Non-CTG RACT to 50 tons/yr MD/VA/DC	1.5	.....	1.5	.....
11	Stage I Enhancement	1.5	.....	1.6	.....
12	Expanded State Point Source Regulation/VOC RACT to 25 tpy	2.4	.....	2.5	.....
13	Stage II Vapor Recovery Nozzles	15.1	.....	15.1	.....
14	RFG refueling benefits	2.6	.....	2.3	.....
15	Non-road Gasoline Engines Rule	22.2	.....	26.6	.....
16	Non-road Diesel Engines	.....	14.9	.....	22.1
17	State NO_X RACT/beyond RACT	.....	203.8	.....	279.4
18	State Portable Fuel Container Rules—MD/VA	0.9	.....	2.4	.....
19	State Solvent Cleaning Rules—VA	.....	.....	9.0	.....
20	EPA's Non-road Engines and vehicles rule—Large Spark Ignition Engine Rule.	.....	0.6	.....	0.5
21	EPA's Non-road Engines and vehicles rule—Spark Ignition Marine Engines.	1.3	.....	3.1	.....
22	TCMs in 2004 SIP Revisions	0.3	0.5	0.3	0.7
23	State AIM Rules	.....	.....	12.3	.....
24	Voluntary Measures Bundle	.....	.....	3.19	.19
25	State Portable Fuel Container Rules—DC	.....	.....	0.2	.....
	Total Reductions	154.3	266.3	213.39	390.29

5. Creditable Reductions in the Attainment Demonstration

As stated previously, emissions reductions may be credited in an attainment demonstration from rule in the ''applicable implementation plan,'' from a rule promulgated by EPA, or from a permit issued pursuant to Title V of the Act. The term ''applicable implementation plan'' is defined in section 302(q) of the Act to mean the SIP approved by EPA. All of the reductions from national rules for which the States seek credit in the attainment demonstration have been promulgated by EPA. All of the reductions from State rules listed in lines 1 through 21 of Table 3 for which the States seek credit in the attainment demonstration have been approved into the applicable SIPs. As for the rest of the State measures, EPA may only credit the attainment demonstration with reductions from a measure approved into the applicable SIP, and, hence, can only issue a final rule approving the attainment plan after or concurrently with EPA's approval of the state measures projected to generate sufficient reductions to demonstrate attainment. However, EPA may propose approval of an attainment demonstration if we have proposed approval of the measures which are projected to generate sufficient reductions to demonstrate attainment. EPA has already proposed approval for all the measures listed in Table 3 as follows:

(a) EPA proposed approval of the Maryland and Virginia State AIM rules on May 25, 2004 (69 FR 29674); and June 7, 2004 (69 FR 31780), respectively;

(b) EPA proposed approval of the District's AIM rule on December 27, 2004 (69 FR 77149);

(c) EPA proposed approval of the Maryland and Virginia Voluntary Measures on December 23, 2004 (69 FR 76889);

(d) EPA proposed approval of the District's Portable Fuel Container Rules rule on December 29, 2004 (69 77970); and

(e) EPA proposed approval of transportation control measures (TCMs) Maryland's, Virginia's and the District's SIPs on January 12, 2005 (70 FR 2085).

B. How Has RACM Been Satisfied?

The 2004 SIP Revisions address the RACM requirement in several ways. First, the 2004 SIP Revisions contain an analysis that no remaining RACM remain. Secondly, the 2004 SIP Revisions detail the control measures in the SIP and the projected benefits from the measures in the SIP in conjunction with those federal measures promulgated by EPA.

1. How Did the States Analyze Measures?

The analyses submitted by the States as part of the 2004 SIP revisions addresses the RACM requirement. The States first analyzed each measure in terms of economic and technological feasibility. If a measure was determined to be either economically or technologically infeasible, the States did not consider the measure further. If the States concluded that the measure was feasible, the States compared estimated benefits against a *de minimis* threshold of 0.1 tons per day (tons/day). The States then considered whether the measure could be implemented in time to advance the attainment date. For the

first step in determining whether a measure might advance the attainment date, the States determined whether the measure could achieve reductions by May 2004. For those measures that the States concluded be implemented by May 2004, the States determined if the aggregate reductions from these measures would advance the attainment date.

How Did the States Determine Economic Reasonableness?

The State analysis rejected measures that were not technologically and/or economic ally feasible based upon whether or not they would cause widespread and substantial adverse impacts or would require intensive resources/costs to implement, thereby placing an undue burden on the affected sources and/or state without commensurate environment benefits to reduce ozone.

The States screened measures for economic feasibility by comparing the cost effectiveness of a potential measure versus the cost effectiveness of RACT for stationary sources and versus the cost effectiveness of those emission mitigation measures (commonly referred to as transportation emission reduction measures or TERMS) adopted in the transportation improvement plans in order to demonstrate conformity. The States concluded that the cost effectiveness threshold for RACT and TERMS less than $10,000 per ton of emissions reductions. However, to ensure consideration of some measures that exceed this threshold, the States established a cut-off of $20,000 per ton. The States established a 0.1 tons/day cutoff to exclude an otherwise feasible measure on the grounds that a large number of these would be necessary to advance the attainment date and thus would pose an undue burden to implement.

The States' analysis process eliminated measures that were technically infeasible in the Washington area. The States also eliminated each measure that either was not determined to be cost-effective, or that would produce a less than 0.1 tons/day reduction.

How Did the States Determine if Measures Would Advance the Attainment Date?

The States then considered whether the measure could be implemented in time to advance the attainment date. For the first step in determining whether a measure might advance the attainment date, the States determined whether the measure could deliver reductions by May 2004 (the beginning of the last ozone season before the attainment year of 2005). The States eliminated any measure that could not do so on the grounds that it would not reduce the potential for exceedances during the 2004 ozone season. The next step in determining whether a measure might advance the attainment date, the State estimated the benefits of each measure which had not been eliminated and totaled the estimated benefits for all of these remaining measures. The States then considered whether these measures in the aggregate would provide sufficient reductions to advance the attainment date.

The photochemical grid modeling analysis assumed a 32 percent reduction in VOC emissions and a 29 percent reduction in NO_X emissions relative to the 1990 base year anthropogenic emissions. The revised 1990 base year anthropogenic emissions inventories are 869.3 tons/day of NO_X and 578.7 tons/day of VOC emissions. Reducing these by 29 and 32 percent, respectively, would yield emissions levels of 617.2. tons/day of NO_X and 393.5 tons/day of VOC emissions. The reductions (relative to the 1990 base year emissions) needed to achieve these levels are 252.1 tons/day of NO_X and 185.2 tons/day of VOC.

The Post-1996 ROP plan for 1999–2005 projects that the measures in the ROP plan would result in emissions levels of 373.3 tons/day of VOC and 614.3 tons/day of NO_X emissions and be sufficient to achieve the relative reduction in emissions modeled as part of the photochemical grid modeling sometime before November 15, 2002. In other words, the measures supporting the ROP plan would be in place before the start of the 2003 ozone season.

EPA has concluded, based upon the Urban Airshed Model modeling in the attainment demonstration that the Washington area is significantly affected by transport of ozone precursors from a number of upwind States (63 FR 57356, October 27, 1998). Under the final NO_X SIP call rule such significant contribution would not likely be mitigated prior to May 2004 when the states upwind of the Washington area were required to implement measures to eliminate their downwind contribution to ozone nonattainment. The Washington area relies on background reductions of transported ozone to attain the 1-hour ozone standard. Therefore, advancing the attainment date for the Washington area would require sufficient additional reductions within the Washington area to fully mitigate the significant transport component.

The States have quantified the transport impact in their photochemical grid modeling. The States performed boundary condition sensitivity modeling for the Washington area using various boundary conditions reflecting the conditions that will result from the implementation of only the Clean Air Act mandated controls versus those that closely approximate the boundary conditions that will result from the additional emission reductions anticipated from the NO_X SIP call. The model run with boundary conditions approximating the NO_X SIP call show a 5 to 10 ppb reduction in peak ozone concentrations in areas with modeled peak concentrations above 124 ppb in comparison with the model run without the NO_X SIP call.

In their RACM analysis the States used the locally derived sensitivity modeling analysis results to determine that a one ton reduction in NO_X emissions within the Washington area would result in a peak ozone concentration reduction of 0.114 ppb; a similar analysis for VOC emissions yielding a result that a one ton reduction in VOC emissions would result in a peak ozone concentration reduction of 0.029 ppb. The States concluded that emissions reductions of 34.0 tons/day of VOC or 8.8 tons/day NO_X would have to be required within the Washington area in order to mitigate 1 ppb of the transported contribution. The States used these thresholds to determine if potential RACM (which had passed the technically and economically feasible ''test'' in the aggregate) would be sufficient to offset 1 ppb of transported ozone and ozone precursors.

3. What Measures Did the States Consider and What Did the States Conclude?

Stationary Source Control Measures—The stationary source controls that were considered included the adoption of additional levels of NO_X controls on large stationary sources beyond the rules already approved into the SIPs or the RACT rule changes required by the reclassification of the area to severe nonattainment. The States concluded that the necessary regulations could not be promulgated in time to deliver benefits by May 2004.

Area Source Control Measures—The area source controls that were considered included airport congestion pricing, measures to reduce aircraft idling at airports, adoption of rules to reduce emissions from small bakeries, banning road paving and traffic marking activities on ozone action days, various regulations to require low emission asphalt, furnaces and water heaters, control of locomotive idling or incentives to repower locomotives,

expanding RACT rules to areas outside the Washington area. The States concluded that only the episodic restriction on road paving and traffic marking activities on ozone action days and the locomotive idling measures passed the initial criteria of economic and technical feasibility, exceeded the 0.1 tons/day threshold, and could be implemented by May 2004. The States estimated the benefits from these measures to see if these measures along with others would provide sufficient reductions to advance the attainment date.

Non-Road Mobile Control Measures—The States considered a variety of potential nonroad mobile source control measures such as requiring existing equipment be retrofitted, requiring the use of low-NO_X fuel by agricultural and other nonroad equipment, offering cash rewards to owners to scrap older, higher-emitting equipment, awarding preference in government contracts for lawn maintenance to bidders using low-emission equipment, or develop a voluntary program to reduce idling by airport ground service equipment. Most of the measures were determined not to be RACM because the measures did not meet the economic feasibility threshold or would not deliver benefits by May 2004. The States concluded that two measures—awarding preference in government contracts for lawn maintenance to bidders using low-emission equipment, and developing a voluntary program to reduce idling by airport ground service equipment—passed the initial criteria of economic and technical feasibility, exceeded the 0.1 tons/day threshold, and the could be implemented by May 2004. The States estimated the benefits from these measures to see if these measures along with others would provide sufficient reductions to advance the attainment date.

On-Road Mobile Control Measures—The States considered over 100 potential on-road mobile source control measures. The States considered measures that fall into the following general categories: Alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, and highway ramp metering. The States considered various measures to increase the numbers of advanced technology vehicles, such as additional low emission buses for the transit system. The States considered traffic system and traffic flow improvements such as additional HOV lanes, allowing the use of right-turn-on-red, and installation of round-abouts (traffic circles) instead of traffic lights. The States considered land use measures such as incentives for mixed use at transit centers, in-fill development and zoning changes to allow neighborhood retail outlets in residential areas. The States considered various market strategies such as a fee on every commuter parking space in the area, annual surcharge on gasoline powered vehicles in the area, cash for clunkers, commuter choice programs, voluntary cash-out subsidies, a VMT tax, congestion pricing and free parking for carpools. The States considered various outreach programs including an employer outreach program to encourage implementation of alternative commuting and a mass marketing campaign aimed at increasing transit usage and ridesharing. The States considered transit improvements such as flat fare for transit, bus service expansion, or providing for ''queue jumps by transit buses at over-capacity signalized intersections.[5] The States concluded that a number of measures passed the initial criteria of economic and technical feasibility, exceeded the 0.1 tons/day threshold, and could be implemented by May 2004. These measures were: (1) Telecommuting centers—including marketing activity, commuter and employer information and assistance; (2) government actions—ozone action day similar to snow day—implement a liberal leave policy for local, state and federal employees on code red ozone action days, permitting employees to work from home or take unscheduled leave; (3) integrated rideshare—to provide transit, park & ride, and telecenter information to all commuters on a match list; (4) permit right turn on red to reduce vehicle idling time by permitting right turn on red, where safety allows; (5) employer outreach (private sector) to provide regional outreach to encourage large private-sector employers to voluntarily implement alternative commute strategies to reduce vehicle trips to work sites; (6) mass marketing campaign marketing effort involving business-to-business advertising campaign in print media and on world wide web to increase transit, ridesharing and other travel demand management programs; (7) transit prioritization—queue jumps to provide queue jumps for buses at over-capacity signalized intersections throughout the region. For these measures, the States estimated the benefits and aggregated the results to see if these measures along with others would provide sufficient reductions to advance the attainment date.

The estimated aggregate benefits from all of the measures described in the preceding paragraphs that passed the economic and technical feasibility test, exceeded the 0.1 tons/day threshold, and could be implemented by May 2004 was 5.1 tons/day of VOC and 3.4 tons/day of NO_X reductions. The States concluded that these measures in the aggregate would not advance the attainment date even if implemented collectively. This is because 5.1 tons/day of VOC and 3.4 tons/day of NO_X do not not equal or exceed the 34.0 tons/day VOC or 8.8 tons/day NO_X emission reductions necessary to mitigate1 ppb of transported ozone.

4. What Is EPA's Analysis of the RACM Demonstration?

EPA believes the States' process is sound and reasonable. The first logical step is to screen-out infeasible measures. As for the cost-effectiveness threshold EPA finds the States' cutoff is reasonable. EPA has recognized that cost-effectiveness is a factor in determining what emission limitation is RACT. EPA has provided guidance to allow States to set *de minimis* levels for exemption of small emissions units from NO_X RACT rules. Part of this determination was the cost-effectiveness of controls. EPA used a cut-off of $1,300 per ton reduced as a cut-off.[6] The States started with a $8,000 to $10,000 per ton cutoff. Secondly, the States have recognized that the TERMS which are adopted as part of the transportation conformity analysis reflect a judgement of what the agency responsible for funding transportation related considers economically reasonable. By doubling the $10,000 per ton threshold to a $20,000 per ton cut-off the States considered more measures to be presumptively reasonable.

EPA agrees with the states that part of the determination as to whether measures advance the attainment date has to consider the need to mitigate ozone transport from upwind areas. EPA finds that the States have been conservative when determining that a suite of measures (that pass the initial

[5] A ''queue jump'' allows a bus to use a shoulder or other designated lane to bypass intersection queues (line of other vehicles) and move forward towards the stop line.

[6] See the memorandum entitled ''De Minimis Values for NO_X RACT'' G. T. Helms, Group Leader, Ozone Policy and Strategies Group (MD–15), to the Air Branch Chiefs, Region I—X, dated January 1, 1995.

feasibility and reasonableness tests) in the aggregate will not advance the attainment date if the total reductions are not projected to reduce peak ozone concentration by 1 ppb. After all, EPA believes the local photochemical grid modeling analyses indicate that 5 to 10 ppb in peak ozone concentrations is attributable to upwind emissions that will be mitigated by the NO_X SIP call. The States' 1ppb ''contribute to attainment significance threshold'' is only one-fifth that size and less than one-one-hundredth of the 1-hour ozone NAAQS. Given that reductions of 34.0 tons/day of VOC or 8.8 tons/day of NO_X are needed to reduce peak ozone concentrations in the Washington area by 1 ppb, EPA believes the 0.1 tons/day reduction threshold for eliminating measures is also reasonable.

For those measures which the States concluded passed the initial of economic and technical feasibility criteria, EPA concurs that these measures are not RACM. The total estimated benefits are far less than the 34.0 tons/day of VOC or 8.8 tons/day of NO_X emission reductions necessary to mitigate 1 ppb of transported ozone and are small in comparison with the reductions needed to achieve attainment (252.1 tons/day of NO_X and 185.2 tons/day of VOC).

The States have adopted rules to reduce emission from many of the area VOC source categories. These rules include solvent cleaning operations, lithographic printing operations, open burning, and landfills. The recently adopted measures to regulate or further regulate architectural and industrial maintenance coatings, solvent cleaning operations and portable fuel containers will provide additional emission reductions of ozone precursors. Under the November 30, 1999 guidance EPA needs to consider whether the State's implementation schedules are as expeditiously as practicable. Given that the implementation/compliance dates for these States' measures have already past, EPA cannot realistically require the States to implement the measures any more quickly.

The photochemical grid modeling analysis assumed a 32 percent reduction in VOC emissions and a 29 percent reduction in NO_X emissions relative to the 1990 base year anthropogenic emissions. The revised 1990 base year anthropogenic emissions inventories are 869.3 tons/day of NO_X and 578.7 tons/day of VOC emissions. Reducing these by 29 and 32 percent, respectively, would yield emissions levels of 617.2 tons/day of NO_X and 393.5 tons/day of VOC emissions. The Post-1996 ROP plan for 1999–2005 projects that the measures in the ROP plan would result in emissions levels of 614.3 tons/day of NO_X and 373.3 tons/day of VOC, and be sufficient to achieve the relative reduction in emissions modeled as part of the photochemical grid modeling sometime before November 15, 2002. In other words, the measures supporting the ROP plan would be in place before the start of the 2003 ozone season. EPA concludes that the SIPs provided for sufficient reductions to advance the attainment date where it not for transported emissions due to be mitigated at the start of the 2004 ozone season under the NO_X SIP Call.

The EPA, therefore, concludes that the States have adopted all RACM.

C. The District's, Maryland's and Virginia's Submittals To Satisfy EPA's Framework for Proposing Action on Attainment Demonstration SIPs

1. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration

Table 2 contains a summary of the CAA required ozone SIP elements for severe areas. The following paragraphs discuss the approval status of the elements listed in Table 2.

(a) *NSR*—For each of the three States, EPA has either approved or proposed for approval a SIP revision to implement the severe area NSR requirements in the Washington area for both VOC and NO_X including an offset ratio of 1.3:1 and a major source applicability definition of 25 tons/year. *See* 69 FR 77690, December 28, 2004; 69 FR 56170, September 20, 2004; and 69 FR 48150, August 9, 2004, for the District, Maryland, and Virginia, respectively.

(b) *RACT*—For each of the three States, EPA has fully approved a SIP revision to implement Reasonably Available Control Technology (RACT) for major sources of VOC and NO_X with major source size definition of 25 tons/year. *See* 69 FR 77690, December 28, 2004; 69 FR 56170, September 20, 2004; and 69 FR 48150, August 9, 2004, for the District, Maryland, and Virginia, respectively.

(c) *Enhanced I&M*—For each of the three States, EPA has fully approved a SIP revision to implement an Enhanced Inspection and Maintenance (I/M) program in the Washington area. *See* 64 FR 31498, June 11, 1999; 64 FR 47670, September 1, 1999; and 64 FR 58340, October 29, 1999.

(d) *15 Percent Plans*—For each of the three States, EPA has fully approved a SIP revision for the 15 percent volatile organic compound reduction (VOC) rate-of-progress plan for the Washington area. *See* 64 FR 42629, August 5, 1999;65 FR 44686, July 19, 2000; and, 65 FR 59727, October 6, 2000.

(e) *Base Year Inventories*—For each of the three States, EPA has fully approved a SIP revision consisting of a 1990 base year emissions inventory for the Washington area. *See* 63 FR 36864, July 8, 1998. On January 12, 2005 (70 FR 2085), EPA published a proposed rule approving amendments to the base year inventories.

(f) *Emission Statements*—For each of the three States, EPA has fully approved a SIP revision to require emission statements in the Washington area. *See* 59 Fed. Reg. 51517, October 12, 1994; 60 Fed. Reg. 21451, May 2, 1995; and, 60 Fed. Reg. 27889, May 26, 1995.

(g) *RACM*—In section IV. B. of this document, we provide our analysis and determination that the SIP revisions submitted by the District, Maryland and Virginia satisfy the RACM requirement.

(h) *Modeled Attainment Demonstration*—In section IV. A. of this document, we provide our analysis and determination that the modeled demonstration of attainment for the Washington area submitted by the District, Maryland and Virginia satisfies the Act and applicable guidance. Furthermore, the District, Maryland and Virginia have adopted and submitted sufficient measures to support that attainment demonstration, and the weight of evidence and relative reduction tests.

(i) *Post 1996*—2005 ROP Plans—On January 12, 2005 (70 FR 2085), EPA published a proposed rule to approve SIP revisions consisting of both a post 1996 to 1999 ROP plan and a post 1999–2005 ROP plan from the District, Maryland and Virginia for the Washington area.

(j) *NLEV*—For each of the three States, EPA has fully approved a SIP revision which substituted NLEV for the clean fuel fleet program the Washington area. *See*, 65 FR 44981, July 20, 2000 and 64 FR 72564, December 28, 1999.

(k) *PAMS*—For each of the three States, EPA has fully approved a SIP revision to implement the photochemical assessment monitoring stations (PAMS) in the Washington area. *See*, 60 FR 47081, September 11, 1995.

(l) *Stage II Vapor Recovery*—For each of the three States, EPA has fully approved a SIP revision to fully implement Stage II vapor recovery in the Washington area. *See*, 59 FR 29730, June 9, 1994; 59 FR 32353, June 23, 1994; and, 64 FR 57777, October 27, 1999.

(m) *VMT Offset SIP*—For each of the three States, on January 12, 2005 (70 FR 2085), EPA published a NPR proposing

to approve SIP revisions including the VMT Offset SIPs.

(n) *185 Penalty Fee SIPs*—On January 12, 2005 (70 FR 2085), EPA published a NPR proposing to approve the District's and Virginia's SIP revisions to enforce the penalty fees pursuant to CAA section 185 in the Washington area if the area fails to attain the 1-hour ozone NAAQS by November 15, 2005 (or by any attainment date extension granted pursuant to section 181 of the CAA). On May 21, 2004, EPA issued a finding that Maryland failed to submit a SIP revision to implement section 185 of the CAA. *See*, 69 FR 29236, May 21, 2004.

2. NO_X Reductions Consistent With the Modeling Demonstration

Inside the Baltimore-Washington modeling domain, the District, Maryland and Virginia modeled only the measures indicated in Table 3. The only NO_X control measure beyond CAA requirements was an additional level of control beyond RACT at large stationary sources of NO_X in the District's and Maryland's portion of the Washington area. As explained previously, all of the measures in Table 3 have been Federally promulgated, approved as SIP revisions, or have been proposed for approval as SIP revisions.

3. Motor Vehicle Emissions Budgets

As discussed previously, the MVEBs are the estimate of motor vehicle emissions in the attainment year that, when considered with emissions from all other sources, is consistent with attainment. The attainment demonstrations for the Washington area contain levels of modeled emissions that the EPA concludes demonstrate attainment once transport from upwind areas is addressed. The States have demonstrated that revised MVEBs for 2005 in the attainment demonstration for the Washington area are adequate by showing that overall emissions reductions (including those resulting in the 2005 MVEBs), when considered with emissions reductions from all other sources by 2005, are greater than the relative reduction assumed in the modeling demonstration.

The EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including federal measures and the mobile source control measures assumed in the NO_X SIP Call, that will be in place in the attainment year. Therefore, the revised motor vehicle emissions budgets presumptively must include all currently promulgated federal measures and state SIP measures and opt-ins shown in Table 4.

TABLE 4.—ON-ROAD MOBILE SOURCE CONTROL MEASURES CONTRIBUTING TO ATTAINMENT OF THE 1-HOUR OZONE NAAQS IN THE WASHINGTON AREA IN 2005

Control measure	Implementation year	In the 2005 motor vehicle emissions budget?
Federal Motor Vehicle Control Program (FMVCP):		
Tier 1	1994	Yes.
Tier 2	2004	Yes.
High enhanced I/M (CAA Mandate)	1997	Yes.
Reformulated Gasoline (State Opt-in):		
Phase I	1995	Yes.
Phase II	2000	Yes.
Clean Fuel Fleets Substitute—National Low Emissions Vehicles (NLEV)	1999	Yes.
Federal Heavy-duty Diesel Vehicle (HDV) 2 gm std	2004	Yes.

4. Tier 2/Sulfur Program Benefits

The EPA concludes that based on the modeling and WOE that the Washington area would not need any additional emission reductions beyond those contained in the area attainment demonstration to ensure attainment of the ozone NAAQS by 2005. Like other areas that rely, in part or in full, on Tier 2 reductions in order to demonstrate attainment, the States developed the Washington area attainment demonstration in the 2004 SIP revisions with the MOBILE6 model.

5. Mid-Course Review (MCR)

The EPA requires receipt of an enforceable commitment to include a MCR from each of the three Washington area States before their attainment demonstrations can be approved. The three States submitted these commitments in section 10.8 of the 2004 SIP revisions. The EPA has concluded that the enforceable commitments found in section 10.8 of the 2004 SIP revisions are approvable.

Note: On December 16, 2004, the District of Columbia and the Commonwealth of Virginia each submitted a MCR for the Washington area. On December 20, 2004, the State of Maryland submitted a MCR for the Washington area.

6. Contingency Measures

On January 12, 2005 (70 FR 2085), EPA published a NPR proposing approval of the three States contingency measures plans for the Washington area to address any potential failure to attain by the severe area attainment deadline of November 15, 2005 as well as any failures to demonstrate ROP.

V. MVEBs and a Protective Finding

A set of MVEBs only apply and may be used for purposes of transportation conformity once they have either been SIP-approved or found adequate by EPA. According to the transportation conformity rule, MVEBs in a submitted SIP may apply for conformity purposes even before we have approved the SIP, under certain circumstances. First, there must not be any other SIP-approved MVEBs that have been established for the same time frame and with respect to the same CAA requirements. Second, MVEBs in submitted SIPs may not be used before we have approved the SIP unless we have found that the submitted SIP's MVEBs are adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e) and the EPA's May 14, 1999 memo entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision'' both as amended by 69 FR 40004, July 1, 2004. For more details about the applicability of submitted and approved budgets, *see* 61 FR 36117, July 9, 1996; 62 FR at 43783–43784, August 15, 1997; and 69 FR 40004 at 400038, July 1, 2004.

A. What MVEBs Currently Apply in the Washington Area?

As stated elsewhere in this document, EPA's approvals of the1996–1999 ROP plan and the earlier versions of the attainment demonstration SIP revisions (those submitted during 1998 and 2000) were vacated by the court. Therefore, the MVEBs in these SIP revisions are not currently in the approved SIP. EPA had issued adequacy findings for the MVEBs in the post 1996–1999 ROP plan and those earlier versions of the attainment demonstration SIP revisions prior to our January 3, 2001 final approval (66 FR 586) of those SIPs. (*See* 64 FR 43698, August 11, 1999, and 65 FR 36439, June 8, 2000). Even though EPA issued findings of adequacy on these budgets, EPA has always interpreted the transportation conformity rule such that a final rulemaking action approving a control strategy or maintenance plan SIP renders any prior adequacy determination made for budgets related to that particular control strategy or maintenance plan SIP of no further force or effect. Instead, the final rulemaking on the SIPs governs which budgets apply for conformity purposes. We also interpret our transportation conformity rule to mean that once a SIP approval is vacated the prior adequacy determination on the vacated budgets is not resurrected.

Therefore, the only MVEBs in the approved SIPs for the Washington area are those for VOC in the approved 15 percent ROP plan for 1996. (*See* 64 FR 42629, August 5, 1999; 65 FR 44686, July 19, 2000; and, 65 FR 59727, October 6, 2000). However, on December 16, 2003 (68 FR 70012), EPA made a finding of adequacy for the 2005 ROP and 2005 attainment year MVEBs in the SIP revisions submitted by Virginia, Maryland and the District of Columbia on August 19, 2003, September 2, 2003, and September 5, 2003, respectively (the December 16, 2003 finding of adequacy). In accordance with the transportation conformity rule, once found adequate, these 2005 MVEBs superceded the MVEBs in the 15 percent ROP plan because these 2005 budgets cover a later year and are more stringent. (*See* 40 CFR 93.118)

B. Will EPA Initiate a Separate Adequacy Review for the 2005 MVEBs in the Attainment Demonstration Plans Submitted in February of 2004?

The EPA shall not initiate a separate adequacy review of the 2005 attainment budgets of the attainment plans submitted by the three States in February of 2004. In this notice of proposed rulemaking, EPA is initiating the process of reviewing the adequacy of the 2005 MVEBs in the attainment demonstration SIP revisions listed in Table 1 of this document simultaneously with our action to approve or disapprove these SIP revisions. We are seeking public comments on this proposed rule including the adequacy of the MVEBs and will accept such comments provided they are submitted by as specified in the **DATES** and **ADDRESSES** sections of this document. We will not hold a separate comment period on the adequacy of these budgets through a separate adequacy process under the conformity rule pursuant to 40 CFR 93.118(f)(1)(i) and (ii). Subsequent to the close of the public comment period specified in the **DATES** of this document, we will indicate whether the 2005 MVEBs in the attainment demonstration revisions are adequate and thus can be used for conformity either: (1) In EPA's final rulemaking on these plans; or (2), prior to any final action, pursuant to 40 CFR 93.118(f)(1)(iii) through (v) and 93.118(f)(2)(iii), by informing the District, Maryland and Virginia in writing and by announcing the adequacy finding by publishing a notice of adequacy status in the **Federal Register**. We will address all comments germane to the adequacy of the MVEBs either in our final rulemaking action or in response to comments in the docket for any separate adequacy finding. *See* 40 CFR 93.118(f) and 69 FR 40004 at 40041, July 1, 2004.

C. What Are the 2005 Budgets in the Attainment Demonstration?

The 2005 MVEBS in the attainment demonstration are area-wide budgets covering the entire Washington area. The MVEBs for 2005 are 97.4 tons/day of VOC and 234.7 tons/day of NO_X.

D. What Effect Will This Action Have on MVEBs for the Washington Area?

This proposed action would approve the 2005 MVEBs in the attainment demonstration into the District of Columbia and Virginia SIPs. In the case of Maryland, this action proposes to either: approve the attainment demonstration, contingent upon Maryland submitting an approvable section 185 penalty fee SIP in time for EPA to approve it prior to the time we must issue our final action on the attainment demonstration; or, in the alternative, to disapprove the Maryland attainment demonstration with a protective finding for the 2005 attainment MVEBs. A protective finding is a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as attainment.

E. What Effects Might This Action Have on Transportation Planning in the Washington Area?

If EPA disapproves an attainment demonstration SIP revision (with or without a protective finding), the conformity status of the transportation plan and transportation improvement plan (TIP) will lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA.[7] No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

Under section 93.120(a)(2) of the conformity rule (40 CFR 93.120(a)(2)), a final disapproval of an attainment demonstration without a protective finding would result in a ''conformity freeze.'' Under a ''conformity freeze,'' only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the attainment demonstration requirement is submitted, EPA finds its MVEBs adequate pursuant to 40 CFR 93.118 or approves the submission, and conformity to the implementation plan revision is determined. A disapproval with a protective finding for the 2005 motor vehicle emissions budgets does not create a ''conformity freeze'' but a lapse would still occur at the same time the highway sanctions would be imposed for a SIP-related failure.

[7] The finding that EPA issued to the State of Maryland on May 21, 2004 (69 FR 29236) for failure to submit the 185 fee SIP was effective June 21, 2004. So long as the section 185 fee provision remains an applicable requirement in the Washington area, the conformity status of the transportation plan and TIP will lapse on the date that highway sanctions are imposed pursuant to this finding (40 CFR 93.120(b)).

F. What Would Be the Basis for Issuing a Protective Finding?

In the preamble to the 1997 amendments to the conformity rule (62 FR 43780, August 15, 1997), EPA explained the implications of a disapproval of an attainment demonstration and how a protective finding works. The recent revisions to the conformity rule have not altered those explanations. When disapproving a control strategy SIP revision the EPA may give the SIP revision a protective finding. If the EPA disapproves a SIP but gives a protective finding, the MVEBs in the disapproved SIP could still be used to demonstrate conformity. There would be no adverse conformity consequences unless highway sanctions were imposed, as is the case with respect to all other SIP planning failures. As discussed previously, highway sanctions would be imposed two years following the EPA's disapproval if the SIP deficiency had not been remedied. The conformity of the plan and TIP would lapse once highway sanctions were imposed.

If the EPA does not issue a protective finding then a conformity freeze would occur on the effective date of the disapproval. *See* 40 CFR 93.120(a)(2).

The EPA may confer a protective finding only if a submitted SIP contains adopted control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the SIP was submitted, such as demonstrating attainment. That is, the EPA will give such an attainment demonstration SIP submission a protective finding if it contains enough emissions reduction measures to achieve its purpose of demonstrating attainment. *See* 40 CFR 93.120(a)(3). *See* also 62 FR 43796, August 15, 1997.

The sole reason EPA is proposing disapproval of the Maryland attainment demonstration is the lack of a section 185 penalty fee SIP revision to cover the Maryland portion of the Washington area. The presence or absence of a section 185 penalty fee SIP revision does not impact the ability of the area to attain by the attainment date because the penalty fees imposed pursuant to section 185 of the CAA are authorized only after EPA determines that area has failed to attain the 1-hour NAAQS by the applicable deadline. Moreover, the section 185 penalty fee requirements do not, in and of themselves, guarantee any further reductions in emissions. Therefore, the effects, *if any,* that these penalty fees will have on emissions will not occur before the applicable attainment date and have not been relied upon in the attainment demonstration for the Washington area.

The EPA is proposing that the attainment plans submitted by the three States demonstrate that the Washington area will attain the 1-hour ozone NAAQS no later than November 15, 2005. The EPA believes that the attainment demonstration SIP submitted by the State of Maryland meets the requirement for a protective finding, however, the EPA will take final action with respect to this protective finding only if it finalizes the disapproval in the alternative option proposed for Maryland's attainment demonstration SIP.

VI. Proposed Actions

A. *District of Columbia*—EPA is proposing approval of the District of Columbia's 1-hour ozone attainment plan for the Washington area which was submitted on September 5, 2003 as supplemented on February 25, 2004. Final approval of the attainment plan is contingent upon final approval of the ROP plans, TCMs, VMT offset SIP and contingency measures plan which EPA proposed for approval on January 12, 2005 (70 FR 2085).

B. *Maryland*—EPA is proposing approval of Maryland's 1-hour ozone attainment plan for the Washington area which was submitted on September 2, 2003 as supplemented on February 24, 2004. Final approval of the attainment plan is contingent upon final approval of the ROP plans, TCMs, VMT offset SIP and contingency measures plan which EPA proposed for approval on January 12, 2005 (70 FR 2085). In addition, final approval is contingent upon the State of Maryland's submittal of an approvable section 185 fee SIP in time for EPA to approve it prior to the time we take final action on the attainment plan.

In the alternative, EPA is proposing to disapprove Maryland's 1-hour ozone attainment plan for the Washington area which was submitted on September 2, 2003 as supplemented on February 24, 2004 for its failure to include provisions to implement the section 185 penalty fee provisions of the Clean Air Act. In conjunction with this alternative proposed disapproval, EPA is also proposing to grant a protective finding for the MVEBs of Maryland's 1-hour attainment plan such that they could still be used for purposes of transportation conformity.

C. *Virginia*—EPA is proposing approval of Virginia's 1-hour ozone attainment plan for the Washington area which was submitted on August 19, 2003 as supplemented on February 25, 2004. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions. Final approval of the attainment plan is contingent upon final approval of the ROP plans, TCMs, VMT offset SIP and contingency measures plan which EPA proposed for approval on January 12, 2005 (70 FR 2085).

D. Motor Vehicle Emissions Budgets

EPA is proposing to approve the MVEBs established and identified in the 1-hour ozone attainment plans for the Washington area submitted by the District, Maryland and Virginia on the dates as provided in this document. The attainment plan MVEBs for 2005 are 97.4 tons/day of VOC and 234.7 tons/day of NO_X . In the case of the State of Maryland, EPA is proposing, in the alternative, to disapprove the attainment plan for its failure to include provisions to implement the section 185 penalty fee provisions the Clean Air Act. In conjunction with this alternative proposed disapproval, EPA is also proposing to grant a protective finding for the MVEBs of the attainment plan such that they could still be used for purposes of transportation conformity.

EPA is also initiating the adequacy process under 40 CFR 93.118(f) for the 2005 budgets in the attainment plans. EPA will not be initiating a separate adequacy process. Persons wishing to comment on the adequacy of these MVEBs should do so at this time.

EPA is soliciting public comments on all these proposed actions and the associated issues discussed in this document. These comments will be considered before taking final actions.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This 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 the proposed approvals in 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.*). The proposed disapproval in the alternative will not affect any existing state requirements applicable to small entities. Federal disapproval of

the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the Administrator certifies that this proposed disapproval action does not have a significant 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 (UMRA) of 1995 (Pub. L. 104–4). Sections 202 and 205 of UMRA do not apply to the proposed disapproval because the proposed disapproval of the SIP submittal would not, in and of itself, constitute a Federal mandate because it would not impose an enforceable duty on any entity. In addition, the Act does not permit EPA to consider the types of analyses described in section 202 in determining whether a SIP submittal meets the CAA. Finally, section 203 does not apply to the proposed disapproval because it would affect only the District of Columbia, the State of Maryland and the Commonwealth of Virginia, which are not small governments. This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

This proposed rule to approve the District of Columbia's, and Virginia's 1-hour ozone attainment plan demonstration for the Washington area; and to approve Maryland's 1-hour ozone attainment plan demonstration for the Washington area, and in the alternative, to disapprove Maryland's 1-hour ozone attainment plan demonstration for the Washington area with a protective finding for the 2005 motor vehicle emissions budgets 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, Ozone, Volatile organic compounds.

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

Dated: January 31, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–2508 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7870–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Shell Oil Company in Deer Park, Texas (Shell) to exclude (or delist) a certain sludge waste generated by its Houston, TX Deer Park facility from the lists of hazardous wastes.

EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Shell's petitioned waste is nonhazardous with respect to the original listing criteria. EPA would also conclude that Shell's waste concentrations are such that short-term and long-term threats from the petitioned waste to human health and the environment are minimized.

DATES: We will accept comments until March 11, 2005. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by February 24, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at

the top with this regulatory docket number: ''F–04–TX–Shell.''

You should address requests for a hearing to Ben Banipal, Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Michelle Peace (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve this delisting?
C. How will Shell manage the waste if it is delisted?
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II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
A. What waste did Shell petition EPA to delist?
B. How did Shell generate this waste?
C. What information and analyses did Shell submit to support its petition?
D. What were the results of Shell's analysis?
E. How did EPA evaluate the risk of delisting this waste?
F. What did EPA conclude about Shell's analysis?
G. What other factors did EPA consider?
H. What is EPA's evaluation of this delisting petition?
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VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. Unfunded Mandates Reform Act
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer and Advancement Act
XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing to grant the petition submitted by Shell to have its North Pond F037 Sludge excluded or delisted from the definition of a hazardous waste, once it is disposed in a Subtitle D Landfill. This is a one-time exclusion for 15,000 cubic yards of sludge.

B. Why Is EPA Proposing To Approve This Delisting?

Shell's petition requests a delisting from the North Pond sludge derived from the treatment of F037 waste. Shell does not believe that the petitioned waste meets the criteria for which EPA listed it. Shell also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Shell's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

C. How Will Shell Manage the Waste if It Is Delisted?

If the petitioned waste is delisted, Shell must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States who have received authorization from EPA to make their own delisting decisions.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law. Delisting petitions approved by the EPA Administrator or his delegate under 40 CFR 260.22 are effective in the State of Texas after the final rule has been published in the **Federal Register**.

II. Background

A. What Is the History of the Delisting Program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final

regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude waste from the list of hazardous wastes. The facility petitions EPA because it does not consider the waste hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See Part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in 40 CFR § 260.22(a) and in section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists to conclude that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous waste and waste derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii and iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Shell Petition EPA To Delist?

On December 30, 2003, Shell petitioned EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, F037 North Pond Sludge generated from its facility located in Deer Park, Texas. The F037 listing is for a petroleum refinery primary oil/water sludge. The sludge has collected in the bottom of the North Pond since the early 1970s and is between 2 to 5 feet deep. The sludge consists of solids settled from the process wastewater, gravel and road base that has settled from storm water flow to the pond. The waste falls under the classification of listed waste under § 261.3. Specifically, in its petition, Shell requested that EPA grant a one time exclusion for 15,000 cubic yards of the F037 North Pond Sludge.

B. How Did Shell Generate This Waste?

Shell generates hazardous and nonhazardous industrial solid wastes as a result of refinery and chemical processes, wastewater treatment, refinery/chemical plant feed, product storage and distribution. Hazardous and nonhazardous wastewaters from the refinery are treated at the North Effluent Treater (NET) along with storm water flow. One of the units in the NET is the North Pond. Past practices allowed dry weather flow of process wastewater to the North Pond resulting in the settled sludge being classified as an F037 listed waste. Dry weather flow to the North Pond was discontinued in September of 2001. The sludge has collected in the bottom of the North Pond since the early 1970s and is between 2 to 5 feet deep. The sludge consists of solids from the process wastewater, gravel and road base that has settled from storm water flow to the pond. The North Pond was built in the 1950s as a small rectangular pond. A companion pond, the South Pond, was built contiguous to the North Pond and hydraulically connected by a flume. The ponds were preceded by three Corrugated Plate Interceptors. These ponds were located hydraulically down gradient of the refinery and received the refinery process wastewater. In the mid to late 1970s, the North Pond was enlarged and reconfigured to an ''L'' shape. This project was done concurrently with construction of the North Effluent Treater (NET). The pond was enlarged to approximately 103,000 square feet in size and about 7.5 feet deep. The working volume of the pond was 5.97 million gallons. The pond was lined with a 3-foot compacted clay liner. Three large discharge pumps located on the northeast side of the pond pumped storm water and wastewater to the Storm Water Impoundment Basin (SWIB) at a rate of 50,000 gallons per minute each during high flow conditions. Between 1988 and 1990, the South Pond was clean closed by removing all the sludges and affected liner and decontaminating all the ancillary equipment. Sludge was removed from the North Pond during the 1977 enlargement project; however, the volume and characteristics of the sludge were not recorded. Since 1977, there have been no other sludge removal efforts. The water storing capacity of the pond has decreased over time with the current remaining capacity estimated at 2.5 to 3.0 million gallons.

C. What Information and Analyses Did Shell Submit To Support Its Petition?

To support its petition, Shell submitted:

(1) Historical information on past waste generation and management practices including analytical data from eleven samples collected in September 2003;

(2) Results of the total constituent list for 40 CFR Part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Analytical constituents of concern for F037;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned waste.

D. What Were the Results of Shell's Analyses?

EPA believes that the Shell analytical characterization demonstrates that the North Pond Sludge is nonhazardous. Analytical data for the F037 North Pond Sludge samples were used in the Delisting Risk Assessment Software. The data summaries for detected constituents are presented in Table I. EPA has reviewed the sampling procedures used by Shell and has determined that they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the F037 North Pond Sludge. The data submitted in support of the petition show that constituents in Shell's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Shell has successfully demonstrated that the F037 North Pond Sludge is nonhazardous.

TABLE I.—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION LEVELS, NORTH POND F037 SLUDGE, SHELL OIL COMPANY, DEER PARK, TEXAS

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable delisting concentration level (mg/L)
Acenaphthene	4.80	0.0011	27.6
Acetophenone	<1.6	0.0013	46.0
Antimony	4.02	0.0275	0.332
Anthracene	1.2	0.0002	131
Arsenic	19.8	0.0326	0.0604
Barium	294	0.572	47.2
Benzene	4.30	0.026	0.436
Benz(a)anthracene	3.90	<0.0002	0.116
Benzo(a)pyrene	2.30	<0.0002	0.0116
Benzo(b)fluoranthene	1.40	<0.0002	0.123
Benzo(g,h,i)perylene	0.68	<0.0002	0.123
Benzo(k)fluoranthene	0.15	<0.0002	1.23
Beryllium	0.641	0.0009	5.04
Bis(2-ethylhexyl)phthalate	1.90	<0.01	9.2
Cadmium	2.98	0.00163	0.363
Chromium	332.0	0.0539	5.0
Chrysene	15.00	<0.0002	12.3
Cobalt	9.92	0.0252	.....
Copper	100	0.0445	6780
4,4′ DDD	0.0065	<0.00005	0.353
4,4′ DDE	0.0044	<0.00005	0.250
4,4′ DDT	0.0083	0.0015	0.218
Di-n-butyl phthalate	3.80	<0.01	48.4
Ethylbenzene	5.60	<0.100	46.0
Fluoranthene	3.60	<0.0002	18.4
Fluorene	20.00	0.0016	18.4
Indeno(1,2,3-cd)pyrene	1.40	<0.0002	0.123
Lead	127.00	0.0147	5.0
Mercury	6.57	0.00015	0.180
2-Methylnaphthalene	40.00	<0.01	.....
Naphthalene	33.00	0.13	9.2
Nickel	91.80	0.142	18.2
Phenanthrene	12.00	0.0018	131
Phenol	<8.0	0.300	276
Pyrene	17.00	<0.0002	13.8
Selenium	34.60	<0.05	1.40
Silver	0.409	<0.05	2.48
Styrene	1.1	<0.200	92.0
2,3,7,8-TCDD Equivalent	0.000332	0.00000000976	0.000000566
Thallium	<1.19	0.0000382	0.0852
Tin	6.55	0.00156	.....
Toluene	1.4	<0.100	92.0
Vanadium	53.9	0.0214	13.6
Xylenes, Total	5.8	0.044	920
Zinc	3650	2.15	181

Notes:
(A) These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
(B) Based on DRAS modeling with a target risk of 10–5 and a target HI of 0.1. One-time sludge volume of 15,000 cy.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in an unlined Subtitle D landfill is the most reasonable, worst-case disposal scenario for Shell's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637

(December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Shell's petitioned waste on human health and the environment. A copy of this software can be found on the Internet at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in an unlined landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Shell had not disposed of the waste in a Subtitle D landfill, so no representative data exists. Although, ground water contamination does exists in the area of this pond, the sludges are not considered a source of ground water contamination. The ground water contamination and remediation is addressed in the compliance plan of the facility's RCRA permit.

EPA believes that the descriptions of Shell hazardous waste process and analytical characterization, which illustrate the presence of toxic constituents at lower concentrations in these waste streams, provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP and Totals concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products above the delisting levels.

F. What Did EPA Conclude About Shell's Analysis?

EPA concluded, after reviewing Shell's processes, that no other hazardous constituents of concern, other than those for which Shell tested, are likely to be present or formed as reaction products or by-products in the wastes. In addition, on the basis of explanations and analytical data provided by Shell, pursuant to § 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22 and 261.23, respectively. Neither did it show the toxicity characteristic.

G. What Other Factors Did EPA Consider?

During the evaluation of Shell's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (*i.e.*, air emissions and surface runoff). EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Shell's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Shell's F037 North Pond Sludge. A description of EPA's assessment of the potential impact of Shell's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F–04–TX–Shell. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Shell's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Shell waste under the modeled disposal conditions.

EPA also considered the potential impact of the petitioned waste via a surface water route. EPA believes that containment structures at Class I Landfills can effectively control surface water runoff, as the Subtitle D regulations (*See* 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this notice due to the aggressive acidic medium used for extraction in the TCLP. EPA believes that, in general, the F037 North Pond Sludge is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Shell's waste were released from a Class I Landfill through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels

of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). EPA therefore concluded that Shell F037 North Pond Sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Shell's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). We believe the short-term and long-term threats posed to human health and the environment are minimized from the petitioned waste due to the low levels of hazardous constituents present in the waste.

It is EPA's position that we should grant Shell an exclusion for the F037 North Pond Sludge. The data submitted to EPA in support of the petition show Shell's F037 North Pond Sludge is nonhazardous.

We have reviewed the sampling procedures used by Shell and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the F037 North Pond Sludge. The data submitted in support of the petition show that constituents in Shell's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. EPA believes that Shell has successfully demonstrated that the F037 North Pond Sludge is nonhazardous.

EPA therefore proposes to grant an exclusion to Shell Oil Company, Deer Park, Texas, for the F037 North Pond Sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the F037 North Pond Sludge.

If we finalize the proposed rule, EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Shell, must comply with the requirements in 40 CFR Part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Reopener

The purpose of Paragraph 1 is to require Shell to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Shell to report differing site conditions or assumptions used in the petition (*i.e.*, if the wastes begin to leach at higher concentrations than predicted) within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that we have the authority under RCRA and the Administrative Procedure Act (APA), 5 U.S.C. § 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of EPA experience. *See* Reynolds Metals Company at 62 FR 37694 and 62 FR 63458, where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA § 553 (b).

(2) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Shell provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. Shell must provide this notification within 60 days of commencing this activity.

B. What Happens if Shell Violates the Terms and Conditions?

If Shell violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Shell to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023 Identify your comments at the top with this regulatory docket number: ''F–04–TX–Shell.''

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA's Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the

overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) if the National Technology Transfer and Advancement Act, EPA is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: January 28, 2005.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Shell Oil Company	Deer Park, TX	North Pond Sludge (EPA Hazardous Waste No. F037) generated one time at a volume of 15,000 cubic yards [insert publication date of the final rule] and disposed in a Subtitle D landfill. This is a one time exclusion and applies to 15,000 cubic yards of North Pond Sludge. (1) Reopener. (A) If, anytime after disposal of the delisted waste, Shell possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If Shell fails to submit the information described in paragraph (A) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Division Director determines that the reported information does require EPA action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or (if no information is presented under paragraph (C) the initial receipt of information described in paragraphs (A) or (B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) Notification Requirements: Shell must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address			Waste description		
*	*	*	*	*	*	*

[FR Doc. 05–2454 Filed 2–8–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7870–3]

South Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to South Carolina. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by March 11, 2005.

ADDRESSES: Send written comments to Thornell Cheeks, South Carolina Authorization Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8479. You may also e-mail your comments to *Cheeks.Thornell@epa.gov* or submit your comments at *www.regulation.gov*. You can examine copies of the materials submitted by South Carolina during normal business hours at the following locations: EPA Region 4 Library, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562–8190; or South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896–4174.

FOR FURTHER INFORMATION CONTACT: Thornell Cheeks, South Carolina Authorization Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8479.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: January 18, 2004.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 05–2456 Filed 2–8–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI80

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Northern Aplomado Falcons in New Mexico and Arizona and Availability of Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability; notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reintroduce northern aplomado falcons (*Falco femoralis septentrionalis*) (falcon) into their historic habitat in southern New Mexico and Arizona with the purpose of establishing a viable resident population. If this proposed rule is finalized, we may release captive-raised falcons as early as the summer of 2005 and release up to 150 additional falcons annually in the summer and/or fall for 10 or more years thereafter until a self-sustaining population is established. We propose to designate this reintroduced population as a nonessential experimental population (NEP) according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. The geographic boundary of the proposed NEP includes all of New Mexico and Arizona. A draft environmental assessment (EA) has been prepared on this proposed action and is available for comment (see **ADDRESSES** section below).

This proposed action is part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species' historical range. This proposed rule provides a plan for establishing the NEP and provides for limited allowable legal taking of the northern aplomado falcon within the defined NEP area.

DATES: We will consider all comments on this proposed rule received from interested parties by April 11, 2005. We will also hold one public hearing on this proposed rule; we have scheduled the hearing for March 15, 2005 at 7 p.m. (see **ADDRESSES** section of this proposed rule for the location).

ADDRESSES: You may submit comments and other information by any of the following methods (please *see* ''Public Comments Solicited'' section below for additional guidance):

- Mail or Hand Delivery: Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113.
- Fax: (505) 346–2542
- E-mail: *R2FWE_AL@fws.gov*.

You may obtain copies of the proposed rule and the draft EA from the above address or by calling (505) 346–2525. The proposed rule and draft EA are also available from our Web site at *http://ifw2es.fws.gov/Library/*.

The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

The public hearing will be held March 15, 2005, at the Corbett Center Student Union, New Mexico State University, Las Cruces, New Mexico, 88003. The Corbett Center Student

Union is located at the intersection of Jordan Street and University Avenue. The hearing will begin at 7 p.m. and last until 8:45 p.m., with an informal question and answer session beginning at 6 p.m. Parking is located in Lot 27 off of Triviz and University Avenue.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Field Supervisor, New Mexico Ecological Services Field Office, telephone (505) 346–2525 (*see* **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We want the final rule to be as effective as possible and the draft EA on the proposed action to evaluate all potential issues associated with this action. Therefore, we invite the public, concerned Tribal and government agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule and the draft EA. Comments should be as specific as possible.

To issue a final rule to implement this proposed action and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including names and addresses, will become part of the supporting record.

If you wish to provide comments and/or information, you may submit your comments and materials by any one of several methods (*see* **ADDRESSES** section). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include ''Attn: Falcon Proposed 10(j) Rule,'' your full name, and your return address in your e-mail message. Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by Federal law. In some circumstances, we may withhold from the rulemaking record a respondent's identity, as allowable by Federal law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background

1. *Legislative:* Congress made significant changes to the Act in 1982 with addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' We have always had the authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j) of the Act, the Secretary of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range as ''experimental.'' Based on the best available information, we must determine whether an experimental population is ''essential'' or ''nonessential'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a nonessential experimental population (NEP) designation.

Without the ''nonessential experimental population'' designation, the Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of an endangered species. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, permitted, or carried out by a Federal agency.

For purposes of section 9 of the Act, individual species within a NEP area are treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, we have greater discretion in developing management programs and special regulations for threatened species than we have for endangered species. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. The special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or a unit of the National Park System, and therefore section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply in these units. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or unit of the National Park System, we treat the population as proposed for listing and only two provisions of section 7 would apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, captively bred birds obtained

from a donor population were propagated with the intention of re-establishing a wild population within the United States to achieve recovery goals.

2. *Biological:* The northern aplomado falcon (hereafter referred to as falcon) is one of three subspecies of the aplomado falcon and the only subspecies recorded in the United States. This subspecies was listed as an endangered species on February 25, 1986 (51 FR 6686). The falcon is classified in the Order Falconiformes, Family Falconidae. Adults have a buffy upper breast with broad, blackish flanks usually extending into a band across the breast; the lower breast and undertail feathers are rufous (red). They have a long blackish tail marked with narrow white bands. Wings are dark above with blackish wing linings and white-edged feathers that form a narrow white line on the trailing edges of the wings. The falcon has a bold black and white facial pattern. Cere (nose area), eye-ring, legs, and feet are bright yellow. Males and females look the same, but males are noticeably smaller than females (Keddy-Hector 2000).

Falcons require open habitats that have scattered trees for hunting, roosting, and nesting and an understory of grass and shrubs. Habitat types include yucca-covered ridges in coastal prairie, riparian woodland in open grassland, palm and oak savannas, deciduous woodland, yucca-mesquite grasslands, and a variety of other open desert grassland and shrub habitats (see review in Keddy-Hector 2000).

Falcons are long-lived monogamous birds that court through a series of aerial displays by the male and mutual soaring and diving by the pair. They do not build their own nests; instead they use abandoned stick nests of other bird species, including other raptor species, crows, and ravens. Falcons are territorial during the breeding season and some pairs remain near and defend nest sites throughout the year. Clutches of two to four eggs are laid between January and July with most clutches initiated in April and May. Both sexes participate in incubation of eggs, and brooding and feeding of young. Young fledge after about 35 days and continue to be fed by their parents for at least another month (Hector 1987). Falcons feed upon medium-sized birds, insects, rodents, bats, and reptiles. Falcon pairs often hunt cooperatively (Keddy-Hector 2000).

Historically, falcons occurred throughout coastal prairie habitat along the southern Gulf coast of Texas, and in savanna and grassland habitat along both sides of the Texas-Mexico border, southern New Mexico, and southeastern Arizona. Falcons were also present in the Mexican states of Tamualipas, Veracruz, Chiapas, Campeche, Tabasco, Chihuahua, Coahuila, Sinaloa, Jalisco, Guerrero, Yucatan, and San Luis Potosi, and on the Pacific coast of Guatemala and El Salvador (Keddy-Hector 2000). Falcons were fairly common in suitable habitat throughout these areas until the 1940s, but subsequently declined rapidly with no documented nesting attempts by wild birds in New Mexico between 1952 and 2001. There have been no verified sightings of falcons in Arizona since 1940 (Corman 1992).

A number of factors contributed to the decline of the falcon throughout its range, including pesticide contamination, habitat destruction, habitat modification, and stream channelization that reduced riparian foraging habitat (Hector 1987, Service 1990). Habitat changes brought about through cattle grazing and agricultural practices may have caused some decline in population numbers and distribution. Pesticide exposure was probably the most significant cause of the species extirpation from the United States with the initiation of widespread DDT (dichloro-diphenyl-trichloroethane) use after World War II coinciding with the species disappearance (51 FR 6686, February 25, 1986). Falcons in Mexico in the 1950s were heavily contaminated with DDT residue, and these levels were likely responsible for a 25 percent decrease in eggshell thickness (Kiff *et al.* 1980). Such high residue levels are likely to cause reproductive failure through egg breakage (Service 1990). Currently, the continued pesticide influence, shrub encroachment into Chihuahuan grasslands, low densities of avian prey in some areas, and the increased presence of the great-horned owl (*Bubo virginianus*), which preys upon the falcon, may be limiting recovery of the species.

Sporadic sightings of falcons have occurred in New Mexico with sightings from every decade since the 1970s (Williams 1997). It appears that at least some of these sightings may be juvenile birds that are dispersing from existing populations in the Mexican state of Chihuahua. Any significant natural re-colonization of habitats in Arizona and New Mexico would likely take decades, if it occurred at all, because the reproductive rate of the population in Mexico has declined, possibly due to extended drought (Burnham, *et al.*, 2002).

3. *Recovery Efforts:* The recovery plan for the falcon was published in June 1990 (U.S. Fish and Wildlife Service 1990). The recovery plan's short-term goal was to downlist the falcon from endangered to threatened by achieving a self-sustaining population of 60 breeding pairs in the United States. Although no specific goals have been set for delisting the falcon, the recovery plan outlines six objectives to be implemented to reach the downlisting goal, including ''reestablish the falcon in the U.S. and Mexico'' (U.S. Fish and Wildlife Service 1990). The establishment of successfully reproducing falcons distributed across their historical range is critical to the recovery of this species. The recovery plan notes that private lands may be needed to fully recover falcons. The approach and techniques we propose to use (*see* section 5. ''Reintroduction Procedures'' below) have been successful for other species, including the peregrine falcon (*Falco peregrinus*), California condor (*Gymnogyps californianus*), harpy eagle (*Harpia harpyja*), and Mauritius kestrel (*Falco punctatus*).

Northern aplomado falcon recovery efforts started when 25 nestling falcons were brought into captivity from populations in Veracruz, Tabasco, Campeche, and Chiapas, Mexico, beginning in 1977, and were transferred in 1983 to the Peregrine Fund's facility in Boise, Idaho. Since 1985, falcons have been propagated and reintroduced to southern Texas on and around the Laguna Atascosa National Wildlife Refuge (NWR) and Matagorda Island NWR under a Safe Harbor Agreement with The Peregrine Fund. A released pair nested and fledged one young on Port of Brownsville land in extreme southern Texas in 1995. In 1996, four territorial pairs produced three fledglings in the same vicinity (P. Jenny, The Peregrine Fund, pers. comm., 1996). These reintroduced falcons were the first known successful nestings in the United States since the last recorded nesting near Deming, New Mexico, in 1952 (Ligon 1961).

There are currently 46 pairs in the captive population, which produce over 100 young per year. From this captive population, 1,004 captive-bred falcons have been released in Texas. The Peregrine Fund conducted a pilot release project in Texas during 1985–1989, and increased restoration efforts began in 1993. These releases have established at least 39 pairs in south Texas and adjacent Taumalipas, Mexico, where no pairs had been recorded since 1942 (Jenny, pers. comm. 2004). Moreover, established pairs began breeding in 1995, and have successfully fledged more than 179 young (Jenny, pers. comm. 2004). Nests were located on a variety of structures both man-

made and natural. Predation from the great-horned owl (*Bubo virginianus*), raccoon (*Procyon lotor*), and coyote (*Canis latrans*) is significant, affecting more than half of all nesting attempts (Jenny 2003).

Beginning in 2002, falcons have been released in west Texas, also under the Safe Harbor Agreement with The Peregrine Fund. One hundred and twenty-five young have been released at four sites on private ranches near Valentine, Texas (Jenny, pers. comm. 2004). In 2003, despite great-horned owl predation, at least 25 young (71 percent) reached independence (Jenny 2003). Nesting productivity increased by approximately 40 percent in 2003 and 2004 when falcons were provided artificial nesting structures with barred sides arranged so that falcons can enter the nest while predators cannot (Jenny, pers. comm. 2004). Pairs of falcons in south Texas successfully fledged young where they had never been successful prior to the use of the new artificial nests (Jenny, pers. comm. 2004).

Releases in Texas have occurred on private property under Safe Harbor Agreement permits (*i.e.*, agreements between a private land owner and the Service which permit future incidental taking of listed species on their private land) with an enrollment of more than 1.4 million acres. Releases have also occurred on Laguna Atascosa, Matagorda Island, and Aransas NWRs in Texas. We believe that it is possible to accelerate the establishment of a breeding population in the Southwest through releases of captive-raised birds. The experience in Texas, where the population went from 0 birds in 1994, to at least 37 pairs that had produced at least 92 young by 2002, illustrates the rapidity with which a population can be established through releases. Despite the relative success of the falcon releases in Texas, we believe the Safe Harbor Agreements used to release falcons in Texas are not the best mechanism for establishing falcons in New Mexico and Arizona. Safe Harbor Agreements can only be developed for private land owners. There is a vast amount of public land in New Mexico and Arizona (about 40 percent in the proposed reintroduction area). Therefore, the public land will be very important for recovery of the falcon in this area. Not only is the public land important because of its high percentage in the NEP area, but it is important because of its habitat characteristics. We believe there is very low probability that falcons will populate lands outside their historic range because their behavioral ecology is not adapted to survival in those habitats. The historic range in the NEP area is Chihuahuan desert grassland, and public lands make up a higher percentage of the Chihuahuan desert grassland than does private land (Young, K.E. and others, 2002).

In New Mexico, standardized falcon surveys have been conducted annually on Department of Defense land (White Sands Missile Range and Fort Bliss) over the last decade (U.S. Fish and Wildlife Service FO records, Albuquerque, NM). Armenderis Ranch in New Mexico and areas immediately adjacent to known falcon habitat (south of Deming, New Mexico) have been similarly surveyed, and surveys were conducted last year on Gray Ranch in New Mexico (USFWS FO records, Albuquerque, NM). After a 50-year absence, a nesting attempt was documented in Luna County, New Mexico, in the spring of 2001 (Ray Meyer, La Tierra Environmental Services, pers. comm. 2004). In 2002, this pair successfully fledged three chicks (Meyer, pers. comm. 2004). In 2003, only a single female was seen in the area of the 2002 nest (Meyer, pers. comm. 2004). In 2004, a pair of falcons was seen on one monitoring site visit and a single falcon was seen on several other occasions.

We do not consider the 2002 nesting pair and any offspring produced as a population. Based on definitions of ''population'' used in other experimental population rules (see the November 22, 1994, final rule for reintroduction of gray wolves to Yellowstone National Park (59 FR 60252)), we believe that a determination that a falcon population already exists in a designated area would require a minimum of two successfully-reproducing falcon pairs over multiple years. Biologically, the term ''population'' is not normally applied to a single pair, and so the few birds in New Mexico could be considered emigrants disconnected from the Chihuahuan population. Also, two, or even three, birds are not considered a self-sustaining population. Self-sustaining populations need a sufficient number of individuals to avoid inbreeding depression and occurrences of chance local extinction; this can range from 50 to 500 breeding individuals, according to minimum viable population theory (Soule, M.E. (ed.) 1987).

4. *Reintroduction Sites:* Falcons historically occurred in Chihuahuan desert grasslands within the proposed NEP area, and habitats in the release areas are similar to those that support nesting falcons in northern Mexico populations. Primary considerations for identifying falcon release sites include areas: (1) Within or in proximity to potentially suitable habitat, including open grassland habitats that have scattered trees/shrubs/yucca for nesting and perching; (2) supporting available prey (*i.e.*, insects, small to medium-sized birds, and rodents) to support falcons; (3) with minimal natural and man-made hazards (*i.e.*, predators, open-water tanks) and potential hazards should be addressed and minimized where practical; (4) with access for logistical support; (5) with sufficient potentially suitable habitat surrounding a potential release site and its proximity to other similar habitats; and (6) with a willing landowner or land manager.

While the NEP area will include both Arizona and New Mexico, release sites will only be on lands within New Mexico. Release sites within the proposed NEP area shall be selected to increase the distribution of the population and its rate of growth. Selection will be based upon suitability and extent of available habitat, as well as any dispersal patterns from prior releases. Released falcons are expected to move around within the areas of their release, but may disperse to more distant areas. The 10(j) designation and supporting 4(d) rule cover both private and public lands in New Mexico and Arizona, so Safe Harbor Agreements will not be necessary with private landowners. If finalized, incidental take will be authorized through this rule.

5. *Reintroduction Procedures:* The rearing and release techniques to be used in establishing this NEP have proven successful in establishing a wild population of falcons in southern Texas. Falcons will be raised in The Peregrine Fund's captive propagation facility in Boise, Idaho. Newly hatched falcon chicks are fed by hand in sibling groups for up to 25 days. They are then raised in sibling groups with minimal human exposure until their transportation to a release site at 32–37 days of age. Falcons are then shipped by air between Boise and the release locations, and driven to the release site (hack site). At the release site, the falcons are placed in a protective box on top of a conspicuous tower and fed for 7 to 10 days. The box is then left open and falcons are allowed to come and go freely. Food is provided on the tower and, initially, the falcons return each day to feed. Eventually the falcons begin chasing prey, making their own kills, and spending more and more time away from the hack site. A falcon is considered to be ''successfully released'' when it is no longer dependent on food provided at the release site. This process generally takes from 3 to 6 weeks (Jenny 2003). The hack site attendants will evaluate the

progress of the released falcons. The release process can be extended to ensure a successful release or a bird may be returned to the propagation facility in Boise if it does not attain independence.

Falcons will be released in groups of 5 to 7 similarly-aged nestlings with the total annual release not to exceed 150 birds. Within a single year, multiple releases may occur at a single release site. Allowing multiple releases from a single site increases chances of establishing breeding pairs and also allows released birds to learn from independent birds that are already established on the site. Juvenile falcons are reasonably gregarious and problems of aggression at release sites in southern Texas have not generally developed until adult pairs become established. The Service believes that the techniques described above, and implemented successfully in southern Texas, will also be successful in New Mexico. We anticipate releasing falcons for 10 or more years.

6. *Status of Reintroduced Population:* We propose this reintroduced population to be nonessential to the continued existence of the species according to the provisions of section 10(j) of the Act. We have concluded that this experimental population is nonessential to the continued existence of the falcon for the following reasons:

(a) With at least three populations, one in eastern Mexico, a second in northern Chihuahua, Mexico, and a third becoming established in southern Texas, the experimental population is not essential to the continued existence of the species. The threat of extinction from a single catastrophic event has been reduced by a gradual increase of the southern Texas and captive populations. Thus, loss of the experimental population will not appreciably reduce the likelihood of falcon survival in the United States, and

(b) Any birds lost during the reintroduction attempt can be replaced through captive breeding. Production from the extant captive flock is already sufficient to support the release of birds that would occur under this proposed rule, in addition to continued releases into south and west Texas.

We fully expect that the proposed NEP will result in the establishment of a self-sustaining, resident population, which will contribute to the recovery of the species. We expect this reintroduction to be compatible with current or planned human activities in the release area. There have been no reported conflicts between human activities and falcons in Texas, where 1,004 falcons have been released over the course of 18 years (Jenny, pers. comm. 2004). If the actions carried forward as a result of this proposed rule fail to demonstrate sufficient success toward recovery, as determined by the Service, then the Service, in coordination with other Federal land managers, the States of Arizona and New Mexico, and private collaborators, would reevaluate management strategies.

Although uncertainties regarding the reintroduction of the proposed NEP exist, the success of the southern Texas reintroduction suggests that this effort will succeed. Based on that experience, we have good reason to believe that appropriately managed captive-reared birds are suitable for release into the wild and can survive and successfully reproduce. Although prey-base biomass (g/ha) may be lower throughout the proposed NEP area than in south Texas, prey-base biomass (g/ha) in the proposed NEP area is similar to occupied habitat in Chihuahua, Mexico, where the falcons consume primarily birds (Truett 2002). Further, the establishment of a third, wild, self-sustaining population provides further assurances that the species will survive in the United States. For example, if the Texas population was significantly affected by catastrophic events such as a Gulf coast hurricane, the NEP in New Mexico would provide a buffer for the species in the wild while the Texas population recovered.

7. *Location of Reintroduced Population:* Section 10(j) of the Act requires that an experimental population be geographically separate from other populations of the same species. The proposed NEP area covers all of New Mexico and Arizona, with the expectation that falcons would only persist within the Chihuahuan Desert, which extends north from Mexico into southern Texas, southern New Mexico and southeast Arizona. The NEP area is geographically isolated from existing falcon populations in Mexico and Texas by a sufficient distance to preclude significant contact between populations. Although no falcons have been documented in Arizona since the 1940s, sporadic falcon sightings have occurred in New Mexico. Most recently, breeding was documented in Luna County, New Mexico, in 2001 and 2002 (Meyer, pers. comm. 2003). However, we do not believe the presence of these falcons meets a minimal definition of a population as stated in section 3 ''Recovery Efforts'' above.

It is difficult to predict where individual falcons may disperse following release within the proposed NEP area. A 70-day old male falcon dispersed 136 kilometers (km) (84.5 miles (mi)) from a hack site in Texas (Perez *et al.*1996), and a falcon banded in Chihuahua, Mexico, was observed 250 km (155 mi) north in New Mexico (A. Montoya, The Peregrine Fund, pers. comm.). Perez *et al.* (1996) placed radio transmitters on 14 falcons in Texas and found home range size varied from 36–281 square km (km^2) (14–108.5 square mi). Designation of a large NEP area around planned release sites allows for the possible occurrence of falcons in a large geographic area. Any falcon found within the NEP area will be considered part of the experimental population.

It is possible that some captive-bred falcons from Texas, or their progeny, could disperse into the NEP. Under the proposed rule, any falcon within the NEP shall be treated as a part of the NEP. Such treatment affords birds originating from Safe Harbor releases in Texas essentially the same treatment as they receive when on Safe Harbor properties (*i.e.*, unknowing take would not be prosecuted), and is generally consistent with the Service's June 17, 1999, Safe Harbor Policy to ''use the maximum flexibility allowed under the Act in addressing neighboring properties under Safe Harbor Agreements'' (64 FR 32717).

8. *Management:* (a) *Monitoring:* The Service is developing a monitoring plan, and it will be finalized prior to publishing a final rule. It will be available from the Service (see **ADDRESSES** section). The Service, The Peregrine Fund, Turner Endangered Species Fund, and other cooperators will monitor the success of the release program in New Mexico. Falcons will be observed daily before they are released. Facilities for release of the birds will be modeled after facilities used for falcons in Texas. Information on survival of released birds, movements, behavior, reproductive success, and causes of any losses, will be gathered during the duration of the proposed program. Program progress will be summarized and reported annually at stakeholder meetings. We plan to evaluate the progress of the program every 5 years. Telemetry may be used to monitor falcon movements. Blood samples may be taken to monitor contaminant levels.

(b) *Disease:* The Peregrine Fund has raised aplomado falcons since 1977. In 1996, a novel systemic adenovirus killed 57 chicks. The outbreak was controlled and transmission arrested. Maintenance and hygiene at the Boise, Idaho, captive rearing facility is more than sufficient to prevent and/or contain a similar outbreak (B. Rideout, Head of Pathology, Center for Reproduction of Endangered Species, San Diego

Zoological Society, San Diego, California, pers. comm. 2003).

(c) *Genetics:* The captive flock is managed to maintain and maximize genetic diversity (The Peregrine Fund Operation Reports, 1993–2003).

(d) *Mortality:* The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as military training, livestock grazing, recreation, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a falcon within the proposed NEP area provided that the take is unintentional and was not due to negligent conduct. Unintentional take will be considered ''incidental take,'' and will be authorized under the proposed rule. We expect levels of incidental take to be low since the reintroduction is compatible with existing land use practices for the area.

When we have evidence of knowing (*i.e.*, intentional) take of a falcon, we will refer matters to the appropriate authorities for investigation. Knowing, or intentional take, refers to actions such as shooting, purposeful destruction of active nests, or harassment of falcons from active nests for purposes other than those described in section (e) ''Special Handling'' below. Any take of a falcon, whether incidental or not, must be reported to the local Service Field Supervisor (see **ADDRESSES** section).

(e) *Special Handling:* The Service, New Mexico Department of Game and Fish (NMDGF) and Arizona Game and Fish Department (AGFD) employees, and their agents (including employees and agents of The Peregrine Fund) are authorized, when permitted by the Service (50 CFR parts 13, 21, and 17.32), to: (1) Relocate falcons to avoid conflict with human activities; (2) relocate falcons that have moved outside the proposed NEP area when removal is necessary or requested; (3) relocate falcons within the proposed NEP area to improve survival and recovery prospects; (4) aid animals that are sick, injured, or otherwise in need of special care; and (5) monitor and band falcons. Employees of the Service, in consultation with NMDGF and AGFD employees and their agents (including employees and agents of The Peregrine Fund), can determine if a falcon is unfit to remain in the wild and should be returned to captivity, and are authorized by permit (as above) to salvage dead falcons. When falcons are handled, blood may be taken for physiological, environmental contaminant, and/or genetic analysis.

(f) *Coordination with Landowners and Land Managers:* The Service and cooperators have identified issues and concerns associated with the proposed falcon reintroduction through the National Environmental Policy Act (NEPA) scoping comment period. The proposed reintroduction also has been discussed with potentially affected State agencies and some private landowners wishing to have falcons released on their property. Affected State agencies, landowners, and land managers have indicated support for the proposed reintroduction, provided falcons released in the proposed NEP area are established as nonessential and land use activities in the proposed NEP area are not constrained without the consent of affected landowners.

(g) *Potential for Conflict with Military, Industrial, Agricultural and Recreational Activities:* We do not expect conflicts between falcon management and agricultural, oil and gas development, military, or recreational activities. These activities on private or military lands within the proposed NEP area will continue without additional restrictions during implementation of the falcon reintroduction activities. With proper management, we do not expect adverse impacts to falcons from agricultural, oil and gas development, military, or recreational activities in the proposed NEP area. If proposed agricultural, oil and gas development, military, or recreational activities may affect the falcon's prey base within release areas, State, Tribal, and/or Federal biologists can determine whether falcons could be impacted and, if necessary, work with the other agencies and stakeholders in an attempt to avoid such impacts. If private activities impede the establishment of falcons, we will work closely with the State, Tribe, and/or landowners to suggest alternative procedures to minimize conflicts. The States of Arizona and New Mexico are not directed by this proposed rule to take any specific actions to provide any special protective measures, nor are they prevented from imposing restrictions under State law, such as protective designations and area closures. Neither of the States within the proposed NEP area, both of which are participants in the northern aplomado falcon working group, has indicated that they would propose hunting restrictions or closures related to game species because of the falcon reintroduction. There have been no reported conflicts between human activities and falcons in Texas, where 1,004 falcons have been released over the course of 18 years (Jenny, pers. comm. 2004).

Overall, the presence of falcons is not expected to result in restrictions or constraints on the hunting of wildlife or to affect economic benefits that landowners might receive from hunting leases. The action will not affect the establishment of future hunting seasons or conservation actions approved for other migratory bird species. There will be no federally mandated hunting area or season closures or season modifications resulting from the establishment of the NEP. Conflicts with upland bird hunting in the release area are not anticipated since neither of the States within the proposed NEP area has indicated that they would propose hunting restrictions or closures related to game species because of the falcon reintroduction.

The principal activities on private property near the initial release areas are agriculture and recreation. We do not believe that use of these private properties by falcons will preclude such private uses because these activities and the falcon's needs do not conflict with each other.

Released falcons might wander into other parts of the proposed NEP area or even outside the NEP area. We believe the frequency of movements outside the proposed NEP area is likely to be very low based on the experience with falcon reintroduction in Texas (Burnham, *et al.* 2002). Any falcons outside the proposed NEP area will be considered endangered under the Act. Any falcons that occur within the proposed NEP area will be considered part of the proposed NEP and will be subject to the protective measures in place for the proposed NEP. The decreased level of protections afforded to falcons that cross into the proposed NEP is not expected to have any significant adverse impacts to the wild population, since we do not anticipate this to occur very often.

(h) *Protection of Falcons:* We will release falcons in a manner that provides short-term protection from natural predators, and human-related sources of mortality. Improved release methods, and discouraging predators, should help reduce natural mortality. Releasing falcons in areas with little human activity and development will minimize human-related sources of mortality. Should causes of mortality be identified, we will work with the State, Tribe, and/or landowners to correct the problem.(h)

(i) *Potential for Conflict with Natural Recolonization of Falcons:* Natural, *i.e.*, unaided, falcon recolonization of New Mexico and Arizona would be dependent on dispersing falcons from

Mexico, Texas, or possibly unknown nesting pairs within the United States. We do not consider the unaided recolonization of falcons in the proposed NEP area a likely occurrence for a number of reasons. The half-century absence of falcons in Arizona and New Mexico suggests that the Chihuahua, Mexico, falcon population cannot recolonize New Mexico and Arizona with sufficient numbers to establish a population. The low fledging success in Chihuahua, and stable or declining breeding numbers there since observations first began in 1992 (Montoya *et al.* 1997), suggest that birds in this area are not likely to provide enough dispersers to populate New Mexico. We do not consider the presence of the documented 2001 and 2002 breeding pair in Luna County to represent a population. Although there may be occasional falcon dispersal movements from Mexico to New Mexico, we do not believe this will lead to the establishment of a viable population within New Mexico. Given the lack of a falcon population in the action area, and the low probability that falcons from Chihuahua, Mexico, can recolonize New Mexico, we believe that releases are needed in order to establish a resident falcon population in the U.S. Chihuahuan desert grasslands.

If natural recolonization does occur in significant numbers, then we may amend this rule. However, we do not think this action will be necessary since any falcons that occur in the proposed NEP area will be considered part of the proposed NEP and will be subject to the protective measures in place for the proposed NEP.

(j) *Public Awareness and Cooperation:* We will inform the general public of the importance of this reintroduction project in the overall recovery of the falcon. The designation of the proposed NEP for New Mexico and Arizona would provide greater flexibility in the management of reintroduced falcons. The proposed NEP designation is necessary to secure needed cooperation of the States, Tribes, landowners, agencies, and other interests in the proposed NEP area. As mentioned before, despite the relative success of the falcon releases in Texas, we believe the Safe Harbor Agreements used to release falcons in Texas are not the best mechanism for establishing falcons in New Mexico and Arizona. Safe Harbor Agreements can only be developed for private land owners, whereas there is a vast amount of public land in New Mexico and Arizona (about 40 percent in the reintroduction area). Therefore, the proposed NEP designation will facilitate the recovery of the falcon on this public land, as well as on private land. As mentioned under the ''Legislative'' section above, a NEP designation requires consultations under section 7(a)(2) only for National Wildlife Refuges and units of the National Park System. All other Federal actions only require the Federal action agency to confer with us under section 7(a)(4); the results of which are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. The opportunity for greater discretion in developing management programs or conducting other activities in a NEP area can be appealing to Federal agencies and the general public.

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that creating a NEP of northern aplomado falcons and releasing them into the NEP area will further the conservation of the species.

Public Hearings

The Act provides for one or more public hearings on this proposed rule, if requested. Given the likelihood of a request, we have scheduled one public hearing. We will hold a public hearing as specified above in **DATES** and **ADDRESSES.** Announcements for the public hearing will be made in local newspapers.

Public hearings are designed to gather relevant information that the public may have that we should consider in our rulemaking. During the hearing, we will present information about the proposed action. We invite the public to submit information and comments at the hearing or in writing during the open public comment period. We encourage persons wishing to comment at the hearing to provide a written copy of their statement at the start of the hearing. This notice and public hearing will allow all interested parties to submit comments on the proposed NEP rule for the falcon. We are seeking comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the proposal. Persons may send written comments to the New Mexico Ecological Services Field Office (see **ADDRESSES** section) at any time during the open comment period. We will give equal consideration to oral and written comments.

Peer Review

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three appropriate and independent specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this proposed NEP rule. The purpose of such review is to ensure that the proposed NEP designation is based on the best scientific information available.

We will invite these peer reviewers to comment during the public comment period. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action subject to Office of Management and Budget review. As described below, this rule will not have an annual economic effect of $100 million or more on the economy and will not have an adverse effect on an economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit and full economic analysis will not be required.

Following release, birds may use private or public lands adjacent to release areas. Because of the substantial regulatory relief provided by the proposed NEP designation (no penalties for unintentional take or restrictions against land use), we do not believe the reintroduction of falcons will conflict with existing human activities or hinder public or private use of lands within the NEP area. Likewise, no governments, individuals, or corporations will be required to specifically manage for reintroduced falcons.

This proposed rule will not create inconsistencies with other agency's actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are the Bureau of Land Management (BLM) and Department of Defense (DOD) because they manage large areas of suitable falcon habitat within the proposed NEP area. These agencies participated in the northern aplomado falcon working group and had the opportunity for development and review of the resulting action proposed by this rulemaking, so as to have it consistent with their land management plans. Because of the substantial regulatory relief provided by

the NEP designation, we believe that the reintroduction of northern aplomado falcons in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of the NEP area as a result of this proposed rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This proposed rule does not raise novel legal or policy issues. Since 1984, we have promulgated section 10(j) rules for many other species in various localities. Such rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 804(2)), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this proposed rule includes the States of Arizona and New Mexico. We do not expect this rule to have any significant effect on recreational, agricultural, or development activities within the proposed NEP area because the proposed NEP designation provides no restrictions on most Federal (*see* next paragraph for National Wildlife Refuges and units of the National Park System) and all non-Federal actions that may affect falcons. In addition, the special rule authorizes unknowing or incidental take of falcons (*i.e.*, take that is incidental to an otherwise lawful activity). Direct take for research or educational purposes would require a section 10 recovery permit. Knowing take (such as shooting) would not be permitted. The action will not affect the establishment of future hunting seasons or conservation actions approved for migratory bird species. The principal activities on private property near the initial release areas are agriculture and recreation. We believe the presence of the falcon will not preclude use of lands for these purposes. Because there will be no new or additional economic or regulatory restrictions imposed upon States, Federal agencies, or members of the public due to the presence of the falcon, this rulemaking is not expected to have any significant adverse impacts to recreation, agriculture, or any development activities.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or unit of the National Park System, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or unit of the National Park System, we treat the population as proposed for listing and only two provisions of section 7 would apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. On the basis of information contained in the ''Required Determinations'' section above, this rule will not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments will not be affected because the proposed NEP designation will not place additional requirements on any city, county, or other local municipalities.

2. This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This proposed NEP designation for the falcon will not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. We do not expect this proposed rule to have a potential takings implication under Executive Order 12630 because it would exempt individuals or corporations from prosecution for take that is accidental and incidental to an otherwise lawful activity. Because of the substantial regulatory relief provided by the NEP designation, we do not believe the reintroduction of falcons would conflict with existing or proposed human activities or hinder public use of lands within the proposed NEP area. Neither of the States within the proposed NEP area will be required to specifically manage or reintroduce falcons.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive uses of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of a federally listed bird) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with

Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in New Mexico and Arizona. Achieving the recovery goal for this species will contribute to its eventual delisting and its return to primary State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken in coordination with the States. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections 3(a) and 3(b)(2) of the Order. We establish experimental populations in accordance with section 10(j) of the Act.

Government-to-Government Relationship With Tribes

In accordance with Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997); the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we have notified the Native American Tribes within the NEP area about this proposal. They have been advised through verbal and written contact, including informational mailings from the Service. Information was also presented to the Native American Fish and Wildlife Society in 2003 (Maureen Murphy, USFWS, pers. comm. 2004). If future activities resulting from this proposed rule may affect Tribal resources, the Service will communicate and consult on a Government-to-Government basis with any affected Native American Tribes in order to find an agreement.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule contains information collection activity for experimental populations. The Fish and Wildlife Service has Office of Management and Budget approval for the collection under OMB Control Number 1018–0095. The Service 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.

National Environmental Policy Act

We have prepared a draft environmental assessment (EA) as defined under the authority of the National Environmental Policy Act of 1969. It is available from the New Mexico Ecological Services Field Office (see **ADDRESSES** section). We published a notice of intent to prepare an EA and a notice of public scoping meetings in the January 27, 2003, **Federal Register** (68 FR 3889)

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the proposed rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the proposed rule in the Supplementary Information section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand? Send your comments concerning how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail your comments to: *Exsec@ios.doi.gov.*

References Cited

A complete list of all references cited in this proposed rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are staff with the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the existing entry for ''Falcon, northern aplomado'' under ''BIRDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Falcon, northern aplomado.	*Falco femoralis septentrionalis*.	U.S.A. (AZ, NM, TX), Mexico, Guatemala.	Entire, except where listed as an experimental population.	E	216	N/A	N/A
Falcon, northern aplomado.	*Falco femoralis septentrionalis*.	U.S.A. (AZ, NM, TX), Mexico, Guatemala.	U.S.A. (AZ, NM)	XN	.....	N/A	17.84(o)
*	*	*	*	*	*		*

3. Amend § 17.84 by adding paragraph (o) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(o) Northern aplomado falcon (*Falco femoralis septentrionalis*).

(1) The northern aplomado falcon (*Falco femoralis septentrionalis*) (falcon) population identified in paragraph (o)(9)(i) of this section is a nonessential experimental population (NEP).

(2) No person may take this species, except as provided in paragraphs (o)(3) through (5) and (o)(10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take falcons for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act (Act);

(4) A falcon may be taken within the NEP area, provided that such take is incidental to and not the purpose of, the carrying out of an otherwise lawful activity; and that such taking is reported as soon as possible as provided under paragraph (o)(6) of this section.

(5) Any employee or agent of the Service, New Mexico Department of Game and Fish, Arizona Game and Fish Department, or The Peregrine Fund, who is designated for such purpose may, when acting in the course of official duties, take a falcon if such action is necessary to:

(i) Aid a sick, injured, or orphaned specimen;

(ii) Dispose of a dead specimen, or salvage a dead specimen that may be useful for scientific study;

(iii) Move a bird within the NEP area for genetic purposes or to improve the health of the population; or

(iv) Relocate falcons that have moved outside the NEP area, by returning the falcon to the NEP area or moving it to a captive breeding facility. All captures and relocations from outside the NEP area will be conducted with the permission of the landowner(s) or appropriate land management agencies.

(v) Collect nesting data or band individuals.

(6) Any taking pursuant to paragraphs (o)(3) through (5) of this section must be reported as soon as possible by calling the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113; (505) 346–2542. Upon contact, a determination will be made as to the disposition of any live or dead specimens.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (o) (2) and (7) of this section.

(9)(i) The boundaries of the designated NEP area are based on county borders and include the entire States of New Mexico and Arizona. The release area is within the historic range of the species. Release sites will be in New Mexico.

(ii) All falcons found in the wild within the boundaries of the NEP area after the first releases will be considered members of the NEP. A falcon occurring outside of the NEP area is considered endangered under the Act unless it is marked or otherwise known to be a member of the NEP.

(iii) The Service has designated the NEP area to accommodate the potential future movements of a wild population of falcons. All released birds and their progeny are expected to remain in the NEP area due to the geographic extent of the designation.

(10) The NEP will be monitored closely for the duration of the program, generally using radio telemetry as appropriate. Any bird that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State or Tribal wildlife personnel or their designated agent and given appropriate care. Such birds will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive breeding facility.

(11) The Service plans to evaluate the status of the NEP every 5 years to determine future management status and needs, with the first evaluation occurring not more than 5 years after the first release of birds into the NEP area. All reviews will take into account the reproductive success and movement patterns of individuals released, food habits, and overall health of the population.

Dated: January 26, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–2415 Filed 2–8–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 70, No. 26
Wednesday, February 9, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Report of Food Stamp Benefit Issuance and Commodity Distribution for Disaster Relief.

OMB Control Number: 0584–0037.

Summary of Collection: The Emergency Food Stamp Assistance Program is authorized by the Disaster Relief Act of 1970; the Food Stamp Act, as amended; and Part 274 of the Food Stamp Program regulations. The Food and Nutrition Service (FNS) initiate this program in a food stamp project area when all or part of the area has been affected by a disaster. Food distribution in disaster situations is authorized under Section 32 of the Act of August 24, 1935. Surplus foods are made available by State distributing agencies for relief purposes to victims of natural disasters such as hurricanes, floods, tornadoes, etc. Distribution to these recipients is made primarily through such organizations as the American Red Cross or the Salvation Army. These organizations use surplus foods for both central feeding operations and for distribution to families in homes cut off from normal sources of food supply. Form FNS–292 will be used by State welfare departments to report to FNS the number of households and persons who were certified for Emergency Food Stamp Assistance, and also to report the value of benefits issued to those households.

Need and Use of the Information: FNS will collect information through the use of form FNS–292, which is used by the FNS Administrator, the Food Distribution Division, and the three Food Stamp Program divisions to monitor program activity, assess coverage provided to needy recipients, and to prepare budget requests. If the information were not collected, FNS would be unable to monitor the issuance of food stamp benefits and the distribution of surplus foods during disaster situations.

Description of Respondents: State, local, or tribal government.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 97.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2464 Filed 2–8–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 3, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 1962–1, Agreement for the Use of Proceeds/Release of Chattel Security.

OMB Control Number: 0560–0171.

Summary of Collection: Section 335(f) of the Consolidated Farm and Rural Development Act (CONACT) requires release of normal income security to pay essential household and farm operating expenses of the borrower, until the Farm Service Agency (FSA) accelerates the loans. The FSA agreed in the consent decree to approve a borrower's planned use of proceeds from the disposition of their chattel security, record any changes to planned use, and record the actual disposition of chattel security for the year of operation.

Need and Use of the Information: FSA will collect information on the actual and planned disposition of chattel security through the use of form FSA 1962–1. This form allows for normal income releases as required for payment of essential family living and farm operating expenses, provides the borrower with information on how to report sales of chattels, income received and how to notify agency of any changes to the operation or the use of chattel proceeds. The information collected will come from FSA borrowers who may be individual farmers or farming entities.

Description of Respondent: Farms; business or other for-profit; individuals or households.

Number of Respondents: 69,300.

Frequency of Responses: Reporting: annually.

Total Burden Hours: 20,531.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–2465 Filed 2–8–05; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest, California; Empire Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service Plumas National Forest will prepare an Environmental Impact Statement (EIS) on a proposal to construct a Defensible Fuel Profile Zone (DFPZ), harvest trees using group-selection and individual tree selection silvicultural methods, and perform associated road-system improvement work in forested areas of public land northeast of Quincy, California.

DATES: Comments concerning the scope of the analysis must be received within 30 days of the date of publication of this Notice of Intent in the **Federal Register**. The draft EIS is expected in April 2005 and the final EIS is expected in July 2005.

ADDRESSES: Send written comments to James M. Peña, Plumas National Forest, PO Box 11500, Quincy, CA 95971. Fax: (530) 283–7746. Electronic comments should be sent to: *comments-pacificsouthwest-plumas@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Gary Rotta, Interdisciplinary Team Leader, Mt. Hough Ranger District, telephone (530) 283–7687.

SUPPLEMENTARY INFORMATION:

Tentative or Preliminary Issues and Possible Alternatives

In June 2004, James M. Peña solicited public comment for the Empire Vegetation Management Project proposed action. Comments received during that initial scoping period will be considered in this analysis. Substantial questions regarding the potential environmental effects of the original proposed action have prompted the preparation of an Environmental Impact Statement (EIS). All action alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition. Other alternatives may be developed based on significant issues identified during the scoping process for this EIS. Alternatives being considered at this time include: (A) The Proposed Action and (B) No Action, as well as possible alternatives that consider watershed concerns, fuel treatments that allow for continuity of wildlife habitat, increased economical efficiency, density of group selection harvest units and how it affects continuous forest cover and edge effect.

The proposed action is designed to meet the standards and guidelines for land management activities in the Plumas National Forest Land and Resource Management Plan (1988) (LRMP) as amended by the Record of Decision for the Herger-Feinstein Quincy Library Group Forest Recovery Act (1999) (HFQLG), and as amended by the Record of Decision for the Sierra Nevada Forest Plan Amendment (2004).

The proposed action is located in Plumas County, California, within the Mt. Hough Ranger District of the Plumas National Forest in all or portions of Section 1, T23N, R9E; Section 6, T23N, R10E; Sections 4 & 8, T23N, R11E; Sections 1–6, 8–12, 13–16, 22–26, 31, and 32, T24N, R10E; Sections 5–8, 15, 17, 21–28, and 33–35, T24N, R11E; Sections 1, 10–12, 13, 14, 21–28, 33–34, and 26, T25N, R9E; Sections 6–8 and 14–35, T25N, R10E; Sections 19, 29, 30, 31, and 32, T25N, R11E, MDM.

Purpose and Need for Action

The need for and purpose of the project has three elements: (1) To implement fuel reduction in the Wildland Urban Interface (WUI) and, as part of the larger HFQLG fuel treatment strategic network as called for by the HFQLG Act (section 401[b][1] and [d][1]) and the HFQLG amendment to the LRMP, to reduce the potential size and intensity of wildfires and provide fire suppression personnel safe locations for taking action against wildfires; (2) to implement group selection and individual tree selection, as directed in the HFQLG Act (section 401[b][1] and [d][2]) and the HFQLG amendment of the LRMP, to test the effectiveness of an uneven-aged silvicultural system in achieving an all-aged, multistory, fire resilient forest, providing an adequate timber supply that contributes to the economic stability of rural communities, and improving and maintaining ecological health of the forest; and (3) to reduce impacts of the transportation system on forest resources and provide the necessary access for the fuel treatments and the group and individual tree selection harvests.

Proposed Action

The assessment area for the project is about 103,000 acres. The project is composed of four actions: (1) Fuel treatments; (2) group selection timber harvest; (3) individual tree selection harvest; and (4) transportation system improvement. Fuel treatments would consist of construction of defensible fuel profile zones (DFPZs) and other areas of hazardous fuel reduction around communities, totaling about 6,600 acres. Group selection timber harvest as part of the HFQLG pilot project would be conducted on about 1,300 acres. Individual tree selection harvests would take place over about 4,000 acres surrounding the group selection units, with a focus on dead or dying trees, those at high risk or of poor genetic quality, and crowded stands. To provide access for the project and reduce impacts of the existing road system on key resources, about three miles of new system roads would be constructed and closed after use; six miles of temporary

roads would be constructed and decommissioned after use; 17 miles of existing roads would be closed; 15 miles of existing roads would be permanently decommissioned; and 117 miles of existing roads would be reconstructed to sustain project use and reduce water quality impacts.

Lead Agency

The USDA Forest Service is the lead agency for this proposal.

Responsible Official

Plumas National Forest Supervisor James M. Peña is the responsible official. Plumas National Forest, PO Box 11500, Quincy, CA 95971.

Nature of Decision To Be Made

Forest Supervisor James M. Peña will decide whether to implement the Empire Project as proposed and described above, implement the project based on an alternative to this proposal that is formulated to resolve identified conflicts, or not implement this project at this time.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to the proposed action. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

A copy of the Proposed Action and/or summary of the Proposed Action will be mailed to adjacent landowners, as well as those people and organizations that have indicated a specific interest in the Empire project, individuals who attended the two open houses held prior to the development of a landscape assessment for the watersheds surrounding the project, people who sent in previous comments, to Native American entities, and federal, state, and local agencies. The public will be notified of any meetings regarding this proposal by mailings and press releases sent to the local newspaper and media. There are no meetings planned at this time.

Permits or Licenses Required

An Air Pollution Permit and a Smoke Management Plan are required by local agencies.

Comment

This notice of intent initiates the scoping process which guides the development of the environmental impact statement under NEPA, which will guide development of the EIS. Our desire is to receive substantive comments on the merits of the Proposed Action, as well as comments that address errors, misinformation, or information that has been omitted. Substantive comments are defined as comments within the scope of the proposal, that have a direct relationship to the proposal, and that include supporting reasons for the Responsible Official's consideration.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regualtions for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 3, 2005.

Terri Simon-Jackson,

Acting Forest Supervisor.

[FR Doc. 05–2494 Filed 2–8–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Wednesday, February 16, 2005, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208–392–6681 or e-mail *dgochnour@fs.fed.us.*

Dated: January 3, 2005.

Richard M. Christensen,

Engineering, Lands, and Minerals Officer, Boise National Forest.

[FR Doc. 05–2485 Filed 2–8–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service: North Carolina Electric Membership Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding Of No Significant Impact with respect to a request from North Carolina Electric Membership Corporation for financing assistance from RUS to finance the construction of a 336 megawatt (MW), simple-cycle combustion turbine electric generating facility in Anson County North Carolina, and a 280 MW simple-cycle combustion turbine electric generation facility in Richmond County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Lawrence Wolfe, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–5093, e-mail *larry.wolfe@usda.gov.*

SUPPLEMENTARY INFORMATION: North Carolina Electric Membership Corporation proposes to construct and operate two simple-cycle combustion turbine electric generation projects. A 336 MW facility is proposed at a site located approximately 4 miles east of Lilesville, just to the north of Blewett Falls Road (SR 1745) and south of McCoy Creek in Anson County, North Carolina. Approximately 20 acres of the 178 acre site will be needed for the generation facility. The other project consists of a 280 MW facility proposed at a site approximately 2.54 miles southwest of Hamlet west of Airport Road and south of Marks Creek in Richmond County, North Carolina. Approximately 20 acres of the 258 acre site will be needed for the generation facility. This facility will also require the construction of 7.8 miles of 230 kV transmission line between the Rockingham Substation and the Richmond Substation. The transmission line will be constructed and operated by Progress Energy. North Carolina Electric Membership Corporation is expected to finance the cost of the project through an RUS guarantee. Specific information on the facilities to be constructed and their locations are provided in the environmental assessment.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from June Small, North Carolina Electric Membership Corporation, P.O. Box 27306, Raleigh, North Carolina 27611–7306. Ms. Small may be contacted by telephone at (919) 872–0800 or e-mail at *june.small@ncemcs.com.*

Dated: February 4, 2005.

James R. Newby,

Assistant Administrator, Electric Program.

[FR Doc. 05–2515 Filed 2–8–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 6, 2004, the Department of Commerce published the preliminary results and partial rescission of the seventh administrative review and revocation of the antidumping duty order in part, for the antidumping duty order on certain pasta from Italy. The review covers eight manufacturers/exporters of the subject merchandise: (1) Barilla Alimentare, S.p.A. (Barilla), (2) Corticella Molini e Pastifici S.p.A. (Corticella) and its affiliate Pasta Combattenti S.p.A. (Combattenti) (collectively, Corticella/Combattenti), (3) Pastificio Guido Ferrara S.r.l. (Ferrara), (4) Industria Alimentare Colavita, S.p.A. (Indalco) and its affiliate Fusco S.r.l. (Fusco) (collectively Indalco), (5) Pasta Lensi S.r.l. (Lensi), (6) PAM S.p.A. (PAM), (7) Pastificio Riscossa F. Illi Mastromauro, S.r.l. (Riscossa), and (8) Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A. (Russo). The period of review (POR) is July 1, 2002, through June 30, 2003.

As a result of our analysis of the comments received, these final results differ from the preliminary results. For our final results, we have found that during the POR, Barilla, Corticella/Combattenti, Indalco, PAM, Riscossa, and Russo sold subject merchandise at less than normal value (NV). We have also found that Ferrara and Lensi did not make sales of the subject merchandise at less than NV (*i.e.*, they have ''zero'' or *de minimis* dumping margins). We have also determined to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Ferrara and Lensi because each company sold the subject merchandise at not less than NV for a period of at least three consecutive years. *See* 19 CFR 351.222(b)(2) and the ''Revocation'' section of this notice. The final results are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Young, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–6397.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published the preliminary results of the seventh administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Revocation of the Antidumping Duty Order in Part: For the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 69 FR 47880 (August 6, 2004) (*Preliminary Results*). Although the Department initiated the review of fifteen companies, we rescinded the reviews of N. Puglisi & F. Industria Pasta Alimentari S.p.A. (Puglisi), La Molisana Industrie Alimentari S.p.a. (La Molisana), Molino e Pastificio Tomasello S.r.l. (Tomasello), Pastificio Antonio Pallante S.r.l. (Pallante) and Industrie Alimentari Molisane S.r.l. (IAM) (collectively Pallante/IAM), Pastificio Fratelli Pagani S.p.A. (Pagani), Rummo S.p.A. Molino e Pastificio (Rummo), and Pastificio Lucio Garofalo S.p.A. (Garofalo). *See* the ''Background'' and ''Partial Rescission'' section of the *Preliminary Results*, 69 FR at 47880, 47881. The review covers the remaining eight manufacturers/exporters: Barilla, Corticella/Combattenti, Ferrara, Indalco, Lensi, PAM, Riscossa, and Russo.

We invited parties to comment on our *Preliminary Results*. Petitioners[1] filed case briefs on September 7, 2004, regarding Barilla, Indalco, and Riscossa. Barilla, Indalco, PAM, Russo, Riscossa, and Lensi each filed case briefs on September 7, 2004. On September 13, 2004, petitioners submitted rebuttal briefs concerning Barilla and Indalco, and Barilla, Riscossa, and Indalco submitted rebuttal briefs. On October 6, 2004, a public hearing was held at the Department of Commerce with respect to Barilla. On November 4, 2004, the Department published the notice of extension of final results of the antidumping administrative review of pasta from Italy, extending the date for

[1] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, Borden Foods Corporation and American Italian Pasta Company.

these final results to February 2, 2005. *See Certain Pasta From Italy: Extension of Final Results of Antidumping Duty Administrative Review*, 69 FR 64275.

Scope of Review

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

The merchandise subject to this order is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Assignment of the Same Antidumping Duty Rate to Corticella/Combattenti and CLC

In the *Preliminary Results*, we stated that evidence indicates that Corticella/Combattenti and its toll producer, Coopertive Lomellina Cerealicoltori S.r.l. (CLC), are affiliated, and we noted that the Department recognized, given the nature of their affiliation, that a related issue could arise with respect to whether there is a potential for manipulation of price or production and, if so, whether Corticella/Combattenti and CLC should receive a single same antidumping duty rate. *See* 69 FR at 47880. We solicited comments on the issue for consideration in the final results of review. We did not receive any comments on the matter.

For purposes of these final results, we continue to find that Corticella/Combattenti and CLC are affiliated. Further, upon further examination, we have revised our approach from the *Preliminary Results* regarding the antidumping duty rates assigned to Corticella/Combattenti and CLC. Specifically, we find that there is sufficient record evidence to warrant collapsing Corticella/Combattenti and CLC pursuant to 19 CFR 351.401(f) and that the companies should receive a single weighted–average antidumping duty margin. For further discussion of this issue, *see* the February 2, 2005 memorandum from the Team to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, entitled, ''The relationship of Coopertive Lomellina Cerealicoltori S.r.l. (CLC) with Corticella Molini e Pastifici S.p.A. (Corticella) and its affiliate Pasta Combattenti S.p.A. (Combattenti, collectively Corticella/Combattenti),'' a proprietary document, the public version of which is available in the Central Records Unit, room B–099 of the main Department building.

Revocation

In the *Preliminary Results*, we preliminarily determined to revoke the antidumping duty order with respect to subject merchandise produced and exported by Ferrara. *See* 69 FR at 47887. We did not receive any comments from interested parties concerning our revocation with respect to Ferrara. For the reasons set forth in the *Preliminary Results*, 69 FR at 47886, we continue to find that revocation is appropriate with respect to Ferrara and, thus, we revoke the antidumping duty order with respect to subject merchandise produced and exported by Ferrara.

Regarding Lensi, in the *Preliminary Results*, we found that the company made sales of subject merchandise at less than NV. *See* 69 FR at 47886. As a result, we preliminarily determined not to revoke the antidumping duty order with respect to Lensi. However, as explained in Comments 13 through 20 of the Issues and Decision Memorandum that accompanies the final results of review, we have corrected certain inadvertent errors in Lensi's margin program and, as a result, find that Lensi did not sell subject merchandise at less than NV. As noted in the Issues and Decision Memorandum, petitioners did not comment on any of the issues raised by Lensi, including the revocation issue. As explained in the February 2, 2005, memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, from the Team, we find that Lensi has satisfied all requirements under 19 CFR 351.222(e)(1) and 19 CFR 351.222(b)(2) entitling it to revocation, and, thus, we revoke the antidumping duty order with respect to subject merchandise produced and exported by Lensi. In accordance with 19 CFR 351.222(f)(3), we will instruct CBP to terminate the suspension of liquidation for merchandise produced and exported by Ferrara or produced and exported by Lensi, entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and to refund any cash deposit.

Analysis of Comments Received

All issues raised in the case and rebuttal brief by parties to this administrative review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted–average margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Barilla	7.25
Corticella/Combattenti	4.00
Ferrara	de minimis
Indalco	6.03
Lensi	de minimis
PAM	4.78
Riscossa	1.05
Russo	7.36
All Others	11.26

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer–specific duty assessment rates by aggregating the dumping margins for the examined U.S. sales for each importer and dividing the amount by the total entered value of the sales for that importer. In situations in which the importer–specific assessment rate is above *de miminis*, we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of

this notice of final results of the administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct CBP not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate established in the less–than-fair–value investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments and Issues in the Decision Memorandum

List of Comments:

Barilla Alimentare, S.p.A. (Barilla)

Comment 1: Double Counting of the Cost of Semolina Purchases
Comment 2: Treatment of Subject Merchandise Produced by Other Italian Manufacturers
Comment 3: Overstatement of Constructed Export Price (CEP) Profit
Comment 4: CEP Offset
Comment 5: Use of Facts Available for Financial Discount
Comment 6: Reclassification of Rebate Payments as Selling Expense
Comment 7: Margin Calculation Methodology
Comment 8: Application of Case Discount

Industria Alimentare Colavita, S.p.A. and Fusco S.r.l. (collectively Indalco)

Comment 9: Liquidation Instructions
Comment 10: Margin Calculation Methodology
Comment 11: Selling, General & Administrative (SG&A) Expenses
Comment 12: DIFMER Adjustment

Pasta Lensi S.r.l. (Lensi)

Comment 13: Credit and purchase order adjustments to the Gross Unit Price in the Net U.S. Price Calculation
Comment 14: Credit Adjustment to Gross Unit Price in Calculating Normal Value
Comment 15: Commission Offset for CEP Sales
Comment 16: CEP Offset
Comment 17: Imputed Credit Expenses
Comment 18: Wheat Classifications
Comment 19: CEP Profit
Comment 20: Revocation of the Antidumping Duty Order for Lensi

PAM S.p.A. (PAM)

Comment 21: Collapsing PAM's wheat types 1 and 2

Pasta Riscossa F. Illi Mastromaura, S.r.l. (Riscossa)

Comment 22: Use of a Constant Factor for Inland Freight Expense
Comment 23: Correction of the Home Market Warranties field
Comment 24: Inclusion of Purchased Pasta in Comparison Market Program
Comment 25: Adjustment of Semolina Costs
Comment 26: Revision of Riscossa's Reported Interest Rate

Pastificio Carmine Russo S.p.A./ Pastificio Di Nola S.p.A. (Russo)

Comment 27: U.S. Price Calculation

[FR Doc. E5–534 Filed 2–8–05; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–805)

Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 6, 2004, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey. This review covers two exporters/producers of subject merchandise, Filiz Gida Sanayi ve Ticaret A.S. (Filiz) and Tat Konserve A.S. (Tat), succesor–in-interest to Pastavilla Makarnacilik San. V. Tic. A.S., (Pastavilla). The period of review (POR) is July 1, 2002, through June 30, 2003.

As a result of our analysis of the comments received, these final results differ from the preliminary results. For our final results, we have found that during the POR, Tat and Filiz sold subject merchandise at less than normal value (NV). The final results are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3601 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published the preliminary results of its administrative review of the antidumping duty order on pasta from Turkey. *See Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47876 (August 6, 2004)

(*Preliminary Results*). The review covers two manufacturers/exporters. The POR is July 1, 2002, through June 30, 2003. We invited parties to comment on our preliminary results of review. We only received timely case briefs from Tat and petitioners[1] on September 7, 2004. We received rebuttal briefs from Tat, Filiz, and petitioners on September 13, 2004.[2] On September 17, 2004, Filiz submitted an untimely case brief, and requested that the Department consider it for these final results. On September 22, 2004, the Department returned Filiz's case brief as untimely filed new factual information pursuant to 19 CFR 351.301 (b)(2). *See* Letter to the File Re: Removal of Filiz Case Brief, dated September 22, 2004.

On November 4, 2004, the Department published the notice of extension of final results of the antidumping duty administrative review of pasta from Turkey, extending the date for these final results to February 2, 2005. *See Certain Pasta From Turkey: Extension of Final Results of Antidumping Duty Administrative Review*, 69 FR 64275 (November 4, 2005).

Scope of Review

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. See Memorandum from John Brinkmann, Program Manager, to Richard Moreland, Deputy Assistant Secretary, Concerning Final Scope Ruling, dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 (the CRU).

The merchandise subject to this order is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal brief by parties to this administrative review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We calculated the export price and NV using the same methodology described in the *Preliminary Results*, except as follows:

- The Department has corrected a clerical error in order to collapse wheat codes 1 and 2 consistently throughout the program for Filiz and Tat.
- The countervailing duty expense (CVDU) reported by Tat was deleted from the margin calculation program in order to avoid double–counting of this expense.
- The Department has corrected an error in applying the affiliated party test for Tat.

These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted–average margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Tat	36.65
Filiz	17.73

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer–specific duty assessment rates by aggregating the dumping margins for the examined U.S. sales for each importer and dividing the amount by the total entered value of the sales for that importer. In situations in which the importer–specific assessment rate is above *de miminis*, we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct CBP not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 51.49 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties

[1] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, Borden Foods Corporation and American Italian Pasta Company.

[2] On September 13, 2004, Filiz filed a rebuttal brief stating that it would not address the issues raised by petitioners in their September 7, 2004 filing because Filiz had already addressed the issues in its case brief. However, Filiz had failed to file the referenced case brief with the Department.

and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments and Issues in the Decision Memorandum

I. List of Comments:

Tat Konserve A.S. (Tat)

Comment 1: Whether the Department Should Reject Tat's February 24, 2004, Submission
Comment 2: Calculation Error in Affiliated Party Arm's–Length Test
Comment 3: Whether the Department Should Continue to Collapse Tat's Wheat Codes
Comment 4: Whether the Department Should Correct Tat's Cost Test to Account for Different Levels of Trade
Comment 5: Whether the Department Double–Counted Tat's Countervailing Duties
Comment 6: Modification of Imputed Credit Calculations

Filiz Gida Sanayi ve Ticaret A.S. (Filiz)

Comment 7: The Department Should Continue to Collapse Wheat Codes 1 and 2 But Correct for a Clerical Error

II. Background

III. Wheat Codes

IV. Discussion of Interested Party Comments

[FR Doc. E5–538 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 6, 2004, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of persulfates from the People's Republic of China (the PRC). This review covers one exporter of the subject merchandise, Shanghai AJ Import & Export Corporation (Ai Jian). The period of review is July 1, 2002, through June 30, 2003. Based on our analysis of the comments received, we have made certain changes in the margin calculations. See the section entitled ''Changes Since the Preliminary Results'' listed below. The final weighted–average dumping margin is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper–Viti or Erol Yesin, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–7425 and (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published the preliminary results of the 2002–2003 administrative review of the antidumping duty order on persulfates from the PRC. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47887 (August 6, 2004) (*Preliminary Results*). In these results the Department relied on the financial statement of a single Indian producer of identical merchandise to calculate surrogate financial ratios for Ai Jian. On October 29, 2004, we recalculated our preliminary results using the financial statements of two Indian producers of comparable merchandise to calculate surrogate financial ratios. For details, *see* Memorandum on Recalculation of Preliminary Results of Review from Jeffrey A. May, Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, dated October 29, 2004. We invited interested parties to comment on both the preliminary and recalculated preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Separate Rates

Ai Jian has requested a separate, company–specific antidumping duty rate. In our preliminary results, we found that Ai Jian had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 69 FR at 47888. We have not received any other information since the preliminary results which would warrant reconsideration of our separate–rates determination with respect to this company. Therefore, we have assigned an individual dumping margin to Ai Jian for this administrative review.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated February 2, 2005, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn.

The paper copy and electronic version of the Decision Memo are identical in content.

Changes from the Preliminary Results

For purposes of the final results, we have made certain changes in the margin calculation for Ai Jian. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memo.

Final Results of Review

As a result of our review, we determine that the following weighted–average percentage margin exists for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import and Export Corporation	3.30

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated customer–specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer–specific assessment rate is above *de minimis* we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for Ai Jian, the cash–deposit rate will be 3.30 percent; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash–deposit rate for all other PRC exporters will be 119.02 percent, the PRC–wide rate established in the less–than-fair–value investigation; and (4) the cash–deposit rate for non–PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

Appendix

Comments and Responses:

Comment 1: Use of financial statements from Asian Peroxides, Limited (APL) and National Peroxides Limited (NPL), producers of comparable merchandise

Comment 2: Use of financial statements of Gujarat and Calibre to calculate a surrogate SG&A ratio

Comment 3: Use of financial information from ''potentially sick'' companies

Comment 4: Categorization of ''consumables consumed'' in APL's financial statement

Comment 5: Offset of APL and NPL's SG&A expenses with interest and dividend income

Comment 6: SG&A labor

Comment 7: Use of NPL's most contemporaneous financial statement

Comment 8: Affiliation between Chinese exporter and U.S. customer

Comment 9: Surrogate labor rate

Comment 10: seb APPENDTreatment of non–dumped sales

[FR Doc. E5–537 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Structural Steel Beams from Korea; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 3, 2004, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping order covering structural steel beams from the Republic of Korea. *See Structural Steel Beams from Korea: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 53887 (September 3, 2004) (*Preliminary Results*). The merchandise covered by this order is structural steel beams as described in the ''Scope of the Review'' section of this notice. The period of review (POR) is August 1, 2002, through July 31, 2003. We invited parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we have not made any changes in the margin calculations. Therefore, the final results are unchanged from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, at (202) 482–6312 or (202) 482–0649, respectively, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this review are doubly–symmetric shapes, whether hot- or cold–rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide–flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes) and ''M'' shapes. All products that meet the physical and metallurgical descriptions provided above are within the scope of this review unless otherwise excluded. The

following products are outside and/or specifically excluded from the scope of this review: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this review is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7216.32.00000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7216.99.0010, 7216.99.0090, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in ''Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order for Structural Steel Beams from the Republic of Korea: Notice of Final Results of Antidumping Duty Administrative Review (A–580–841),'' dated February 1, 2005 (Decision Memorandum), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have not made any changes in the margin calculations.

Final Results of the Review

We determine the following percentage weighted–average margins exist for the period August 1, 2002, through July 31, 2003:

Manufacturer / Exporter	Weighted Average Margin
INI Steel Company	16.62 percent
Dongkuk Steel Mill Co., Ltd.	4.39 percent

Liquidation

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates. To calculate these rates, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the appropriate assessment rate against the entered Customs values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of structural steel beams from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 37.21 percent. This rate is the ''All Others'' rate from the amended final determination in the LTFV investigations. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea*, 65 FR 50501, 50502 (August 18, 2000).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: February 1, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

APPENDIX

Comments and Responses

1. Revision of the Model Match Characteristics
2. Affiliation of Dongkuk Steel Mill Co., Ltd. and Dongkuk Industries Co., Ltd.
3. Level of Trade for Dongkuk Steel Mill Co., Ltd.

[FR Doc. E5–533 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 05–001. Applicant: California Department of Food and Agriculture, 3294 Meadowview Road, Sacramento, CA 95832.

Instrument: Electron Microscope, Model H–7500–1 TEM.

Manufacturer: Hitachi High Technologies Corporation.

Intended Use: The instrument is intended to be used to observe and to record images of plant viruses from crude plant sap, purified virus preparations and in imbedded plant tissues to study and identify new and emerging plant viruses that are important for California agriculture. Application accepted by Commissioner of Customs: January 5, 2005.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E5–540 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Virginia Commonwealth University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–022. Applicant: Virginia Commonwealth University, Richmond, VA. Instrument: Electron Microscope, Model JEM–1230. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 69 FR 77995, December 29, 2004. Order Date: January 29, 2004.

Docket Number: 04–023. Applicant: Oklahoma Medical Research Foundation, Oklahoma City, OK. Instrument: Electron Microscope, Model H–7600–1 TEM. Manufacturer: Hitachi, Ltd., Japan. Intended Use: See notice at 69 FR 7794, December 29, 2004. Order Date: December 11, 2003.

Docket Number: 04–024. Applicant: The University of Iowa, Iowa City, IA. Instrument: Electron Microscope, Model JEM–1230. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 66 FR 77994, December 29, 2004. Order Date: May 4, 2004.

Docket Number: 04–025. Applicant: Oak Ridge National Laboratory, Oak Ridge, TN. Instrument: Electron Microscope, Model JEM–2200FS. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 66 FR 77995, December 29, 2004. Order Date: December 31, 2003.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E5–539 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020305B]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Snapper Grouper Committee, Advisory Panel Selection Committee, Joint Executive and Finance Committees, Controlled Access Committee, Highly Migratory Species Committee, and a meeting of the full Council. In addition, there will be a public scoping meeting addressing the Fishery Ecosystem Plan and Comprehensive Amendment.

DATES: The meeting will be held in February and March 2005. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton Savannah DeSoto Hotel, 15 East Liberty Street, Savannah, GA 31401 Telephone: (1–800) 426–8483 or 912/ 232–9000, FAX 912/ 232–6018.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843/571–4366 or toll free at 866/SAFMC–10; fax: 843/769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *Snapper Grouper Committee Meeting: February 28, 2005, 1:30 p.m. – 5 p.m. and March 1, 2005, 8:30 a.m. – 5 p.m.*

The Snapper Grouper Committee will review draft Amendment 13B regarding mandates under the Sustainable Fisheries Act to address overfishing and choose management measure alternatives. In addition, the Committee will review and develop recommendations for the ''Oculina Closed Area Evaluation Plan'', receive an update on the Large Whale Take Reduction Team Draft Environmental Impact Statement (DEIS) and Proposed Rule, and receive a presentation by NOAA Fisheries' Southeast Regional Office on linking permits and landings databases.

Note: A public scoping meeting on the Fishery Ecosystem Plan and Comprehensive Amendment will be held February 28, 2005 beginning at 6 p.m.

2. *Advisory Panel Selection Committee Meeting: March 2, 2005, 8:30 a.m. – 10 a.m. (CLOSED SESSION)*

The Committee will review advisory panel applications and develop recommendations for Council consideration.

3. Joint Executive Committee and Finance Committee Meeting: March 2, 2005, 10 a.m. until 12 noon

The Committees will receive an update on additional Calendar Year (CY) 2005 funds and review the CY 2005 activities schedule. The Committees will also review activities and budgets for Ecosystem-based management, the Southeast Data, Assessment, and Review (SEDAR) stock assessment process, and Coral activities, and receive a report on the status of the CY 2005–2009 grant budget.

4. *Controlled Access Committee Meeting: March 2, 2005, 1:30 p.m. – 5 p.m.*

The Controlled Access Committee will receive an introduction to rights-based systems, discuss Individual

Fishing Quotas (IFQs), and receive a presentation on IFQs in Alaska.

5. *Highly Migratory Species Committee Meeting: March 3, 2005, 8:30 a.m. 12 noon*

The Highly Migratory Species Committee will receive a presentation regarding Amendment 2 to the Atlantic Tuna, Swordfish, Shark, and Billfish Fishery Management Plan (FMP) from NOAA Fisheries. The Committee will discuss bluefin tuna and shark management issues following the presentation.

6. *Council Session: March 3, 2005, 1:30 p.m. – 5 p.m. and March 4, 2005, 8:30 a.m. – 12 noon*

From 1:30 p.m. – 1:45 p.m., the Council will call the meeting order, make introductions and roll call and adopt the meeting agenda.

From 1:45 p.m. 2:45 p.m., the Council will hear a report from the Snapper Grouper Committee and take action as appropriate.

From 2:45 p.m. – 3:15 p.m., the Council will receive a report from the Joint Executive/Finance Committee and approve the CY 2005 Activities Schedule and Budget.

From 3:15 p.m. – 3:45 p.m., the Council will hear a report from the Advisory Panel Selection Committee and approve appointment of advisory panel members.

From 3:45 p.m. – 4:15 p.m., the Council will hear a report from the Controlled Access Committee.

From 4:15 p.m. – 4:45 p.m., the Council will hear a report from the Highly Migratory Species Committee and take action as appropriate.

From 4:45 p.m. – 5 p.m., the Council will review the status of the Red Drum FMP.

Council Session: March 4, 2005, 8:30 a.m. – 12 noon.

From 8:30 a.m. – 9 a.m., the Council will receive a briefing on litigation and other legal issues affecting the Council (CLOSED SESSION)

From 9 a.m. – 9:30 a.m., the Council will discuss Exempted Fishery Permit requests and take action as appropriate.

From 9:30 a.m. – 10 a.m., the Council will review the Atlantic States Marine Fisheries Commission's Law Enforcement Policy and take action as appropriate.

From 10 a.m. – 11 a.m., the Council will hear status reports from NOAA Fisheries' Southeast Regional Office and the Southeast Fishery Science Center.

From 11 a.m. – 12 noon, the Council will receive agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 25, 2005.

Dated: February 4, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–530 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020105C]

Endangered and Threatened Species: Notice of New Information Available Concerning Oregon Coast Coho Salmon Currently Proposed for Threatened Status

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

ACTION: Notice of Availability of new information.

SUMMARY: In June 2004, NMFS proposed that Oregon Coast coho salmon be listed as a threatened species under the Endangered Species Act (ESA). The State of Oregon (hereafter, ''the State'') has recently made publically available a draft assessment of the viability of Oregon Coast coho salmon, as well as of the contributions of the Oregon Plan for Salmon and Watersheds (OPSW) to conserving Oregon Coast coho salmon. To ensure that the final listing determination for Oregon Coast coho salmon is based upon the best available scientific and commercial information, NMFS will be considering the information presented in the State's draft assessment (hereafter the ''draft Coho Project Report'') in determining the final listing status for the species. Accordingly, notice is hereby given of the availability of the State's draft Coho Project Report for public review and comment. NMFS is furnishing this notification to allow other agencies and the public an opportunity to review and comment on the State's analyses and findings. Specifically, NMFS is soliciting public comment on the State's assessment as it relates to the ESA listing status of Oregon Coast coho salmon, as well as other information concerning NMFS' final listing decision on Oregon Coast coho. All comments received will become part of the public record and will be available for review.

DATES: All comments must be received no later than 5 p.m. Pacific Standard Time on March 11, 2005.

ADDRESSES: Copies of the State's draft Coho Project Report are available on the Internet at: *ftp://nrimp.dfw.state.or.us/OregonPlan/*, or upon request (see **FOR FURTHER INFORMATION CONTACT** below). You may submit comments on the draft Coho Project Report by any of the following methods:

E-mail: The mailbox address for submitting e-mail comments on the draft OPSW Assessment Report is *OR__Coho__Report.nwr@noaa.gov*. Please include in the subject line of the e-mail comment the document identifier ''Oregon's Draft Coho Project Report.''

Mail: Prior to February 18, 2005, you may submit written comments and information to Chief, NMFS, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, Oregon, 97232–2737. Following February 18, 2005, you may submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232. Please identify the comment as regarding the ''Oregon's Draft Coho Project Report.''

Hand Delivery/Courier: Prior to February 18, 2005, you may hand deliver written comments and information to NMFS, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, Oregon, 97232–2737. Following February 18, 2005, you may hand deliver written comments and information to NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232. Business hours are 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Please identify the comment as regarding the ''Oregon's Draft Coho Project Report.''

Fax: 503–230–5441. Please identify the fax comment as regarding the ''Oregon's Draft Coho Project Report.''

FOR FURTHER INFORMATION CONTACT: Scott Rumsey, NMFS, Northwest Region, Protected Resources Division by phone at (503) 872–2791. Copies of the **Federal Register** notices cited herein and additional salmon-related materials are available on the Internet at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. In judging the efficacy of existing protective efforts, NMFS relies on the joint NMFS-U.S. Fish and Wildlife Service ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE;'' 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determination of whether a species should be listed as threatened or endangered. NMFS lists as endangered ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and lists as threatened any species ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

On June 14, 2004, NMFS published proposed ESA listing determinations for 27 Evolutionarily Significant Units (ESUs) of salmon and O. mykiss (69 FR 33101), including a proposal to list the Oregon Coast ESU as ''threatened'' under the ESA. In concluding that the ESU is ''likely to become endangered within the foreseeable future,'' NMFS evaluated the status of the species, noting that recent strong returns (in 2000–2002) are extremely encouraging, but that these strong returns follow 3 years of successive recruitment failure (in 1997–1999). The recent increases in Oregon Coast coho returns are largely attributed to highly productive ocean conditions favoring high rates of coho marine survival. NMFS concluded that the recent increases need to be sustained through additional brood years to resolve remaining uncertainties regarding ESU viability, particularly during unfavorable ocean conditions. NMFS noted that additional information demonstrating that the freshwater habitat can support high abundances of natural spawners and sustain recent abundance levels would also help resolve these uncertainties.

As part of its June 2004 listing proposals, NMFS evaluated, pursuant to the ESA and consistent with PECE, available information regarding efforts being made to protect the species. In its proposed listing determination for the Oregon Coast coho ESU, NMFS determined that, given the best information available at the time of the proposal, OPSW and other protective efforts do not provide sufficient certainty of implementation and effectiveness to alter the conclusion that the ESU is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' However, NMFS noted that the State was initiating a comprehensive analysis of the adequacy of actions under OPSW, specifically in the context of contributing to the conservation and recovery of the Oregon Coast coho ESU. At the time of the proposal the State's OPSW assessment had just recently been initiated, and no new information was available to further inform NMFS' proposed listing determination for the Oregon Coast coho ESU. However, NMFS noted that ''if information is made available to NMFS suggesting that the Oregon Plan [OPSW] and/or other conservation efforts substantially mitigate ESU extinction risk, NMFS may take such opportunity to re-initiate a status review for the Oregon Coast coho ESU to consider the best and most recent scientific and commercial information available.''

Following an initial public comment period of 90 days, the public comment period was extended twice for an additional 36 and 22 days, respectively (69 FR 53031; August 31, 2004; 69 FR 61348; October 18, 2004).

The State has recently made a draft report publicly available (available on the Internet at: *ftp://nrimp.dfw.state.or.us/OregonPlan/*) assessing the viability of Oregon Coast coho and the contributions of OPSW to the conservation of the ESU. NMFS will consider the information presented in the draft and final Coho Project Report in developing a final listing determination for the Oregon Coast coho ESU. To that end, NMFS is soliciting public comment on the State's draft Coho Project Report.

Information Solicited

NMFS is soliciting public comment on whether the State's draft Coho Project Report provides new information and analyses concerning the viability of Oregon Coast coho to alter the NMFS' extinction risk assessment and proposed determination that the ESU is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (i.e., ''threatened''). Additionally, NMFS is soliciting comment on whether the draft Coho Project Report presents information and analyses demonstrating, consistent with PECE, that the OPSW provides sufficient certainty of implementation and effectiveness to alter NMFS' proposed determination that efforts being made to protect the Oregon Coast coho ESU do not substantially mitigate the assessed level of extinction risk. NMFS will also consider, in making a final listing decision for the Oregon Coast coho ESU, any information provided pursuant to this notice concerning the viability of Oregon Coast coho and any efforts being made to protect that ESU.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 3, 2005.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2530 Filed 2–8–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Joint Navigation Conference

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: This notice informs the public that the Joint Services Data Exchange (JSDE), in conjunction with the Air Force Space and Missile Systems Center (SMC) NAVSTAR GPS Joint Program Office and the Embedded GPS INS {Inertial Navigation System} (EGI) Program Office, will host a U.S. Government-wide Joint Navigation Conference (JNC) at the Rosen Centre, Orlando, FL, 11–14 April 2005. The 2005 JNC will be the largest U.S. military navigation conference of the year. This conference will focus on battlefield applications of GPS and other navigation solutions, as well as advances in Guidance, Navigation, and

Control (GN&C), with emphasis on joint development, test, and support, logistics, and integration of the affordable GN&C systems. This is the only Navigation Systems Conference focused exclusively on Warfighter needs, issues, and experiences. Operational user participation is vital to the overall understanding of navigation warfare and is critical to the success of the JNC. The Conference will be held at the For Official Use Only (FOUO) designation and Secret levels. Attendance is restricted to U.S. Government, contractors, and invited Allied personnel. Advance visit requests and approvals are required of all attendees. Additional information, registration and security forms are provided for your convenience at the following Web site: *http://www.jointnavigation.org.* The Web site is the preferred method for registering to attend the conference. Visitors Access Request (VAR) may also be sent by fax to SMC/GPES 1–310–363–6387.

DATES: The suspense date for advance registration is 25 March 2005.

FOR FURTHER INFORMATION CONTACT: Point of Contact: GPUI at 1–310–363–6283 or 3145, GPS JPO User Integration Branch.

SUPPLEMENTARY INFORMATION: The civilian and military communities will focus on the use the battlefield applications of GPS and other navigation solutions; as well as advances in Guidance, Navigation, and Control (GN&C), with emphasis on joint development, test, and support, logistics, and integration of the affordable GN&C systems.

Albert F. Bodnar,

Federal Register, Federal Liaison Officer.

[FR Doc. 05–2491 Filed 2–8–05; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of Draft Tiered Environmental Impact Statement for the Baltimore Harbor and Channels Dredged Material Plan, MD

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act, the U.S. Army Corps of Engineers (USACE), Baltimore District has prepared a Draft Tiered Environmental Impact statement (TEIS) and Dredged Material Management Plan (DMMP) to analyze dredged material placement for the Port of Baltimore for 20 years of maintenance and new work dredging. USACE is making the document available to the public for review and comment through a Notice of Availability published in the Federal Register. The overall goal of the DMMP is to develop a plan to maintain, in an economically and environmentally sound manner, channels necessary for navigation for the Port of Baltimore, conduct dredged material placement in the most environmentally sound manner, and maximize the use of dredged material as a beneficial resource. The recommendations which will provide a minimum of 20 years of dredged material placement capacity for the Port of Baltimore are:

- Continued use of open water placement in Virginia (Dam Neck Open Water Placement; Rappahannock Shoal Deep Alternate Open Water Placement; and Wolf Trap Alternate Open Water Placement).
- Optimized use of existing dredged material management sites in Maryland, including Pooles Island Open Water Site, Hart-Miller Island Dredged Material Containment Facility, Cox Creek Confined Disposal Facility and Poplar Island Environmental Restoration Project (PIERP).
- Multiple confined disposal facilities for harbor material in Patapsco River.
- Large Island Restoration-Middle Chesapeake Bay.
- PIERP Expansion.
- Wetland Restoration-Dorchester County.

We are making the Draft TEIS available to the public for a 45-day review and comment period.

DATES: We must receive comments on or before March 28, 2005, to ensure consideration in final plan development. *See* **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Please send written comments concerning this proposed project to U.S. Army Corps of Engineers, Baltimore District, Attn: Mr. Mark Mendelsohn, Planning Division, P.O. Box 1715, Baltimore, MD 21203–1715. Please submit electronic comments to *Mark.Mendelsohn@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Mendelsohn, Biologist, USACE Baltimore District, Planning Division, (410) 962–9499 or (800) 295–1610.

SUPPLEMENTARY INFORMATION: A key mission of the U.S. Army Corps of Engineers is to provide safe, reliable, and efficient waterborne transportation systems (channels, harbors, and waterways) for movement of commerce, national security needs, and recreation. Accomplishing this successfully requires dredging of channels to adequately meet the needs of waterborne transportation. Operating and maintaining the nation's harbors and waterways, which includes the placement and/or management of dredged material, is an increasingly challenging task. USACE continues its priority mission to plan and implement sound management of dredged materials.

The USACE Engineering Regulation (ER) 1105–100 mandates that the USACE Districts develop a DMMP for all federally maintained navigation harbor projects where there is an indication of insufficient placement capacity to accommodate maintenance dredging for the next 20 years.

Two public meetings will be held for the Baltimore Harbor and Channels Dredged Material Management Plan. The first public meeting will be held at Queen Anne's Public Library, Stevensville Branch on March 7, 2005 beginning at 7 p.m. The second public meeting will be held at Essex Community College, in the Lecture Hall Building J on the first floor, on March 10, 2005 beginning at 7 p.m. Staff will be available one hour prior to meeting time. A map showing the location on the Essex Community College can be found at *http://www.ccbcmd.edu/directory/essex/index.html.* Both meetings will provide an opportunity for the public to present oral and/or written comments. All persons and organizations that have an interest in the DMMP are urged to attend the meeting and provide comments. Your comment must be contained in the body of your message; please do not send attached files. Please include your name and address in your message.

You may view the Draft TEIS and related information on our Web page at *http://www.nab.usace.army.mil/projects/DMMP/index.html.* USACE has distributed copies of the Draft TEIS to appropriate members of Congress, State and local government officials, Federal agencies, and other interested parties. Copies are available for public review at the following locations:

(1) Queen Anne's County Public Library, Stevensville Branch, 200 Library Circle, Stevensville, MD 21666.

(2) Essex County Public Library, 1110 Eastern Boulevard Baltimore, MD 21221.

(3) Anne Arundel County Public Library, 1410 West Street, Annapolis, MD 21401.

(4) St. Mary's County Public Library, 23250 Hollywood Road, Leonardtown, MD 20650.

(5) Somerset County Public Library, 11767 Beachwood St, Princess Anne, MD 21853.

(6) Dorchester County Public Library, 303 Gay St, Cambridge, MD 21613.

You may view the Draft TEIS and related information on our Web page at *http://www.nab.usace.army.miml/projects.DMMP/index.html.*

After the public comment period ends on March 28, 2005, USACE will consider all comments received. The Draft TEIS will be revised as appropriate and a Final TEIS will be issued. The Draft TEIS has been prepared in accordance with (1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and (3) USACE regulations implementing NEPA (ER–200–2–2).

Mark Mendelsohn,

Biologist, Baltimore District, USACE.

[FR Doc. 05–2483 Filed 2–8–05; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 3, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54. Burden Hours: 6,120.

Abstract: The information contained in the Consolidated Annual Performance Report for Vocational Technical Education is needed to monitor State performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998. The respondents include eligible agencies in 54 states and insular areas. This revision clarifies instructions and definitions and eliminates the collection of some data elements.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2624. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–528 Filed 2–8–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information Grants To Reduce Alcohol Abuse; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184A.

DATES: *Applications Available:* February 9, 2005.

Deadline for Transmittal of Applications: March 28, 2005.

Deadline for Intergovernmental Review: April 11, 2005.

Eligible Applicants: Local educational agencies (LEAs).

Estimated Available Funds: $22,600,000. The Secretary may reserve up to 25 percent of funds to award grants to low-income and rural LEAs. Contingent upon the availability of funds, we may make additional awards in FY 2006 from the list of non-funded applications from this competition.

Estimated Range of Awards: $300,000–$500,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 57.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides grants to LEAs to develop and implement innovative and effective programs to reduce alcohol abuse in secondary schools.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 4129 of the Safe and Drug-Free Schools and Communities Act, 20 U.S.C. 7139.

Absolute Priority: For FY 2005 and any subsequent year in which we make awards on the basis of the list of non-funded applications from this competition, this priority is an absolute

priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Alcohol Abuse Reduction

A project must develop and implement innovative and effective programs to reduce alcohol abuse in secondary schools.

Program Authority: 20 U.S.C. 7139.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $22,600,000. The Secretary may reserve up to 25 percent of funds for grants to low-income and rural LEAs. Contingent upon the availability of funds, we may make additional awards in FY 2006 from the list of non-funded applications from this competition.

Estimated Range of Awards: $300,000–$500,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 57.

Note: Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:* To be eligible to receive a grant under this competition, an LEA's application must include—

i. A description of the activities to be carried out under the grant;

ii. An assurance that such activities will include one or more of the proven strategies for reducing underage alcohol abuse as determined by the Substance Abuse and Mental Health Services Administration (SAMHSA);

iii. An explanation of how other activities to be carried out under the grant that are not part of a SAMHSA model program will be effective in reducing underage alcohol abuse, including references to the past effectiveness of such activities; and

iv. An assurance that the applicant will submit to the Secretary an annual report concerning the effectiveness of the programs and activities funded under the grant.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), PO 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 84.184A.

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 under **FOR FURTHER INFORMATION CONTACT** elsewhere in this notice.

You may also obtain the application package electronically by downloading it from the following Web site: *http://www.ed.gov/programs/dvalcoholabuse/index.html*.

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.

3. *Submission Dates and Times:*

Applications Available: February 9, 2005.

Deadline for Transmittal of Applications: March 28, 2005.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

Other Submission Requirements

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: April 11, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2005. Grants to Reduce Alcohol Abuse—CFDA Number 84.184A is one of the programs included in this project.

If you choose to submit your application electronically, you must use the Grants.gov Apply site (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 request your participation in Grants.gov.

You may access the electronic grant application for Grants to Reduce Alcohol 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:

- Your participation in Grants.gov is voluntary.
- 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 with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. 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 submitted after 4:30 p.m. on the application deadline date.
- If you experience technical difficulties on the application deadline date and are unable to meet the 4:30 p.m., Washington, DC time, deadline, print out your application and follow the instructions in this notice for the submission of paper applications by mail or hand delivery.
- 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 application 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 program to ensure that your application is submitted timely to the Grants.gov system.
- To use Grants.gov, you, as the applicant, must have a D-U-N-S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may 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. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement 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.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184A), 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 84.184A), 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 submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184A), 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 program are in 34 CFR 75.210 and in the application package for this competition.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is rural and low-income status.

Applications from rural and low-income applicants will be read and scored separately and up to 25 percent of the available funds will be reserved for awards to these LEAs. The following is a suggested definition of rural and low-income that has been used by this program in previous competitions; however, LEAs that want to be considered as rural and low-income applicants may provide other supporting evidence of their status as rural and low-income.

A rural and low-income LEA is one (a) that is designated with a locale code of 6, 7, or 8, as determined by the Department's National Center for Education Statistics (NCES); and (b) in which 20 percent or more of the children ages 5 through 17 years served by the LEA are from families with incomes below the poverty line.

Note: Applicants wishing to be considered under this factor must be both rural and low-income.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will 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 75.718.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), three measures have been developed for evaluating the overall effectiveness of the Grants to Reduce Alcohol Abuse competition: (1) The percentage of grantees whose target students show a measurable decrease in binge drinking; (2) the percentage of grantees that show a measurable increase in the percentage of target students who believe that alcohol abuse is harmful to their health; and (3) the percentage of grantees that show a measurable increase in the percentage of target students who disapprove of alcohol abuse. These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these three measures in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their annual performance reports about progress toward these goals.

VII. Agency Contact

For Further Information Contact: Ethel F. Jackson, U.S. Department of Education, 400 Maryland Ave., SW., room 3E246, Washington, DC 20202–6450. Telephone: (202) 260–2812 or by e-mail: *ethel.jackson@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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 GPOAccess at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 3, 2005.

Deborah A. Price,

Assistant Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. E5–532 Filed 2–8–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students; Overview Information; Foreign Language Assistance Program—State Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.293C.

DATES: *Applications Available:* February 11, 2005.

Deadline for Notice of Intent to Apply: February 28, 2005.

Deadline for Transmittal of Applications: March 25, 2005.

Deadline for Intergovernmental Review: May 25, 2005.

Eligible Applicants: State educational agencies (SEAs).

Estimated Available Funds: $2,000,000.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Foreign Language Assistance Program (FLAP) provides grants to State educational agencies for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students. A State educational agency that receives a grant under this program must use the funds to support programs that promote systemic approaches to improving foreign language learning in the State.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5493 of the Foreign Language Assistance Act of 2001 (20 U.S.C. 7259b).

Competitive Preference Priority: For FY 2005 this priority is a competitive preference priority.

Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets this priority over an application of comparable merit that does not meet the priority.

This priority is:

Applications describing programs that are carried out through a consortium comprised of the agency receiving the grant and an elementary or secondary school.

Program Authority: 20 U.S.C. 7259a–7259b.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,000,000.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs.

2. *Cost Sharing or Matching:* In order to build foreign language program capacity at the State level, cost sharing is required. Please note that the Federal share of the cost of activities assisted under this program for each fiscal year is 50 percent. *See* 20 U.S.C. 7259a(c).

IV. Application and Submission Information

1. *Address to Request Application Package:* Patrice Swann, U.S. Department of Education, 400 Maryland Avenue, SW., room 10074, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7130, or by e-mail: *patrice.swann@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille,

large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: If you intend to apply for a grant under this competition, contact Patrice Swann by e-mail: *patrice.swann@ed.gov.*

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 35 pages using the following standards.

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract. 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: February 11, 2005.

Deadline for Notice of Intent To Apply: February 28, 2005.

Deadline for Transmittal of Applications: March 25, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. However, we will consider an application, submitted by the application deadline date, even if the applicant did not provide us with notice of its intent to apply by the deadline date for notices of intent to apply.

Deadline for Intergovernmental Review: May 25, 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 may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m. Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our

acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and three 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 84.293C, 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 84.293C, 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 submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and three 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 84.293C, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are as follows:

(a) *Need for project.* (5 points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factor:

(1) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance.* (5 points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factor:

(1) The likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the project design.* (50 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(5) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(d) *Quality of project personnel.* (10 Points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director.

(2) The qualifications, including relevant training and experience, of key project personnel.

(e) *Adequacy of resources.* (5 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factor:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(f) *Quality of the management plan.* (10 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the

proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation.* (15 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

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 Measure:* In response to the Government Performance and Results Act (GPRA), the Department developed one measure for evaluating the overall effectiveness of the Foreign Language Assistance Program (FLAP). The measure assesses the percentage of FLAP projects that report improvements in foreign language proficiency for three-quarters of school participants. We will expect each SEA that carries out a school-based project funded under this competition to document how its project is helping the Department meet this performance measure, including data on the proficiency of students served by projects. Grantees will be expected to report on progress in meeting this performance measure for FLAP in their Annual Performance Report and in their Final Performance Report.

VII. Agency Contact

For Further Information Contact: You may contact either of the following:

Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 10080, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7133, or by e-mail: *rebecca.richey@ed.gov.*

Sharon Manassa, U.S. Department of Education, 400 Maryland Avenue, SW., room 10071, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7124, or by e-mail: *sharon.manassa@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 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: *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: February 4, 2005.

Kathleen Leos,

Associate Assistant Deputy Secretary, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. E5–536 Filed 2–8–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Grant Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Small Business Innovation Research (SBIR) Grants Program Standing Review Panels; recruiting peer reviewers.

SUMMARY: The National Institute on Disability and Rehabilitation Research (NIDRR) is recruiting peer reviewers to serve on standing review panels for its Small Business Innovation Research (SBIR) Grants Program.

DATES: We must receive your nomination on or before March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 6035, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7303 or by email: *carol.cohen@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the SBIR program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally-funded research for economic and social benefits to the Nation. This competitive grants program provides the

incentive for small businesses to profit from the commercialization of technology, products, and services developed through research and development activities funded under the NIDRR sponsored SBIR program. The SBIR program has three-phases: Phases I—startup, Phase II—evaluate commercialization potential, and Phase III—move from the laboratory into the marketplace. However, NIDRR only supports Phase I and Phase II SBIR projects. Phase I grants allow entities to determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. Applications for Phase I focus on research that will contribute to proving the scientific or technical feasibility of the approach, concept or product identified in the proposal, which is a prerequisite for continued ED support in Phase II. The purpose of Phase II is to expand on the results of and to further pursue the development of Phase I projects and to begin to explore the potential for commercialization.

What Are Standing Review Panels?

Phase I and II SBIR grant award decisions are made with the input of standing review panels. Standing review panels are groups of individuals with experience or expertise in specific scientific areas or areas of research. The standing review panels mechanism enhances consistency during a given review cycle and across review cycles. Panels evaluate the scientific and technical merit of grant applications. Individuals are assigned to panels based on their expertise and the priority area(s) assigned to review panels.

What Are the Qualifications of a Standing Review Panel Member?

NIDRR obtains the services of the best-qualified reviewers for standing review panels, including those with disabilities and those from diverse backgrounds. NIDRR is interested in obtaining the services of individuals with training, education, expertise and/or knowledge in a range of areas supported by the 1999–2003 NIDRR long-range research plan (Plan) (*e.g.*, assistive technology, health and function, employment and vocational rehabilitation, independent living and community integration, education and transition activities, and engineering). The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html*.

Individuals may qualify to be peer reviewers on the basis of education, training and professional expertise or some combination of personal and professional experience. Employees of the Federal government are not eligible to serve as peer reviewers for the SBIR grants program.

How Long Will Members of the Standing Review Panel Serve?

Generally, reviewers serve for three-year terms on the Standing Panels with one review per year.

How Can I Become a Standing Review Panel Member?

Individuals are nominated to serve as a standing review panel peer reviewer through self-nomination or nomination by another individual. If you are interested in participating as a reviewer, we request that you submit the following information to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

1. A statement indicating an interest to serve on an SBIR standing review panel and the area(s) of expertise identified from the topic areas enumerated above as well as an indication of knowledge in the following: (1) Small Business Operations and Management; and (2) Product Design, Innovation, Evaluation and Commercialization.

2. Curriculum Vitae or resume detailing areas of expertise and experience.

If you nominate another individual, please contact that individual to determine if the prospective nominee is willing to serve and provide the same information as above.

Standing review panel nominees will be contacted by NIDRR by telephone or e-mail no later than June 15, 2005.

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: February 3, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–535 Filed 2–8–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: Election Assistance Commission.

ACTION: Notice of public hearing.

DATE AND TIME: Wednesday, February 23, 2005, 1 p.m.–5p.m.

PLACE: Michael E. Moritz College of Law, The Ohio State University, 55 W. 12th Ave., Saxbe Auditorium, Columbus, OH 43210–1391.

AGENDA: The Commission will conduct a public hearing to identify the successes and problems involved with the use of provisional voting.

The following witness panels will be presented: Election Officials, Advocacy Organizations/Non-government Sector and Academics.

All public comments will be taken in writing via e-mail at *testimony@eac.gov*, or at the meeting or via mail addressed to the U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005.

FUR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Ray Martinez III,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 05–2563 Filed 2–7–05; 9:02 am]

BILLING CODE 6820–YN–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: Election Assistance Commission.

ACTION: Notice of public meeting.

DATES & TIME: Wednesday, February 23, 2005, 10 a.m.–11:30 a.m.

PLACE: Michael E. Moritz college of Law, The Ohio State University, 55 W. 12th Ave., Saxbe Auditorium, Columbus, OH 43210–1391.

AGENDA: The Commission will receive reports on the following: Updates on Title II Requirements Payments and other administrative or programmatic matters. The Commission will receive presentations on the following: Transition of the voting System Certification Process to EAC and the

Transition of The Lab Certification Process to NIST and EAC.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Ray Martinez III,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 05–2564 Filed 2–7–05; 9:03 am]

BILLING CODE 6820–YN–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–165–000]

Black Marlin Pipeline Company; Notice of Cash-Out Report

February 2, 2005.

Take notice that on January 28, 2005, Black Marlin Pipeline Company (Black Marlin) tendered for filing its annual cash out report for the calendar year ending on December 31, 2004.

Black Marlin states that it is serving copies of the filing to shippers, state commissions and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time on February 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–523 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–166–000]

Distrigas of Massachusetts LLC; Notice of Propsed Changes In FERC Gas Tariff

February 2, 2005.

Take notice that on January 28, 2005, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be made effective November 1, 2004:

Fourth Revised Sheet No. 85
Fourth Revised Sheet No. 86
Fourth Revised Sheet No. 87
Fourth Revised Sheet No. 88
Fourth Revised Sheet No. 89
Fourth Revised Sheet No. 90
Fourth Revised Sheet No. 91

DOMAC states that the tariff sheets extend DOMAC's SS–1 Storage Service Agreement with Boston Gas Company. DOMAC states that the replacement agreement is effective on November 1, 2004, for a term of one year.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–524 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–046]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

February 2, 2005.

Take notice that on January 28, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing a compliance filing pursuant to the Commission's September 22, 2004, order issued in the above-captioned docket.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone

filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–521 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–046]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

February 2, 2005.

Take notice that on January 28, 2005, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing a compliance filing pursuant to the Commission's September 22, 2004 Order issued in the above-captioned docket.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–522 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–62–000]

MIGC, Inc.; Notice of Filing

February 2, 2005.

Take notice that on January 28, 2005, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, First Revised Sheet No.131, to become effective March 1, 2005.

MIGC states that the purpose of this filing is to cancel Rate Schedule TE–1 Tariffs No. 131 through 157, a Gas Transportation and Exchange Agreement between MIGC and Colorado Interstate Gas Company. MIGC states that the Commission had previously granted abandonment of Rate Schedule TE–1 in this docket.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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.

Intervention and Protest Date: 5 p.m. Eastern Time on February 16, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–518 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–377–007]

Northern Border Pipeline Company; Notice of Negotiated Rate

February 2, 2005.

Take notice that on January 28, 2005, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 99A, to become effective February 27, 2005.

Northern Border states that the purpose of this filing is to identify two negotiated rates under Rate Schedule T–1B for transportation between Northern Border and Northern Illinois Gas Company and The Peoples Gas Light and Coke Company. Northern Border further states that minor housekeeping changes also are proposed to the Statement of Negotiated Rates.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–520 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–36–000]

Phelps Dodge Energy Services; Notice of Application for Commission Redetermination of Exempt Wholesale Generator Status

February 2, 2005.

Take notice that on January 31, 2005, Phelps Dodge Energy Services, LLC (PDES) filed an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

PDES states that it operates several facilities with a capacity of 282 MW located in Morenci, Arizona and in Chino and Tyrone, New Mexico. Additionally, PDES states it has recently acquired a one-third undivided interest in a 570 MW gas fired power plan located in Deming, New Mexico.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–519 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–167–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

February 2, 2005.

Take notice that on January 28, 2005, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective February 27, 2005:

Sixth Revised Sheet No. 40
Second Revised Sheet No. 55
Fourth Revised Sheet No. 62
Second Revised Sheet No. 83
Second Revised Sheet No. 90

Pine Needle states that the purpose of the instant filing is to modify its tariff to:(1) Clarify section 12 of the General Terms and Conditions, Pressures; (2) provide for the posting of any information required by Order 2004 on Pine Needle's Electronic Bulletin Board; and (3) add a new section 31 to the General Terms and Conditions, Extension of Service Agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–525 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–168–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

February 2, 2005.

Take notice that on January 28, 2005, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised sheets, to become effective May 1, 2005:

Eleventh Revised Sheet No. 5
Eleventh Revised Sheet No. 6

SLNG states that the revised sheets track maintenance costs associated with the turning basin and berths for ships calling on the LNG import terminal on Elba Island, Georgia. SLNG further states that the Commission approved the tracker as part of a settlement in Docket No. RP02–129.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–516 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–56–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

February 2, 2005.

Take notice that on January 26, 2005, Williston Basin Interstate Pipeline Company (Williston Basin), filed in Docket No. CP05–56–000, an application pursuant to §§ 157.205 and 157.211 (a) (2) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, and pursuant to Williston Basin's blanket certificate authorization granted in Docket No. CP82–487–000, *et al.*, for the construction and operation of a new delivery point in Yellowstone County, Montana to serve ConocoPhillips Company (ConocoPhillips), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin explains that ConocoPhillips has requested the proposed delivery point to accommodate firm and interruptible transportation deliveries for use at its oil refinery in Yellowstone County, Montana, since existing facilities providing natural gas service to its plant are not adequate to serve future needs. Williston Basin states that the estimated cost to construct the proposed delivery point facilities is approximately $108,500. Any questions regarding the application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, 1250 West Century Avenue, Bismarck, North Dakota 58503, (701) 530–1560 (e-mail *keith.tiggelaar@wbip.com).*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866)206–3676, or, for TTY, contact (202)502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: February 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–517 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–54–000]

Wyoming Interstate Company, Ltd.; Notice of Application

February 2, 2005.

Take notice that on January 24, 2005, Wyoming Interstate Company, Ltd. (WIC), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations for an order granting a certificate of public convenience to construct and operate its Piceance Basin Expansion Project consisting of pipeline and compression facilities in Colorado and Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Specifically, WIC proposes to construct, and operate approximately 141.7 miles of 24-inch diameter pipeline extending from the Greasewood Hub in Rio Blanco County, Colorado through Moffat County, Colorado and terminating at interconnects with WIC's mainline and the interstate pipeline facilities of Colorado Interstate Gas Company (CIG) at Wamsutter in Sweetwater County, Wyoming. WIC also proposes to install a 1,650 site-rate horsepower compressor unit at the beginning of the proposed pipeline at the Greasewood Hub. In addition, WIC proposes interconnects with a gathering system and the interstate pipeline facilities of TransColorado Gas Transmission at the Greasewood Hub and an interconnection with CIG at Wamsutter. WIC states that the proposed facilities will have a capacity of 350,000 dth per day and estimates that the proposed facilities will cost $120,200,000. WIC proposes an incremental rate for service on the facilities. Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Wyoming Interstate Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534 or Craig V. Richardson, Vice President and General Counsel, Wyoming Interstate Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–4929 or by fax at (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: February 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–526 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3117–003, et al.]

Wellhead Power Gates, LLC, et al.; Electric Rate and Corporate Filings

February 2, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wellhead Power Gates, LLC

[Docket No. ER01–3117–003]

Take notice that on January 28, 2005, Wellhead Power Gates, LLC (Gates) tendered for filing an updated market power analysis and notice of change in status with respect to the facts the Commission relied upon in granting Gates market-based rate authority.

Comment Date: 5 p.m. eastern time on February 18, 2005.

2. Wellhead Power Gates, Panoche, LLC

[Docket No. ER01–3118–003]

Take notice that on January 28, 2005, Wellhead Power Panoche, LLC (Panoche) tendered for filing an updated market power analysis and notice of change in status with respect to the facts the Commission relied upon in granting Panoche market-based rate authority.

Comment Date: 5 p.m. eastern time on February 18, 2005.

3. New York Independent System Operator, Inc.

[Docket No. ER04–1138–001]

Take notice that on January 28, 2005, the New York Independent System Operator, Inc. (NYISO) tendered for filing revisions to the ISO market administration and control area services tariff (the services tariff) and its open access transmission tariff to establish the effective date for certain provisions.

The NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, NYISO also states that the complete filing has been posted on the NYISO's Web site at

www.nyiso.com and the NYISO will make a paper copy available to any interested party that requests one.

Comment Date: 5 p.m. eastern time on February 18, 2005.

4. New York Independent System Operator, Inc.

[Docket No. ER04–230–007]

Take notice that on January 28, 2005, the New York Independent System Operator, Inc. (NYISO), pursuant to the Commission's Order issued February 11, 2004 in Docket Nos. ER04–230–000 and 001, tendered for filing compliance revisions to the ISO market administration and control area services tariff (the services tariff) and its open access transmission tariff to establish the effective date for certain provisions, to update software references, and to make ministerial corrections. NYISO states that the filing also provides information concerning emergency settlement procedures that the NYISO would follow in the event that its real-time scheduling software was disrupted during the first two weeks after its implementation.

The NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. In addition, NYISO also states that the complete filing has been posted on the NYISO's Web site at *http://www.nyiso.com* and the NYISO will make a paper copy available to any interested party that requests one.

Comment Date: 5 p.m. eastern time on February 18, 2005.

5. Virginia Electric and Power Company

[Docket No. ER05–94–001]

Take notice that on January 28, 2005, Virginia Electric and Power Company (Dominion), tendered for filing an amendment to its October 28, 2004 filing in Docket No. ER05–94–000. Dominion states that the amendment was filed in response to a deficiency letter issued by the Commission on December 1, 2004.

Comment Date: 5 p.m. eastern time on February 18, 2005.

6. ISO New England Inc.

[Docket No. ER05–134–001]

Take notice that, on January 28, 2005, ISO New England Inc. (the ISO) submitted a compliance filing pursuant to the Commission's order issued December 30, 2004 in Docket No. ER05–134–000. The ISO states that the filing removes Schedule 5 from the ISO New England Inc. tariff for transmission dispatch and power administration services, FERC Electric Tariff, Volume No. 1.

ISO New England Inc. states that copies of the filing were served on parties on the official service list in the Docket No. ER05–134–000, as well as to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. eastern time on February 18, 2005.

7. ISO New England Inc.

[Docket No. ER05–135–001]

Take notice that, on January 28, 2005, ISO New England Inc. (ISO–NE) submitted a compliance filing pursuant to the Commission's letter order issued December 30, 2004 in Docket No. ER05–135–000. ISO–NE states that the filing amends section 8.1 and 8.2 of the ISO's Capital Funding Tariff to state that all quarterly and annual capital budget and expenditure filings will be filed pursuant to, and subject to Commission review under, section 205 of the Federal Power Act.

ISO New England Inc. states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, as well as to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. eastern time on February 18, 2005.

8. New England Power Pool

[Docket No. ER05–402–000]

Take notice that on December 30, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Gexa Energy LLC (Gexa); Lew A. Cummings Co. Inc. (Lew A. Cummings); Parkview Adventist Medical Center; Parkview AMC Energy, LLC; and Styrka Energy Master Fund LLC (collectively, the Applicants). NEPOOL Participants Committee requests an effective date of January 1, 2005 for NEPOOL membership of Lew A. Cummings, Parkview AMC Energy and Styrka. In addition, NEPOOL Participants Committee requests an effective date of February 1, 2005 for the NEPOOL membership of Gexa.

NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: 5 p.m. eastern time on February 11, 2005.

9. Southern Indiana Gas and Electric Company

[Docket No. ER05–412–001]

Take notice that, on January 28, 2005, Southern Indiana Gas and Electric Company submitted an amendment to its revised market-based rate tariff filed December 10, 2004 in Docket Nos. ER96–2734–004 and ER05–412–000.

Vectren states that copies of the filing were served upon the public utility's jurisdictional customers who are located in its control area, the Indiana Utility Regulatory Commission and the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on February 18, 2005.

10. Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER05–498–000]

Take notice that on January 27, 2005, Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, NSP Companies) tendered for filing revised tariffs sheets to the Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power (Minnesota) and Northern States Power Company (Wisconsin). The NSP companies request an effective date of January 1, 2005.

The NSP Companies state that a copy of the filing has been served upon the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment Date: 5 p.m. eastern time on February 17, 2005.

11. Southern California Edison Company

[Docket No. ER05–506–000]

Take notice that on January 28, 2005, Southern California Edison Company (SCE) tendered for filing revisions to its transmission owner tariff, FERC Electric Tariff, Second Revised Volume No. 6, to reflect revisions to the transmission access charge balancing account adjustment. SCE requests that the filing be made effective April 1, 2005.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, Pacific Gas and Electric Company, San Diego Gas & Electric Company, California Electricity Oversight Board, Trans-Elect, Western Area Power Administration and the Cities of Anaheim, Azusa, Banning, Riverside, Pasadena and Vernon, California.

Comment Date: 5 p.m. eastern time on February 18, 2005.

12. Virginia Electric and Power Company

[Docket No. ER05–507–000]

Take notice that on January 28, 2005, Virginia Electric and Power Company, doing business as Dominion Virginia Power (the Company), filed a service agreement with North Carolina Electric Membership Corporation (NCEMC) providing for the sale of capacity and firm energy under the Company's cost-based power sales tariff, Original Volume No. 7. The Company requests an effective date of January 1, 2005.

The Company has served this filing on NCEMC, the Virginia State Corporation Commission and the North Carolina Public Utilities Commission.

Comment Date: 5 p.m. eastern time on February 18, 2005.

13. PJM Interconnection, L.L.C.

[Docket No. ER05–509–000]

Take notice that on January 28, 2005, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interim interconnection service agreement (Interim ISA) among PJM, FPL Energy Marcus Hook, L.P., and PECO Energy Company, and a notice of cancellation for an Interim ISA that has been superseded. PJM requests an effective date of December 30, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on February 18, 2005.

14. Appalachian Power Company

[Docket No. ER05–510–000]

Take notice that on January 28, 2005, Appalachian Power Company (APCo) tendered for filing with the Commission a notice of cancellation of Rate Schedule FERC No. 102, an electric service agreement under which APCo currently provides service to Craig-Botetourt Electric Cooperative, Inc (Craig-Botetourt). APCo requests an effective date of March 1, 2005.

APCo states that a copy of its filing was served upon the Virginia State Corporation Commission and Craig-Botetourt.

Comment Date: 5 p.m. eastern time on February 18, 2005.

15. Virginia Electric and Power Company

[Docket No ER05–511–000]

Take notice that on January 28, 2005, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement between Dominion Virginia Power and Central Virginia Electric Cooperative, designated as Service Agreement No. 395, under the Dominion Virginia Power's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5. Dominion Virginia Power requests an effective date of January 1, 2005.

Comment Date: 5 p.m. eastern time on February 18, 2005.

16. Valley Electric Association, Inc.

[Docket No. ES05–17–000]

Take notice that on January 24, 2005, Valley Electric Association, Inc. (Valley Electric) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowings under two loan agreements with the National Rural Utilities Cooperative Finance corporation (CFC), in an amount up to $39.3 million under one loan agreement and in an amount up to $30 million under the other loan agreement. Valley Electric also seeks authorization to issue short-term debt in an amount up to $15 million under a revolving line of credit with CFC.

Valley Electric also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. eastern time on February 18, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–531 Filed 2–8–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0003; FRL–7697–5]

Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA section 8(c)); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C 3501 *et seq.*) EPA is seeking public comment on the following Information Collection Request (ICR): Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (Toxic Substances Control Act (TSCA) section 8(c)) (EPA ICR No. 1031.08, OMB Control No. 2070–0017). This ICR involves a collection activity that is currently approved and scheduled to expire on December 31, 2005. The information collected under this ICR relates to requirements under TSCA section 8(c) that companies that manufacture, process, or distribute in commerce any chemical substance or mixture maintain records of significant adverse reactions to health or the environment alleged to have been caused by such substance or mixture. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPPT–2005–0003, must be received on or before April 11, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8086; fax number: (202) 564–4765; e-mail address: *brown.gerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that manufactures, processes, imports, or distributes in commerce chemical substances or mixtures. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., basic chemical manufacturing; resin, synthetic rubber and artificial and synthetic fibers and filaments manufacturing; pesticide, fertilizer, and other agricultural chemical manufacturing; paint, coating, and adhesive manufacturing; soap, cleaning compound, and toilet preparation manufacturing etc.
- Petroleum refineries (NAICS 32411), e.g., crude oil refining, diesel fuels manufacturing, fuel oils manufacturing, jet fuel manufacturing, kerosene manufacturing, and petroleum distillation etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 717.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPPT–2005–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please

follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0003. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0003. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005–0003. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA section 8(c)).

ICR numbers: EPA ICR No. 1031.08, OMB Control No. 2070–0017.

ICR status: This ICR is currently scheduled to expire on December 31, 2005. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: TSCA section 8(c) requires companies that manufacture, process, or distribute chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provision, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency.

EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company.

Responses to the collection of information are mandatory (see 40 CFR part 717). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to range between 0.25 hour and 8.0 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Estimated total number of potential respondents: 13,445.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 24,548 hours.

Estimated total annual burden costs: $1,232,417.

IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 5,391 hours (from 29,939 hours to 24,548 hours) in the total estimated respondent burden compared with that identified in the ICR most recently approved by OMB. This decrease is based on several factors. Most importantly, while the number of firms rose since the last ICR (12,287 to 13,445), the number of employees fell (from 1,000,000+ to 909,562). Since the allegation rate is based on the number of employees, this results in a decrease in total allegations (7,397 to 6,050), and thus a reduction in burden. There is also a small reduction in burden associated with reviewing **Federal Register** notices. Based on experience over the life of the rule, the average annual number of notices the Agency is expected to issue fell from an estimated 0.11 in the most recent ICR to 0.1 notice per year estimated in this renewal. An additional small reduction is attributable to reduced industry reporting requirements, which have fallen from an estimated 1.75 reports per year (31 reports total/18 years of the rule), to 1.5 reports per year, over the 21 years of the rule (31 reports/21 years).

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 1, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–2510 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0419; FRL–7694–2]

Application for New and Amended Pesticide Registration; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Application for New and Amended Pesticide Registration (EPA ICR No. 0277.14, OMB Control No. 2070–0060). This is a request to renew an existing ICR that is currently approved and due to expire October 31, 2005. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0419, must be received on or before April 11, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an individual or entity engaged in activities related to the registration of a pesticide product. Potentially affected entities may include, but are not limited to:

• Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., individuals or entities engaged in activities related to the registration of a pesticide product.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the data requirements of 40 CFR part 158. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

A. Docket

EPA has established an official public docket for this action under docket ID number OPP–2004–0419. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

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

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0419. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0419. In contrast to EPA's electronic public docket, EPA's e-mail

system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0419.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0419. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Application for New and Amended Pesticide Registration.

ICR numbers: EPA ICR No. 0277.14, OMB Control No. 2070–0060.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire October 31, 2005.

Abstract: This data collection program is designed to provide EPA with necessary data to evaluate an application of a pesticide product as required under section 3 of FIFRA. Under FIFRA, all pesticides must be registered by EPA before they may be sold or distributed in U.S. commerce. Respondents must comply with this collection of information in order to obtain or maintain a benefit (i.e., pesticide registration).

An individual or entity seeking to register a new pesticide or to amend an existing pesticide registration must submit an application package consisting of information relating to the identity and composition of the product, proposed labeling, and supporting data (or compensation for others' data) for the product as outlined in 40 CFR part 158. The EPA bases registration decisions for pesticides on its evaluation of a battery of test data provided primarily by applicants for registration. Required studies include testing to show whether a pesticide has the potential to cause unreasonable adverse human health or environmental effects. The Agency currently collects data on physical chemistry, acute and chronic toxicology, environmental fate, ecological effects, worker exposure, residue chemistry, environmental chemistry, and product performance. If EPA's evaluation of the data show that the statutory requirements of FIFRA are met, then a registration is approved.

Registrants of EPA-registered pesticide products at times become subject to regulations or guidance that include labeling revisions. The revised labeling is submitted as an amendment to the Agency along with the completed application form (EPA Form 8570–1). Normally, data are not required or reviewed for revised labeling regulations or guidance; however, it is necessary that the revised labeling be reviewed and approved. This review is most often accomplished by a Product Manager (PM), or Team Leader, in one of the three regulatory divisions responsible for pesticide registration (the Registration Division, the Antimicrobial Division, and the Biopesticides and Pollution Prevention Division), who ensure that revisions are in compliance with the applicable labeling requirement or guidance.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 152,974 hours at an estimated annual cost of $15,811,872. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Not applicable.

Estimated total number of potential respondents: 2,100.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 3–5.

Estimated total annual burden hours: 152,974.

Estimated total annual burden costs: $15,811,872.

VI. Are There Changes in the Estimates from the Last Approval?

The burden hours for the registrant are based on response activities that have not changed since the last ICR approval, nor has the aggregate number of responses changed. The only changes are the respondent costs as reflected by the increase in labor costs adjusted to 2004 dollars, an increase of $1,603,798 (from $14,208,074 to $15,811,872).

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: February 1, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–2511 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7870–7]

Investigator Initiated Grants: Request for Applications

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Requests for Applications.

SUMMARY: This notice provides information on the availability of fiscal year 2005 investigator initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites research applications in the following areas of special interest to its mission: (1) Early Indicators of Environmentally-Induced Disease, (2) Computational Toxicology: Environmental Bioinformatics Research Center, (3) Environmental Behavior & Decisionmaking: Benefits of Information Disclosure/Provision, (4) Impact of Climate Change and Variability on Human Health, (5) Climate Change and Public Health Decision Making, (6) Exposure Measurement Tools for Endocrine Disrupting Chemicals in Mixtures, (7) Continuous Measurement Methods for Particulate Matter, (8) Development and Evaluation of Innovative Approaches for the Quantitative Assessment of Pathogens in Drinking Water, (9) Novel Biologically-based Public Health Indicators, (10) Allergenicity of Genetically Modified foods, (11) Valuation for Environmental Policy, (12) Implications of Tropospheric Air Pollution for Surface UV Exposures, (13) Nonlinear Responses to Global Change in Linked Aquatic and Terrestrial Ecosystems, (14) Ecology and Oceanology of Hazardous Algal Blooms (with NOAA, NSF, ONR and NASA), (15) Development of Predictive Toxicogenomics Approaches with Computational Toxicology, (16) Market Mechanisms and Incentives: Methods for New Markets; Experimental Markets, (17) Lifestyle and Cultural Practices of Tribal Populations and Risks from Toxic Substances in the Environment, (18) Integration of Biomarkers and PBPK & PBPD Modeling, (19) STAR Graduate Fellowships, (20) GRO Graduate & Undergraduate Fellowships.

CONTACTS: (1) Early Indicators of Environmentally-Induced Disease, e-mail: *fields.nigel@epa.gov,* telephone: 202–343–9767; (2) Computational Toxicology: Environmental Bioinformatics Research Center, e-mail: *mustra.david@epa.gov,* telephone: 202–343–9616; (3) Environmental Behavior & Decisionmaking: Benefits of Information Disclosure/Provision, e-mail: *clark.matthew@epa.gov,* telephone: 202–343–9807; (4) Impact of Climate Change and Variability on Human Health, e-mail: *winner.darrell@epa.gov,* telephone: 202–343–9748; (5) Climate Change and Public Health Decision Making, e-mail: *winner.darrell@epa.gov,* telephone: 202–343–9748; (6) Exposure Measurement Tools for Endocrine Disrupting Chemicals in Mixtures, e-mail: *laessig.susan@epa.gov,* telephone: 202–343–9617; (7) Continuous Measurement Methods for Particulate Matter, e-mail: *winner.darrell@epa.gov,* telephone: 202–343–9748; (8) Development and Evaluation of Innovative Approaches for the Quantitative Assessment of Pathogens in Drinking Water, e-mail: *nolt-helms.cynthia@epa.gov,* telephone: 202–343–9693; (9) Novel Biologically-based Public Health Indicators, e-mail: *turner.vivian@epa.gov,* telephone: 202–343–9697; (10) Allergenicity of Genetically Modified Foods, e-mail: *turner.vivian@epa.gov,* telephone: 202–343–9697; (11) Valuation for Environmental Policy, e-mail: *wheeler.william@epa.gov,* telephone: 202–564–6842; (12) Implications of Tropospheric Air Pollution for Surface UV Exposures, e-mail: *winner.darrell@epa.gov,* telephone: 202–343–9748; (13) Nonlinear Responses to Global Change in Linked Aquatic and Terrestrial Ecosystems, e-mail: *smith.bernicel@epa.gov,* telephone: 202–343–9766; (14) Ecology

and Oceanology of Hazardous Algal Blooms (with NOAA, NSF, ONR and NASA), e-mail: *perovich.gina@epa.gov,* telephone: 202–343–9843; (15) Development of Predictive Toxicogenomics Approaches with Computational Toxicology, e-mail: *mustra.david@epa.gov,* telephone: 202–343–9616; (16) Market Mechanisms and Incentives: Methods for New Markets; Experimental Markets, e-mail: *clark.matthew@epa.gov,* telephone: 202–343–9807; (17) Lifestyle and Cultural Practices of Tribal Populations and Risks from Toxic Substances in the Environment, e-mail: *fields.nigel@epa.gov,* telephone: 202–343–9767; (18) Integration of Biomarkers and PBPK & PBPD Modeling, e-mail: *saint.chris@epa.gov,* telephone: 202–343–3124; (19) STAR Graduate Fellowships, e-mail: *willett.stephanie@epa.gov,* telephone: 202–343–9737; (20) GRO Graduate & Undergraduate Fellowships, e-mail: *willett.stephanie@epa.gov,* telephone: 202–343–9737.

FOR FURTHER INFORMATION CONTACT: The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer,* under ''announcements.'' The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncer/rfa/forms/downlf.html.* Forms may be printed from this site.

Dated: February 1, 2005.

Jack Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 05–2519 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0281; FRL–7681–1]

Pesticides and National Strategies for Health Care Providers; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is soliciting proposals for financial assistance to support a continuing EPA national initiative to improve the training of health care providers in recognition, diagnosis, treatment, and prevention of pesticide poisonings among those who work with pesticides. OPP will establish cooperative agreements with two different organizations whose work collectively will cover a range of activities needed to improve the recognition and management of pesticide-related health conditions. Funded projects will focus on creating significant institutional change in health care providers' educational and practice settings through education, professional training, and the development of new resources and tools on pesticide-related health conditions. The total funding available for award in FY 2005, which represents funding set aside in FY2004, is expected to be approximately $265,000, with two cooperative agreements being awarded at $132,500 each. At the conclusion of the first 1 year period of performance and, based on the availability of future funding, incremental funding of up to $132,500 per cooperative agreement may be made available for each year, allowing the project to continue for a total of five periods of performance (approximately 5 years) and with a total potential funding of up to $1,325,000 for the 5–year period, depending on the need and the Agency's budget in outlying years.

DATES: Applications must be received by EPA on or before March 28, 2005.

ADDRESSES: Applications may be submitted by mail, fax, or electronically. Please follow the detailed instructions provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Allie Fields, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7666; fax number: (703) 308–2962; e-mail address: *fields.allie@epa.gov*.

SUPPLEMENTARY INFORMATION: The following listing provides certain key information concerning the funding opportunity.

- *Federal agency name*: Environmental Protection Agency (EPA).
- *Funding opportunity title*: Pesticides and National Strategies for Health Care Providers.
- *Funding opportunity number*: OPP–003.
- *Announcement type*: The initial announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFDA) number*: This program is included in the Catalog of Federal Domestic Assistance under number 66.607 at *http://www.cfda.gov/public/whole.pdf.*
- *Dates*: Applications must be received by EPA on or before March 28, 2005.

I. Funding Opportunity Description

A. Authority

EPA expects to enter into cooperative agreements under the authority provided in FIFRA section 20 which authorizes the Agency to issue grants or cooperative agreements for research, public education, training, monitoring, demonstration and studies. Regulations governing these cooperative agreements are found at 40 CFR part 30 for institutions of higher education, colleges and universities, and non-profit organizations; and 40 CFR part 31 for States and local governments. In addition, the provisions in 40 CFR part 32, governing government wide debarment and suspension; and the provisions in 40 CFR part 34, regarding restrictions on lobbying apply. All costs incurred under this program must be allowable under the applicable OMB Cost Circulars: A-87 (States and local governments), A-122 (nonprofit organizations), or A-21 (universities). Copies of these circulars can be found at *http://www.whitehouse.gov/omb/circulars/*. In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (e.g., lobbying members of Congress or lobbying for other Federal grants, cooperative agreements, or contracts). See 40 CFR part 34.

B. Program Description

1. *Purpose and scope*. The cooperative agreements awarded under this program are intended to provide financial assistance for continuation of EPA's national initiative to improve the training of health care providers in recognition, diagnosis, treatment, and prevention of pesticide poisonings among those who work with pesticides. Given that health professionals are educated and trained in different settings, EPA seeks to fund two different organizations whose work collectively will cover a range of activities needed to improve the recognition and management of pesticide-related health conditions. One organization will work with decision-makers and faculty at academic institutions and professional associations/organizations to create institutional change in educational settings (e.g., medical schools, nursing schools, residency and practicum programs) so that students in the health professions are prepared to recognize, manage, and prevent pesticide-related health conditions across the United States. The other organization will work directly with health care providers to change the practice of primary care so

that pesticide-related health conditions are recognized, effectively managed, and prevented in practice settings (e.g., private practices, migrant clinics, community clinics, hospitals, workplace clinics).

Under these two new cooperative agreements, projects will be considered that focus on the macro level, to engender changes in the professions, as well as those that focus on the micro level, to implement professional change in the field setting. Experience and expertise with working with professional associations and decision-making bodies that represent and/or influence educational and practice settings will be critical to the success of this program for macro level projects. Experience in field settings will be critical to the success of this program for micro level projects. More importantly, the ability to work directly with the medical community, particularly those with expertise in pesticide poisoning recognition and treatment and occupational medicine, will be essential for implementing this program.

2. *Activities to be funded*. Two cooperative agreements will be established: educational and practice.

i. *Educational*. Educational activities will target the educational settings in which health care providers are educated. Key activities to be funded under the educational cooperative agreement are as follows:

- Organize strategic meetings with decision-makers and faculty at educational institutions and professional associations to communicate the need to incorporate pesticide education and awareness into educational and practice settings.
- Design and implement methods of integration of the pesticide education core competencies into educational and practice settings.
- Develop and provide access (through training, continuing education, website, etc.) to relevant resources and tools to teach occupational health and safety, with a pesticide focus, to current and future health care providers.
- Develop and test an education model that incorporate pesticide education core competencies into the curriculum.
- Evaluate and promote the use of an education model across a wide-range of educational settings.

ii. *Practice*. Practice activities will target the practice settings in which a provider works and participates in professional development. Key activities to be funded under the practice cooperative agreement are as follows:

- Organize strategic meetings with primary health care providers, health care clinic, and other health care delivery systems to communicate the need to incorporate pesticide education and awareness into practice settings.
- Design and implement methods of integration of the key practice skills required for health care providers to deal effectively with pesticide-related health conditions in the practice settings.
- Develop and provide access (through training, continuing education, website, etc.) to relevant resources and tools that health care providers need to deal effectively with pesticide-related health conditions.
- Develop and test a training model for primary health care providers that incorporates key practice skills for recognition and treatment of pesticide poisonings.
- Evaluate and promote the use of a training model for health care providers across a wide-range of practice settings.

This program will further Agency efforts under the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. 136w) to reduce the risk of pesticide poisonings and injuries among agricultural workers, handlers of agricultural pesticides, and the public by providing essential training to health care providers on how to recognize, diagnose, treat, and prevent pesticide-related health conditions more effectively.

3. *Goal and objectives*. The goal of these cooperative agreements is to continue EPA's national initiative to improve the training of health care providers in recognition, diagnosis, treatment, and prevention of pesticide poisonings among those who work with pesticides. The objectives of these cooperative agreements are:

i. To work with two different organizations whose work collectively will cover the wide spectrum of health care professionals that can create change in the educational and practice settings.

ii. To incorporate pesticide education core competencies into the curriculum of universities and schools that educate and train health care providers.

iii. To incorporate into clinical settings the key practice skills required for primary health care providers to deal effectively with pesticide-related health conditions.

iv. To develop and test models of integration of pesticide education core competencies and practice skills into educational and practice settings that can be utilized across the United States by health care providers.

4. *History*. The revised agricultural worker protection regulation, issued in 1992 and fully implemented in 1995, was designed to reduce pesticide exposure to agricultural workers, mitigate exposures that may occur, and inform agricultural employees about the hazards of pesticides. The regulation mandates that farmworkers and pesticide handlers be given pesticide safety training about the health effects of pesticide exposure and the need to get medical treatment for such effects.

In 1996, EPA held nine public meetings to evaluate the progress of worker protection regulation's implementation and to hear the experiences of the people most affected by the regulation. As a result of these meetings, EPA began to focus on the need to improve the recognition, diagnosis, and management of adverse health effects from pesticide exposures on the part of all primary care providers of the health care community.

In April 1998, EPA, in collaboration with several other federal agencies (Department of Health and Human Services, U.S. Department of Agriculture, and Department of Labor), convened a workshop of experts to identify strategies for educating health care providers on how to recognize, diagnose, manage, and prevent adverse health effects from pesticide exposures. The expert panel included representatives from professional health associations; farmworker and community interest organizations; migrant clinician's networks; academia; and pesticide experts. In addition, an invited group of observers from state and federal agencies, health clinics, community-based programs, farmer and farmworker groups, and other interested organizations participated in question and answer sessions with the expert panel. The results from this workshop include the establishment of the Federal Interagency Planning Committee; convening of three workgroups (Education, Practice, and Resource Workgroups); and the update and release of the 5th edition of ''Recognition and Management of Pesticide Poisonings Manual (1999).''

In March 2003, the final ''Implementation Plan for the National Strategies for Health Care Providers: Pesticide Initiative'' was completed. The Implementation Plan sets out a three-prong strategy for improving the recognition, diagnosis, management, and prevention of pesticide-related health conditions by health care providers. The first prong addresses a provider's formal education. The second prong targets the practice setting in which a provider works and participates in professional development. The final prong articulates the resources and tools that providers need to deal effectively with pesticide-related health conditions

in their practice and communities. Several activities outlined in the Implementation Plan have already been completed, including the convening of a national forum of health professionals to officially launch the Initiative and the publication of the ''National Pesticide Competency Guidelines for Medical and Nursing Education and Practice.''

On January 23, 2004, the Pesticide Registration Improvement Act (PRIA) amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under section 33(c)(3)(B), funding shall be used to enhance current scientific and regulatory activities related to worker protection.

II. Award Information

The funding for the selected award projects is in the form of a cooperative agreement awarded under FIFRA section 20. Cooperative agreements will be formed with two different organizations. The total funding available for award in FY 2005 is expected to be approximately $265,000, with two cooperative agreements being awarded $132,500 each.

1. *Educational Cooperative Agreement*. The total funding available for this award in FY 2005 represents funding set aside in FY2004 and is expected to be approximately $132,500. At the conclusion of the first 1 year period of performance, incremental funding of up to $132,500 may be made available for each subsequent year, depending on need and the Agency budget in outlying years which would allow the projects to continue for a total of five periods of performance (approximately 5 years) and totaling up to $662,500 for the 5–year period.

2. *Practice Cooperative Agreement*. The total funding available for this award in FY 2005 represents funding set aside in FY2004 and is expected to be approximately $132,500. At the conclusion of the first 1 year period of performance, incremental funding of up to $132,500 may be made available for each subsequent year, depending on need and the Agency budget in outlying years which would allow the projects to continue for a total of five periods of performance (approximately 5 years) and totaling up to $662,500 for the 5–year period.

Should additional funding become available for award, based on the Agency budget in those outlying years, the Agency may make available additional funds under the cooperative agreement granted based on the solicitation and in accordance with the final selection process, without further notice of competition during the first year after the competition award.

III. Eligibility Information

1. *Threshold eligibility factors*. To be eligible for consideration, applicants must meet all of the following criteria. Failure to meet the following criteria will result in the automatic disqualification for consideration of the proposal for funding:

i. Be an applicant who is eligible to receive funding under this announcement, including states, U. S. territories or possessions, federally recognized Tribal governments and organizations, public and private universities and colleges, hospitals, laboratories, other public or private nonprofit institutions, and individuals. Non-profit organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in section 3 of the Lobbying Disclosure Action of 1995 are not eligible to apply. Eligible applicants may include: Agricultural, environmental, health, and educational organizations and agencies, colleges or universities, the Cooperative Extension Service, other public or non-profit agencies, authorities, institutions, organizations; individuals or other qualified entities working in agricultural science, technology, research, training, safety, education, and communications. Applicants with broad reaches into the diverse interests of the agricultural community, including farmworkers, farmworker families, pesticide handlers, health providers, growers, the Cooperative Extension Service, state, national and international agriculture, environment, labor and occupational health, rural and migrant health, education agencies are eligible.

ii. The proposal must address all of the qualifications in the high priority areas for consideration listed under Unit III.2.

iii. The proposal must address all of the activities to be funded for either the educational or practice cooperative agreement. The activities to be funded are listed under Unit I.B.2.

iv. The proposal must meet all format and content requirements contained in Unit IV.

v. The proposal must comply with the directions for submittal contained in this notice.

2. *Eligibility criteria*. Applicants must demonstrate ability, experience and/or expertise in the following high priority areas for consideration. Applicants will be evaluated on the following criteria:

i. *Ability and experience in working with a wide range of health professionals in the practice settings and at educational institutions and professional associations*. Applicants must demonstrate the ability to create a variety of fora within which representatives of professional associations, accrediting bodies, curriculum committees, etc., can advance the goals of EPA's Office of Pesticide Programs' health care providers initiative.

ii. *Ability and experience in developing a methodological process for incorporating new information into an established system*. Applicants must demonstrate the ability and experience to develop and implement methods for integrating the pesticide core competencies and key practice skills into a wide-range of educational and practice settings. This may include developing the necessary resources and tools for health professionals during training and/or practice.

iii. *Experience and expertise in developing educational materials and methods of delivery*. Applicants must demonstrate experience and expertise in developing, organizing, and making accessible educational materials about pesticides and pesticide-related health conditions. This may include developing a power point or web-based course on pesticide education, or designing a website where resources and tools are available for downloading.

iv. *Ability and experience in working with pesticide experts and clinicians in occupational health and safety settings*. Applicants must demonstrate the ability and experience with working with pesticide experts and clinicians in occupational health and safety settings to ensure the accuracy and practicality of educational materials developed.

v. *Ability and experience in conducting a needs assessment of the target audience*. Applicants must demonstrate the ability and experience to conduct a needs assessment to determine the most effective ways to reach health care providers through educational interventions, model programs, and resources.

vi. *Ability to pilot test and evaluate new educational and practice models*. Applicants must demonstrate the ability to develop, test, evaluate, and promote the use of an educational or training model that incorporates the pesticide core competencies and key practice skills into educational and practice settings.

vii. *Knowledge of the Pesticide Registration Improvement Act (PRIA) specifically section 33(c)(3)(B), Worker Protection*.

3. *Cost sharing or matching*. There are no cost share requirements for this project. However, matching funds are encouraged.

IV. Application and Submission Information

1. *Address to request proposal package.* Allie Fields, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7666; fax number: (703) 308–2962; e-mail address: *fields.allie@epa.gov*.

2. *Content and form of application submission.* Proposals must be typewritten, in 12 point or larger print using 8.5 x 11 inch paper with minimum 1 inch horizontal and vertical margins. Pages must be numbered in order starting with the cover page and continuing through the appendices. One original and one electronic copy (e-mail or disk) is required.

All proposals must include:

- Completed Standard Form SF 424*, Application for Federal Assistance. Please include organization fax number and e-mail address. The application forms are available on line at *http://www.epa.gov/ogd/grants/how_to_apply.htm*.
- Completed Section B--Budget Categories, on page 1 of Standard Form SF 424A* (see allowable costs discussion below). Blank forms may be located at *http://www.epa.gov/ogd/grants/how_to_apply.htm*.
- Detailed itemization of the amounts budgeted by individual Object Class Categories (see allowable costs discussion below).
- Statement regarding whether this proposal is a continuation of a previously funded project. If so, please provide the assistance number and status of the current grant/cooperative agreement.

Executive Summary. The Executive Summary shall be a stand alone document, not to exceed one page, containing the specifics of what is proposed and what you expect to accomplish regarding measuring or movement toward achieving project goals. This summary should identify the measurable environmental results you expect including potential human health benefits.

Table of contents. A one page table listing the different parts of your proposal and the page number on which each part begins.

Proposal narrative. Includes Parts I–V as identified below (not to exceed 10 pages).

Part I--Project title. Self explanatory.

Part II--Objectives. A numbered list (1, 2, etc.) of concisely written project objectives, in most cases, each objective can be stated in a single sentence

Part III--Justification. For each objective listed in Part II, discuss the potential outcome in terms of human health, environmental and/or pesticide risk reduction.

Part IV--Approach and methods. Describe in detail how the program will be carried out. Describe how the system or approach will support the program goals.

Part V--Impact assessment. Please state how you will evaluate the success of the program in terms of measurable results. How and with what measures will humans be better protected as a result of the program. Quantifiable risk reduction measures should be described.

Appendices. These appendices must be included in the cooperative agreement proposal. Additional appendices are not permitted.

Timetable. A timetable that includes what will be accomplished under each of the objectives during the project and when completion of each objective is anticipated.

Major participants. List all affiliates or other organizations, educators, trainers, and others having a major role in the proposal. Provide name, organizational affiliation, or occupation and a description of the role each will play in the project. A brief resume (not to exceed two pages) should be submitted for each major project manager, educator, support staff, or other major participant.

3. *Submission dates and times.* You may submit an application through the mail, by fax, or electronically. Regardless of submission method, all applications must be received by EPA on or before March 28, 2005.

4. *Intergovernmental Review.* All applicants should be aware that formal requests for assistance (i.e., SF 424 and associated documentation) may be subject to intergovernmental review under Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants should contact their state's single point of contact (SPOC) for further information. There is a list of these contacts at the following web site: *http:/whitehouse.gov/omb/grants/spoc.html*.

5. *Funding restrictions.* EPA grant funds may only be used for the purposes set forth in the cooperative agreement, and must be consistent with the statutory authority for the award. Cooperative agreement funds may not be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other governmental entity. All costs identified in the budget must conform to applicable Federal Cost Principles contained in OMB Circular A-87; A-122; and A-21, as appropriate.

6. *Other submission requirements.* As indicated above, each application must include the original paper copy of the submission, along with one electronic copy. The electronic copy of your application package, whether submitted separately by e-mail or on a disk, please ensure that the electronic copy is consolidated into a single file, and that you use Word Perfect WP8/9 for Windows, or Adobe PDF 4/5. If mailing a disk, please use a 3.5 disk that is labeled as a proposal for the Pesticides and National Strategies for Health Care Providers, and include your pertinent information. Please check your electronic submissions to ensure that it does not contain any computer viruses.

Submit your application using one of the following methods:

By mail to: Allie Fields, Office of Pesticide Programs, Mail code: 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

By fax to: Allie Fields at fax number: (703) 308–2962.

By e-mail to: *fields.allie@epa.gov*.

7. *Confidential business information.* Applicants should clearly mark information contained in their proposal which they consider confidential business information. EPA reserves the right to make final confidentially decisions in accordance with Agency regulations at 40 CFR part 2, subpart B. If no such claim accompanies the proposal when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

V. Application Review Information

Applicants will be screened to ensure that they meet all eligibility criteria and will be disqualified if they do not meet all eligibility criteria. The proposals will be evaluated by an EPA Review Panel and selected according to the evaluation criteria listed below. The corresponding points next to each criterion are the weights EPA will use to evaluate the applications. Please note that certain sections are given greater weight than others. Each application will be ranked based on the following evaluation criteria (Total: 100 points):

1. *Technical qualifications and overall management plan.* Proposals should provide complete information on the education, skills, training, and relevant experience of the project leader and/or other key managers. As appropriate, please cite technical qualifications and specific examples of

prior, relevant experience. The application must clearly demonstrate the ability and experience to work with a wide range of health professionals in the practice and educational settings, as outlined in Unit III.2. The proposal must also address the systems of accountability and management oversight that are in place to ensure projects stay on track. (Weight: 30 points)

2. *Project goals and implementation plan*. Proposals should clearly outline measurable goals, objectives, and specific tasks that will be undertaken to improve the recognition, diagnosis, management, and prevention of pesticide-related health conditions by health care providers. This includes describing implementation strategies for incorporating new information into established systems, developing and providing access to educational materials, conducting a needs assessment, and pilot testing new educational and practice models. (Weight: 40 points)

3. *Clarity of the measures of success*. All proposals should clearly state the key outputs of the proposed projects. In addition, it should be clearly stated how progress and success will be measured. Success of the project in terms of measurable environmental results should be described. (Weight: 20 points)

4. *Budget*. A detailed budget narrative demonstrating a clear link between resources and project objectives must be provided. If EPA funding for this project will be supplemented by other sources, please identify them. (Weight: 10 points)

The proposals will be reviewed and evaluated by a team of internal EPA Worker Protection and Pesticide Handler Certification and Training experts. The final funding decision will be made from a group of top rated proposals by the Chief of the Certification and Worker Protection Branch, Field and External Affairs Division, Office of Pesticide Programs. The Agency reserves the right to reject all proposals and make no awards. The procedures for dispute resolution at 40 CFR 30.63 and 40 CFR 31.70 apply.

VI. Award Administration Information

1. *Award notices*. The Certification and Worker Protection Branch in OPP will mail an acknowledgment to applicants upon receipt of the application. Once all of the applications have been reviewed, evaluated, and ranked, applicants will be notified of the outcome of the competition. A listing of the successful proposal will be posted on the Certification and Worker Protection website address at the conclusion of the competition (go to: *http://www.epa.gov/pesticides/health/worker.htm*). The website may also contain additional information about this announcement including information concerning deadline extensions or other modifications.

2. *Administrative and national policy requirements*. An applicant whose proposal is selected for Federal funding must complete additional forms prior to award (see 40 CFR 30.12 and 31.10), and will be required to certify that they have not been debarred or suspended from participation in Federal assistance awards in accordance with 40 CFR part 32. In addition, Applicants must comply with the Intergovernmental Review Process. Further information regarding this requirement will be provided if your proposal is selected for funding.

3. *Reporting*. The successful recipient will be required to submit quarterly and annual reports, and to submit annual financial reports. The specific information contained within the report will include at a minimum, a comparison of actual accomplishments to the objectives established for the period. The Certification and Worker Protection Branch may request additional information relative to the scope of work in the cooperative agreement which may be useful for Agency reporting under the Government Performance and Results Act.

VII. Agency Contact

Allie Fields, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7666; fax number: (703) 308–2962; e-mail address:*fields.allie@epa.gov*.

VIII. Other Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Assistance is generally available to states, U. S. territories or possessions, federally recognized Tribal governments and organizations, public and private universities and colleges, hospitals, laboratories, other public or private nonprofit institutions, and individuals. Non-profit organizations described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in section 3 of the Lobbying Disclosure Action of 1995 are not eligible to apply. This program may, however, be of particular interest to agricultural, environmental, health, and educational organizations and agencies, colleges or universities, the Cooperative Extension Service and other public or non-profit agencies, authorities, institutions, organizations, individuals or other qualified entities working in agricultural science, technology, research, training, safety, education, and communications. Those entities with broad reaches into the diverse interests of the agricultural community, including farmworkers, farmworker families, pesticide handlers, health providers, growers, the Cooperative Extension Service, state, national and international agriculture, environment, labor and occupational health, rural and migrant health, education agencies may be interested in applying. Because others may also be interested, the Agency has not attempted to describe all the specific entities that may be interested by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0281. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit VIII.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

IX. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the

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

List of Subjects

Environmental protection, Grants, Pesticides, Training.

Dated: January 31, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–2509 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7870–4]

Notice of Open Meeting of the Environmental Financial Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

EFAB is chartered with providing analysis and advice to the EPA Administrator and program offices on environmental finance. The purpose of this meeting is to hear from informed speakers on environmental finance issues, proposed legislation and Agency priorities and to discuss progress with work products under EFAB's current strategic action agenda. Environmental financing topics expected to be discussed include: Joint Operations of the State Revolving Fund Programs, Innovations in Watershed Financing, Affordability of Water and Wastewater, Innovative Financing Tools, Preventing Future Non-Funded Abandoned Sites (Financial Assurance), and Useful Life Financing of Environmental Facilities.

The meeting is open to the public; however, seating is limited. All members of the public who wish to attend the meeting must register in advance, no later than Tuesday, March 8, 2005.

DATES: EFAB meeting is scheduled for Tuesday, March 15, 2005 from 1 p.m.–5 p.m. and Wednesday, March 16, 2005 from 8:45 a.m.–5 p.m.

ADDRESSES: Radisson Barcelo Hotel, Phillips Ballroom, 2121 P St., NW., Washington, DC 20037.

Registration and Information Contact: To register for the meeting or get further information, please contact Alecia Crichlow, U.S. EPA, (202) 564–5188 or *crichlow.alecia@epa.gov.*

Dated: January 25, 2005.

Joseph Dillon,

Director, Office of Enterprise Technology & Innovation.

[FR Doc. 05–2455 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7870–6]

Ninth Meeting of the World Trade Center Expert Technical Review Panel To Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The World Trade Center Expert Technical Review Panel (or WTC Expert Panel) will hold its ninth meeting intended to provide for greater input on ongoing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center (WTC). The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the WTC attacks. Panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents (except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet Web site. EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003.

DATES: The ninth meeting of the WTC Expert Panel will be held on February 23, 2005, from 9 a.m. to 5 p.m., eastern standard time. On-site registration will begin at 8:30 a.m.

ADDRESSES: The WTC Expert Panel meeting will be held at St. John's University, Saval Auditorium, 101 Murray Street (between Greenwich Street and West Side Highway), New York City (Manhattan). The auditorium is located on the second floor of the building and is handicap accessible. A government-issued identification (e.g., driver's license) is required for entry.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration and logistics, please see the panel's Web site *http://www.epa.gov/wtc/panel* or contact ERG at (781) 674–7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the WTC Expert Panel, contact Ms. Lisa Matthews, EPA Office of the Science Advisor, telephone (202) 564–6669 or e-mail: *matthews.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. WTC Expert Panel Meeting Information

Eastern Research Group, Inc., (ERG), an EPA contractor, will coordinate the WTC Expert Panel meeting. To attend the panel meeting as an observer, please register by visiting the Web site at: *http://www.epa.gov/wtc/panel.* You may also register for the meeting by calling ERG's conference registration line between the hours of 9 a.m. and 5:30 p.m. e.s.t. at (781) 674–7374 or toll free at 1–800–803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations are accepted on a first-come, first-served basis. The deadline for pre-registration is February 18, 2005. Registrations will continue to be accepted after this date, including on-site registration, if space allows. There will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the Web site. Please bring a copy of your comments to the meeting for the record or submit them electronically via e-mail to *meetings@erg.com,* subject line: WTC.

II. Background Information

Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other federal agencies, New York City and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9–11 Web site at *http://www.epa.gov/wtc/*.

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust, as well as the development of a human exposure and health risk assessment. This risk assessment document, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster, is available on the Web at *http://www.epa.gov/ncea/wtc.htm*). Numerous additional studies by other Federal and State agencies, universities and other organizations have documented impacts to both the outdoor and indoor environments and to human health.

While these monitoring and assessment activities were ongoing and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June until December 2002, residents impacted by WTC dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request either federally-funded cleaning and monitoring for airborne asbestos or monitoring of their residences. The cleanup continued into the summer of 2003 by which time the EPA had cleaned and monitored 3,400 apartments and monitored 800 apartments. Detailed information on this portion of the EPA response is also available at *http://www.epa.gov/wtc/*.

A critical component of understanding long-term human health impacts is the establishment of health registries. The WTC Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the WTC towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH) in cooperation with a number of academic institutions, public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: *http://www.nyc.gov/html/doh/html/wtc/index.html*.

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, the EPA has convened a technical panel of experts who have been involved with WTC assessment activities. A senior official from EPA's Office of Research and Development will chair the panel. Dr. Paul Lioy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School-UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members, a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings typically will be one- or two-day meetings, and they will occur over the course of approximately a two-year period. Panel members will provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a **Federal Register** Notice, and they will be open to the public for attendance and brief oral comments.

The focus of the ninth meeting of the WTC Expert Panel is to summarize public comments received on the External Review Draft entitled, Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment (EPA/600/R–04/169A), and to hear comments from individual panel members on the draft sampling plan and the public comments received. The draft proposed sampling plan was published in the **Federal Register** on October 21, 2004 (69 FR 61838) for public comment; the public comment period closed on January 18, 2005. The document is also available on the panel Web site identified earlier at: *http://www.epa.gov/wtc/panel*. EPA will consider all comments in revising the document. Additional information on meetings of the WTC Expert Panel can be found at the panel Web site.

III. How To Get Information on E–DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. 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, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Dated: February 3, 2005.

William H. Farland,

Acting Deputy Assistant Administrator for Science, EPA Office of Research and Development.

[FR Doc. 05–2517 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0004; FRL–7697–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to

publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 15, 2004 to December 31, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2005–0004 and the specific PMN number or TME number, must be received on or before March 11, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0004. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0004 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20050004 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 15, 2004 to December 31. 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 12/15/04 TO 12/31/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0193	12/15/04	03/14/05	CBI	(G) Open air non-dispersive use	(G) Polyester acrylate oligomer

I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 12/15/04 TO 12/31/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0194	12/15/04	03/14/05	Eastman Kodak Company	(G) Component in imaging formulations	(G) Mixture of phenyl azo sulfonylphenyl copper amino sodium salt and phenyl azo sulfonylphenyl copper sodium salt
P–05–0195	12/16/04	03/15/05	Chryso, Inc.	(S) Dispersant for portland cement in pastes, mortars and concrete; dispersant for calcium aluminate cement pastes, mortars and concrete	(G) Aminophosphonic acid polyalkylene oxide
P–05–0196	12/16/04	03/15/05	Chryso, Inc.	(S) Dispersant for portland cement in pastes, mortars and concrete; dispersant for calcium aluminate cement pastes, mortars and concrete	(G) Alkaline earth metal salt aminophosphonic acid polyalkylene oxide
P–05–0197	12/16/04	03/15/05	Chryso, Inc.	(S) Dispersant for portland cement in pastes, mortars and concrete; dispersant for calcium aluminate cement pastes, mortars and concrete	(G) Aminophosphonic acid polyalkylene oxide salt
P–05–0198	12/16/04	03/15/05	CBI	(G) Open, non-dispersive (resin)	(G) Quaternized styrene polymer
P–05–0199	12/16/04	03/15/05	Chryso, Inc.	(S) Dispersant for portland cement in pastes, mortars and concrete; dispersant for calcium aluminate cement pastes, mortars and concrete	(G) Alkali metal salt aminophosphonic acid polyalkylene oxide
P–05–0200	12/16/04	03/15/05	Chryso, Inc.	(S) Dispersant for portland cement in pastes, mortars and concrete; dispersant for calcium aluminate cement pastes, mortars and concrete	(G) Aminophosphonic acid polyalkylene oxide salt
P–05–0201	12/21/04	03/20/05	Reichhold, Inc.	(G) Coating resin	(G) Amine salt of polyester polyol, polymer with hydroxy substituted carboxylic acid, cycloaliphatic diisocyanate, hydroxy substituted alkyl amines and diethylene triamine.
P–05–0202	12/21/04	03/20/05	CBI	(G) Colorant	(G) Sulfonated azo dye
P–05–0203	12/21/04	03/20/05	CBI	(G) Colorant	(G) Sulfonated azo dye
P–05–0204	12/22/04	03/21/05	CBI	(G) Polymer can be used to disperse inorganic minerals used in cement. due to the polymer affinity for calcium there is also application in industrial water treatment to suppress calcium scale formation thus increasing water reuse.	(G) Acrylic acid, methacrylic acid, maleic acid copolymer, sodium salt
P–05–0205	12/22/04	03/21/05	CBI	(G) Polymer can be used to disperse inorganic minerals used in cement. due to the polymer affinity for calcium there is also application in industrial water treatment to suppress calcium scale formation thus increasing water reuse.	(G) Acrylic acid, methacrylic acid, 2-acryloamido-2-methylpropane sulfonic acid sodium salt copolymer sodium salt
P–05–0206	12/22/04	03/21/05	CBI	(G) Polymer can be used to disperse inorganic minerals used in cement. due to the polymer affinity for calcium there is also application in industrial water treatment to suppress calcium scale formation thus increasing water reuse.	(G) Acrylic acid, methacrylic acid, 2-acryloamido-2-methylpropane sulfonic acid sodium salt copolymer sodium salt
P–05–0207	12/22/04	03/21/05	CBI	(G) Polymer can be used to disperse inorganic minerals used in cement. due to the polymer affinity for calcium there is also application in industrial water treatment to suppress calcium scale formation thus increasing water reuse.	(G) Acrylic acid, methacrylic acid, maleic acid, 2-acryloamido-2-methylpropane sulfonic acid sodium salt copolymer sodium salt
P–05–0208	12/22/04	03/21/05	CBI	(G) Polymer can be used to disperse inorganic minerals used in cement. due to the polymer affinity for calcium there is also application in industrial water treatment to suppress calcium scale formation thus increasing water reuse.	(G) Acrylic acid, methacrylic acid, methyl methacrylate, sodium p-sulphophenyl methallyl ether, sodium methallyl sulfonate, copolymer sodium salt

I. 30 PREMANUFACTURE NOTICES RECEIVED FROM: 12/15/04 TO 12/31/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0209	12/22/04	03/21/05	CBI	(G) Polymer can be used to disperse inorganic minerals used in cement. due to the polymer affinity for calcium there is also application in industrial water treatment to suppress calcium scale formation thus increasing water reuse.	(G) Methacylic acid, 2-acrylamido-2-methylpropane sulfonic acid sodium salt, copolymer sodium salt
P–05–0210	12/22/04	03/21/05	CBI	(G) Intermediate in the production of wax	(G) Vegetable oil, modified products
P–05–0211	12/22/04	03/21/05	CBI	(S) Wax	(G) Hydrogenated modified vegetable oil
P–05–0212	12/23/04	03/22/05	CBI	(G) Scale inhibitor for calcium and barium scales. find use in subterranean oil wells, industrial water treatment.	(G) Maleic acid, sodium allyl sulphonate copolymer sodium salt
P–05–0213	12/23/04	03/22/05	CBI	(G) Scale inhibitor for calcium and barium scales. find use in subterranean oil wells, industrial water treatment.	(G) Maleic acid, sodium allyl sulphonate copolymer, sodium salt
P–05–0214	12/23/04	03/22/05	CBI	(G) Scale inhibitor for calcium and barium scales. find use in subterranean oil wells, industrial water treatment.	(G) Maleic acid, sodium allyl sulphonate, acrylic acid copolymer, sodium salt
P–05–0215	12/23/04	03/22/05	CBI	(G) Scale inhibitor for calcium and barium scales. find use in subterranean oil wells, industrial water treatment.	(G) Maleic acid, sodium allyl sulphonate, acrylic acid, 2-(hydroxyethyl methacrylate) phosphate copolymer, sodium salt
P–05–0216	12/23/04	03/22/05	CBI	(G) Scale inhibitor for calcium and barium scales. Find use in subterranean oil wells, industrial water treatment.	(G) Maleic acid, sodium allyl sulphonate, 2-(hydroxyethyl methacrylate) phosphate copolymer, sodium salt
P–05–0217	12/23/04	03/22/05	CBI	(G) Scale inhibitor for calcium and barium scales. find use in subterranean oil wells, industrial water treatment.	(G) Maleic acid, sodium allyl sulphonate, 2-(hydroxyethyl methacrylate) phosphate copolymer, sodium salt
P–05–0218	12/27/04	03/26/05	Lubrizol Metalworking Additives	(S) Metalworking fluids, soluble oil; lubricants	(S) Fatty acids, coco, polymers with adipic acid, pentaerythritol, succinic anhydride monopolyisobutylene derivs. and trimethylolpropane
P–05–0219	12/28/04	03/27/05	Max Marx Color Company	(S) Pigment used in aqueous inks	(S) Xanthylium,3,6-bis(diethylamino)-9-[2-(methoxycarbonyl)phenyl]-molybdatesilicate
P–05–0220	12/27/04	03/26/05	CBI	(G) Component of manufactured consumer article-contained use	(G) Benzenesulfonic acid, 3-(heteropolycycle)-4-hydroxy-5-(1-methylpropyl)-, barium salt (2:1)
P–05–0221	12/28/04	03/27/05	Ethox Chemicals, LLC	(G) Surface coating	(S) Ethanol,2-[2-[2-[2-(isohexadecylox-y)propoxy]ethoxy]ethoxy], acetate
P–05–0222	12/30/04	03/29/05	Mapei Corporation	(S) Admixture (filler) for construction chemicals.	(S) Tobermorite

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 24 NOTICES OF COMMENCEMENT FROM: 12/15/04 TO 12/31/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0012	12/29/04	04/11/03	(G) Alkylamides, ethoxylated
P–03–0013	12/29/04	04/11/03	(G) Alkylamides, ethoxylated
P–03–0642	12/20/04	11/04/04	(G) Disubstituted benzenesulfonic acid, alkali metal salt
P–03–0643	12/27/04	12/01/04	(G) Disubstituted benzoic acid, alkali metal salt.
P–03–0695	12/21/04	11/18/04	(G) Rosin, polymer with a monocarboxylic acid, phenols, formaldehyde, maleic anhydride and pentaerythritol.
P–04–0072	12/16/04	12/09/04	(G) Acidic polyester

II. 24 NOTICES OF COMMENCEMENT FROM: 12/15/04 TO 12/31/04—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0245	12/15/04	11/16/04	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), potassium sodium salt
P–04–0246	12/15/04	11/16/04	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), potassium sodium salt
P–04–0333	12/16/04	12/10/04	(G) Aliphatic polyisocyanate
P–04–0366	12/20/04	11/23/04	(G) Blocked isocyanate
P–04–0382	12/20/04	12/06/04	(G) Zinc soap
P–04–0565	12/17/04	11/09/04	(G) Substituted pyridinedicarboxylate
P–04–0595	12/21/04	11/17/04	(S) 4,7-methano-1h-indene-5-carboxaldehyde, 3a,4,5,6,7,7a-hexahydro-, reaction products with methyl ethyl ketone
P–04–0621	12/29/04	12/02/04	(S) 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate, 2-hydroxyethyl 2-methyl-2-propenoate and methyl 2-methyl-2-propenoate, 2,2′-azobis[2-methylpropanenitrile]-initiated
P–04–0660	12/15/04	11/16/04	(G) N-sulfoalkyl-aminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(alkyloxyalkylenediyl) and poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0661	12/15/04	11/16/04	(G) N-sulfoalkyl-aminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(alkyloxyalkylenediyl) and poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0662	12/15/04	11/16/04	(G) N-sulfoalkyl-aminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0663	12/15/04	11/16/04	(G) N-sulfoalkyl-aminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0680	12/15/04	12/13/04	(G) Polyamine-epoxy adduct
P–04–0744	12/22/04	11/22/04	(G) Acrylate copolymer
P–04–0758	12/15/04	11/08/04	(G) Blocked polymeric isocyanate
P–04–0875	12/21/04	12/15/04	(G) Namox niobium ammonium oxalate
P–04–0906	12/22/04	12/14/04	(G) Silicone anhydride
P–99–0932	12/22/04	11/17/04	(G) Polyhydroxyaminoethers

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 13, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–2516 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 05–264]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 4, 2005, the Commission released a public notice announcing the March 15, 2005 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Tuesday, March 15, 2005, 9:30 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: February 4, 2005.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, March 15, 2005, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Tuesday, March 15, 2005, 9:30 am*

1. Announcements and Recent News
2. Approval of Minutes
   —Meeting of January 19, 2005
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of National Thousands Block Pooling Administrator
5. Report of NAPM, LLC
6. Status of Industry Numbering Committee (INC) activities
7. Report from NANP B&C Agent
8. Report of the Billing & Collection Oversight Working Group (B&CWG)
9. Reports from Issues Management Groups (IMGs)
   —Safety Valve IMG
   —SNAC Guidelines IMG
10. Report of Local Number Portability Administration (LNPA) Working Group
11. Report of Numbering Oversight Working Group (NOWG)
12. Report of Future of Numbering Working Group
13. Special Presentations
    ENUM Update from Verisign

ENUM Update from Karen Mulberry
14. Update List of NANC Accomplishments
15. Summary of Action Items
16. Public Comments and Participation (5 minutes per speaker)
17. Other Business

Adjourn no later than 5 p.m.
Next Meeting: Tuesday, May 17, 2005.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 05–2501 Filed 2–8–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via email at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011574–012.
Title: Pacific Islands Discussion Agreement.
Parties: Hamburg-Süd; Polynesia Line Ltd.; FESCO Ocean Management Limited d/b/a FESCO Australia North America Line; Australia-New Zealand Direct Line, a division of CP Ships (UK) Ltd.; CMA CGM SA; and Compagnie Maritime Marfret, SA.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.
Synopsis: The amendment adds a provision dealing with the liability for penalties.

Agreement No.: 011733–014.
Title: Common Ocean Carrier Platform Agreement.
Parties: A.P. Moller-Maersk A/S, P&O Nedlloyd Limited, Hamburg-Süd, Mediterranean Shipping Company S.A., CMA CGM S.A., Hapag Lloyd Container Linie GmbH, and United Arab Shipping Company (SAG), as shareholder parties, and Alianca Navegacao e Logistica Ltda., Safmarine Container Lines N.V., Nippon Yusen Kaisha, CP Ship Limited, Tasman Orient Line C.V., Mitsui O.S.K. lines Ltd., Lykes Lines Limited LLC, Kawasaki Kisen Kaisha Ltd., FESCO Ocean Management Ltd., and Senator Lines GmbH as non-shareholder parties.
Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.
Synopsis: The amendment would permit the tender function of the portal to be used for NVOCC service arrangements and to permit the portal to host individual rate information subject to certain confidentiality.

Agreement No.: 011808–001.
Title: HJS/Sinolines Slot Allocation & Sailing Agreement.
Parties: Hanjin Shipping Co., Ltd. and Sinotrans Container Lines Co., Ltd.
Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street; Suite 850; Irvine, CA 92614.
Synopsis: The amendment expands the parties' slot exchange to vessels of third parties on which they have rights to space and increases the number of slots exchanged.

Agreement No.: 011823–005.
Title: Contship/P&O Nedlloyd Vessel Sharing Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., and Contship Containerlines.
Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW., Washington, DC 20036.
Synopsis: The amendment revises the parties' service patterns and clarifies the amount of capacity that will be provided under the agreement.

Agreement No.: 011824–002.
Title: Contship/P&O Nedlloyd-CMA/Marfret Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, CMA CGM, S.A., CMA CGM (UK) Limited, and Compagnie Maritime Marfret, S.A.
Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW., Washington, DC 20036.
Synopsis: The amendment revises the parties' service patterns and clarifies the amount of capacity that will be provided under the agreement.

Agreement No.: 011825–002.
Title: CS/PONL–HSDG Agreement.
Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., Contship Containerlines, and Hamburg Süd.
Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW., Washington, DC 20036.
Synopsis: The amendment revises the parties' service patterns and clarifies the amount of capacity that will be provided under the agreement.

Agreement No.: 011826–002.
Title: CS/PONL-Hapag-Lloyd Agreement.
Parties: P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Contship Containerlines; and Hapag-Lloyd Container Linie GmbH.
Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW., Washington, DC 20036.
Synopsis: The amendment revises the parties' service patterns and clarifies the amount of capacity that will be provided under the agreement.

Agreement No.: 011899.
Title: Manzanillo/Savannah Space Charter Agreement.
Parties: Hamburg-Süd; Contship Containerlines, a division of CP Ships (UK) Ltd.; and P&O Nedlloyd Limited/P&O Nedlloyd B.V. (As one party).
Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW., Washington, D.C. 20036.
Synopsis: The subject agreement would permit Contship and HSDG to charter space from P&O on cargoes destined for Savannah and transshipped at Manzanillo in the trade between United States' ports and ports in Australia and New Zealand.

Agreement No.: 200955–001.
Title: Howland Hook/Global Terminal Agreement.
Parties: Howland Hook Leasing Corporation; Global Terminal & Container Services, Inc.; and New York Container Terminal, Inc.
Filing Party: Mark M. Jaffe, Esq.; Hill, Betts & Nash, LLP; 200 Liberty Street; 26th Floor; New York, New York 10281.
Synopsis: The amendment makes New York Container Terminal, Inc. the active stevedore party for the Staten Island facility of the agreement. The modification further makes technical and housekeeping changes to the agreement.

Dated: February 4, 2005.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–2524 Filed 2–8–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean

Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

InterCaribbean Cargo, Inc., 8080 NW 71st Street, Miami, FL 33166, Officer: Ramona A. Lopez, President (Qualifying Individual).

The One Shipping Inc., 19390 East Fadden Street, Rowland Heights, CA 91748, Officers: San Wei Huang, CFO (Qualifying Individual), Chiao Ling Dong, CEO.

International Express Inc., 11435 NW 34th Street, Miami, FL 33178, Officers: Susan Pollard, Director (Qualifying Individual), Mala Veerasawmy, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

United Aircraft Sales, Corp. dba ILS Cargo USA, 7517–21 NW 52 Street, Miami, FL 33166, Officers: Marlen Estevez, Account Executive (Qualifying Individual), Rafael Mosquera, Vice President.

USL, Inc. dba USL Logistics, 3621 S. Harbor Blvd., Suite 225, Santa Ana, CA 92704, Officers: Robert A. Beilin, Sen. Vice President (Qualifying Individual), Edward W. Aldridge, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Pro Packing, Inc., 100 Broad Avenue, Wilmington, CA 90477, Officer: Greg Sanden, President (Qualifying Individual).

Rohclem Corporation, 2005 Bierce Drive, Virginia Beach, VA 23454, Officer: Melchor C. Lazo, II, President (Qualifying Individual).

Dated: February 4, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–2525 Filed 2–8–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0337]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of this request, call the CDC Reports Clearance Officer at (404) 371–5976 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC via fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Blood Lead Surveillance System (OMB No. 0920–0337)—Revision—National Center for Environmental Health (NCEH) and National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

CDC, National Center for Environmental Health began the National Childhood Lead Surveillance Program in 1992. The goals of the childhood lead surveillance program are to: (1) Establish childhood lead surveillance systems at the state and national levels; (2) use surveillance data to estimate the extent of elevated blood-lead levels (BLLs) among children; (3) assess the follow-up of children with elevated blood-lead levels; (4) examine potential sources of lead exposure; and (5) help allocate resources for lead poison prevention activities. State surveillance systems are based on reports of blood-lead tests from laboratories. Ideally, laboratories report results of all lead tests (not just elevated values) to the state health department; however, each state determines the reporting level for blood-lead tests. In addition to blood-lead test results, state child-specific surveillance databases contain follow-up data on children with elevated blood-lead levels including data on medical treatment, environmental investigations, and potential sources of lead exposure. Surveillance data for the national database are extracted from the state child tracking databases and transferred to CDC.

Since 1987, CDC National Institute for Occupational Safety and Health has sponsored the state-based Adult Blood Lead Epidemiology and Surveillance (ABLES) program to track cases of elevated BLLs among persons ages 16 years and older, and provide intervention consultation and other assistance. The public health objective of the ABLES program, as stated in Healthy People 2010, is to reduce the number of persons with BLLs >25 μg/dL from work exposures to zero by 2010. The ABLES program seeks to accomplish its objective by continuing to improve its surveillance programs and helping state health and other agencies to effectively intervene to prevent further lead exposures. Intervention strategies implemented by state ABLES-reporting include: conducting follow-up interviews with physicians, employers, and workers; investigating work sites; delivering technical assistance regarding exposure reduction or prevention; providing referrals for consultation and enforcement; and developing and disseminating educational materials and outreach programs. To coordinate their reporting and intervention activities for maximum efficiency, state ABLES programs are strongly encouraged to develop effective working relationships with the childhood lead prevention programs in their states. An estimated two-three percent of children with BLLs >10 μg/dL reach those levels from exposure to lead brought home from the workplace on the clothes or in the vehicles of their adult caregivers.

ABLES is being included for the first time under this OMB approval request. ABLES is also a state laboratory-based surveillance system and many states collect both child and adult blood lead data. This request formerly known as the ''National Childhood Blood Lead Surveillance System'' is for a three-year extension with various changes to the current childhood system and the inclusion of the adult blood lead surveillance system. There is no cost to respondents other than their time. The estimated annualized burden is 672 hours.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per respondent (in hrs.)
State and Local Health Departments for Child Surveillance	47	4	2
State and Local Health Departments for Adult Surveillance	37	4	2

Dated: February 1, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–2486 Filed 2–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05BF]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5976 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Human Smoking Behavior Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

CDC, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) in a joint venture with the National Center for Environmental Health (NCEH) proposes to conduct a study to better understand patterns of human smoking behavior across several of the most popular cigarette categories (ultralight, light, full flavored menthol and full-flavored non-menthol) and to determine the level of exposure to smoke toxins delivered by these cigarette categories. This is important because the current method of measuring constituents that smoke is via the Federal Trade Commission's machine smoking method, which does not accurately reflect human smoking patterns. Although there is ample evidence of the inadequacies and biases inherent in machine-smoking protocols, they serve the purpose of ranking cigarettes smoked under standardized conditions. Comparison of cigarette smoke emissions using machine-smoking methods will persevere until something superior is developed. Therefore, machine-smoking must be adequately informed to yield results that better reflect human smoking behavior. Funding for this study will come from both NCCDPHP and NCEH. The Centers will share responsibilities, with administrative and technical assistance coming from NCCDPHP and laboratory support coming from NCEH.

This is a laboratory-based descriptive study of smoking behavior and analysis of biomarkers of exposure for current adult smokers of a range of cigarette categories that are representative of the most commonly smoked U.S. cigarettes. The goals of this project are to characterize the range of human smoking behavior for a variety of cigarette categories and machine-smoked yields, and to estimate the levels of biomarkers of exposure with the various cigarette styles. This study will assess known indicators of smoking behavior (ventilation pore-blocking behavior, puff volume, puff duration, puff velocity and inter-puff interval) to determine typical patterns of smoking behavior.

Measures of exposure will include expired-air carbon monoxide boost, assessment of carcinogens, nicotine and its metabolites in urine, cotinine in saliva and solanesol in cigarette butts as an indicator of total smoke exposure. There are no direct respondent costs associated with the information collection for the study. The smoking behavior and biomarkers of 360 smokers will be ascertained.

ANNUALIZED BURDEN

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Screening	500	1	6/60	50
Clinic Visit 1	360	1	1.1	198
Clinic Visit 2	360	1	1.0	180
Total				428

Dated: February 1, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–2487 Filed 2–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–0006]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5976 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Statement in Support of Application for Waiver of Inadmissabilty (0920–0006)—Extension ''National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Section 212(a)(1) of the Immigration and Nationality Act states that aliens with specific health-related conditions are ineligible for admission into the United States. The Attorney General may waive application of this inadmissibility on health-related grounds if an application for waiver is filed and approved by the consular office considering the application for visa. NCID Division of Global Migration and Quarantine uses this application primarily to collect information to establish and maintain records of waiver applicants in order to notify the U. S. Citizenship and Immigration Services (USCIS) when terms, conditions and controls imposed by waiver are not met. NCID is requesting the extension of this data for 3 years. There are no costs to respondents except their time.

ANNUALIZED BURDEN TABLE

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Businesses or Organizations	200	1	10/60	33
Total				33

Dated: February 2, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–2488 Filed 2–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Chronic Disease Prevention and Health Promotion Conference Support Program; Correction

A notice announcing the availability of Fiscal Year 2005 funds to award a Grant Agreement to Support Chronic Disease Prevention and Health Promotion Conferences, PA 05031 was published in the **Federal Register** on November 3, 2004, Volume 69, Number 212, pages 64057–64062. The notice is corrected as follows:

On page 64059, first column, under III.3 Other, Special Requirements, fourth bullet, delete the bullet that reads, ''Applicants who do not submit a LOI will not be eligible to submit an application for review or funding.''

On page 64059, first column, under IV.2 Content and Form of Submission, Letter of Intent (LOI), first paragraph, delete the first and the fourth sentence that reads, ''A LOI is required for this Program Announcement'' and ''If you do not submit a LOI, you will not be allowed to submit an application.''

On page 64060, first column, under IV.3 Submission Dates and Times, change to extend the LOI Deadline Date: Cycle B: February 14, 2005, delete the paragraph that reads, ''CDC requires that you submit a LOI if you intend to apply for this program. Although the LOI will not be evaluated, and does not enter into review of your subsequent application, failure to submit a timely LOI will preclude you from submitting an application.'' and replace with the following, ''CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.''

Dated: February 3, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2493 Filed 2–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services Funding Opportunity

Funding Opportunity Title: Assets for Independence Demonstration Program.

Announcement Type: Grant-Initial.

Funding Opportunity Number: HHS–2005–ACF–OCS–EI–0053.

CFDA Number: 93.602.

Category of Funding Activity: Income Security and Social Services.

Executive Summary:

The Administration for Children and Families, Office of Community Services (OCS) will accept applications for financial assistance to establish and administer Assets for Independence (AFI) Projects. These projects assist low-income people in becoming economically self-sufficient. They do so by teaching project participants about economic and consumer issues and enabling them to establish matched savings accounts called Individual Development Accounts (IDA) in order to save for a first home, a business or higher education. Grantees must participate in an on-going national evaluation of the impact of AFI Projects and IDAs.

This is a standing announcement. It is effective until canceled or changed by the Office of Community Services. Applicants may submit applications at any time throughout the year. OCS will review and make funding decisions about applications submitted by any of three due dates: March 15, June 15 and November 1. (If a date falls on a weekend, the due date will be the following Monday.) For example, starting in mid-March annually, OCS will review all applications submitted November 2 through March 15. Starting in early June, OCS will review all applications submitted March 16 through June 15. And, starting in early November, OCS will review all applications submitted June 16 through November 1. Unsuccessful applicants may submit a new application in any succeeding application period.

Grantees must comply with terms of the Assets for Independence Act (AFIA) (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, as amended, Public Law 105–285, 42 U.S.C. 604 note) in submitting an application and administering an AFI Project.

The OCS Asset Building Web site (at *http://www.acf.hhs.gov/assetbuilding*) includes information about the AFI Program. The Web site presents a wealth of ideas and suggestions for developing and managing an AFI Project. In particular, it includes downloadable text of the AFI Act and a synopsis of grantee responsibilities imposed by the Act. It also features a downloadable guidebook, The AFI Project Builder that covers many topics and includes suggestions and best practices for planning, starting and implementing an AFI Project. Applicants can visit the website to obtain more in-depth information regarding the requirements for applying for and implementing an AFI Project.

Priority Area 1

I. Funding Opportunity Description

The Administration for Children and Families, Office of Community Services (OCS) will accept applications for financial assistance to establish and administer Assets for Independence (AFI) Projects. These projects assist low-income people in becoming economically self-sufficient. They do so by teaching project participants about economic and consumer issues and enabling them to establish matched savings accounts called Individual Development Accounts (IDA) in order to save for a first home, a business or higher education. Grantees must participate in an on-going national evaluation of the impact of AFI Projects and IDAs.

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The OCS Asset Building Web site (at *http://www.acf.hhs.gov/assetbuilding*) includes additional information about the AFI Program. The website includes a wealth of ideas and suggestions for developing and managing an AFI Project. In particular, it includes downloadable text of the AFI Act and a synopsis of grantee responsibilities imposed by the Act. It also features a downloadable guidebook, The AFI Project Builder that covers many topics and includes suggestions and best practices for planning, starting and implementing an AFI Project. Applicants can visit the website to obtain more in-depth information regarding the requirements for applying for and implementing and AFI Project.

Program Purpose and Scope

The purpose of the Assets for Independence Program is to demonstrate and evaluate the effectiveness of asset-building projects that assist low-income people in becoming economically self-sufficient by teaching them about economic and consumer issues and enabling them to establish matched savings accounts called Individual Development Accounts (IDA). The program is demonstrating and evaluating the effects of AFI projects and IDAs in terms of increasing the economic self-sufficiency of low-income families; promoting savings for first-time homeownership, post-secondary education, and small business or micro-enterprise development; and stabilizing and improving families and communities.

OCS seeks to support innovative AFI Projects administered by national, State-wide, regional and community-based organizations. Organizations that may apply include, but are not limited to, Community Action Agencies; community development corporations; financial institutions such as banks, credit unions, and community development financial institutions; faith-based and community organizations; State and local government agencies; and other organizations such as marriage strengthening coalitions; service and fraternal organizations; schools, colleges and universities; and consortia or groups of organizations that collaborate to administer an AFI Project.

A broad range of organizations may be eligible for AFI Project funding, including the following:

—Organizations with projects that serve communities and groups that are less represented among the current AFI Projects such as residents of rural areas and Native American individuals or communities.

—Organizations with projects involving schools, colleges or universities to provide services to youth who are saving to attend higher education.

—Organizations with projects involving area businesses to provide services to the employees of those businesses. This may include local government agencies that seek to provide an IDA benefit for their employees.

—Organizations with projects involving the agency that manages the local welfare (Temporary Assistance for Needy Families—TANF) program; other offices that manage employment, education, and training

initiatives; and agencies that manage child support enforcement.

—Organizations with projects administered by a consortium or network of organizations including a lead organization and one or more subsidiary organizations. In this arrangement, a lead organization receives the OCS funding and administers the overall AFI Project including the financial accounting services for the project, while the subsidiary organizations provide services to project participants in a defined locality or a certain target population in a region, State, city or other geographic area. OCS believes such consortia or network arrangements may be particularly cost effective and efficient.

—Organizations with projects involving family strengthening coalitions and related organizations in an effort to integrate asset-building work with activities that promote healthy marriage and family formation. These activities may include, for example, communication skills training, marriage-oriented financial education, family budgeting, and marriage enrichment training. The goal for integrating asset building with healthy marriage projects is to link financial education with family budgeting abilities and marital communication skills that help to strengthen families and improve the communities in which families live.

OCS encourages and will provide preference to applicants that:

—Propose projects that will enroll participants from households with children;

—Propose projects that will enroll individuals residing within relatively well-defined neighborhoods or communities that experience high rates of poverty or unemployment; or

—Propose projects with a proportionally greater amount of funds committed from private sector sources.

II. Award Information

Funding Instrument Type: Grant.

Anticipated total priority area funding: $18,000,000.

Anticipated number of awards: 50 to 60.

Average Projected Award Amount per project period: $327,273.

Length of Project Periods: Other.

Explanation of other: 5 year (60 months) project period with 5 year (60 months) budget period.

Ceiling of Individual Awards per project period: $1,000,000.

Floor on amount of individual awards per project period: None.

III. Eligibility Information

1. Eligible Applicants

State governments;
County governments;
City or township governments;
Special district governments;
Independent school districts;
State controlled institutions of higher education;
Native American tribal governments (Federally recognized);
Public Housing authorities/Indian housing authorities;
Native American tribal organizations (other than Federally recognized tribal governments); and
Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Additional Information on Eligibility:

Both Faith and Community-based organizations having 501(c)(3) status with the Internal Revenue Service are eligible to apply.

State, tribal, county, or local governments; school districts; public housing authorities; and other governments or agencies are eligible only as joint-applicants with a non-profit organization having 501(c)(3) status.

Low-Income Credit Unions and Community Development Financial Institutions are eligible only if they demonstrate a strong collaborative relationship with one or more local community-based organization(s) that seek to address poverty and the economic needs of community residents. Such community-based organizations may be any number of types of entities such as philanthropic foundations, community foundations, for-profit organizations, or non-profit organizations. If a non-profit, they are not required to have 501(c)(3) status.

Applicant Low-Income Credit Unions and Community Development Financial Institutions may be a subsidiary of or otherwise affiliated with a State, local or Tribal government, or any non-profit or for-profit organization.

Applicant Low-Income Credit Unions must submit official documentation that the National Credit Union Administration has designated the organization as such. For information about Low-Income Credit Unions, see *http://www.ncua.gov.*

Applicant Community Development Financial Institutions must submit official documentation that the U.S. Department of the Treasury has designated the organization as such. For information about Community Development Financial Institutions, go to *http://www.cdfifund.gov.*

Applications submitted by joint applicants, for example, by a State, local or Tribal government agency and a non-profit organization, must clearly identify the organizations that are the joint applicants. The required Standard Form 424 ''Application for Federal Assistance'' must be signed by an authorized representative of the one joint applicant that will be responsible for grant administration and AFI Project implementation. The responsible applicant may be either the government agency or the non-profit organization.

Current AFI Project grantees may submit funding applications for new five-year projects. They will be reviewed competitively with all other applications.

Please see Section IV, for required documentation supporting eligibility and/or funding restrictions.

2. Cost Sharing/Matching

Cost Sharing/Matching: Yes.

Matching/Cost-Sharing

Grantees are required to meet a non-Federal share of project costs in accordance with Section 406(b) of the Assets for Independence Act. Grantees must provide at least *50 percent* of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash contributions only. Therefore, a project requesting $350,000 in Federal funds (based on an award of $350,000 per budget period) must provide a match of at least $350,000 (50 percent of the total approved project costs). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

Please note however that although applications that fail to provide such documentation at the time of application submission will not be barred from competitive review, matching/cost sharing will be used as an evaluation and/or preference criterion. Please see Section I. Funding Opportunity Description for a description of the matching/cost share requirement as a preference criterion. Please also see Section V.1 Budget and Budget Justification for the specific matching/cost sharing criterion that will be evaluated to support this preference.

3. Other

All applicants must have a Dun & Bradstreet Number. On June 27, 2003

the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal *http://www.grants.gov/.* A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

(The Only Applicable Methods For the Assets For Independence Program Are the First and Second Bulleted Items. The Applicant Should Disregard the Other Areas Listed.)

When applying electronically we strongly suggest that you attach proof of non-profit status with your electronic application.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be eligible for funding under this announcement.

Any application post-marked after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services, ATTN: Assets for Independence Program, 370 L'Enfant Promenade, SW., #500 West, Washington, DC 20447, Phone: 202–401–4626, Fax: 202–401–5718, E-mail: *afiprogram@acf.hhs.gov,* URL: *http://www.acf.hhs.gov/grants/open/HHS–2005–ACF–OCS–EI–0053.html.*

2. Content and Form of Application Submission

Application Format

You may submit your application in either electronic or paper format.

To submit an application electronically, please use the *http://www.Grants.gov/Apply* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications via e-mail or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grant.gov:

- Electronic submission is voluntary.
- 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. We strongly recommend that you do not wait until the application deadline to begin the application process through Grants.Gov.
- We recommend you visit Grants.Gov at least 30 days prior to filling your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.Gov Help Desk at 1–800–518–4726 to report the problem and obtain assistance with the system.
- To use Grants.Gov you as the applicant, must have a DUNS Number and register in the Central Contact Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grant.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.grants.gov.*
- You must search for the downloadable application package by the CFDA number.

An original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Number of Pages in Application Package

Please number all application pages sequentially, beginning with the proposal abstract as page number one. Include page numbers for supplemental documents including appendices. Please do not include organizational brochures or other promotional materials, slides, films, newspaper clips, and so forth.

Applications should be thorough yet concise. We suggest up to 40 pages for the table of contents, project abstract

and project narrative, and any number of additional pages for required standard forms, assurances, certifications, disclosures, appendices, and supplemental documents.

Proof of Non-Profit Status

Non-profit organizations applying for funding are required to submit proof of their non-profit status.

Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

(The Only Applicable Methods for the Assets for Independance Program Are the First and Second Bulleted Items. The Applicant Should Disregard the Other Areas Listed.)

Proof of Low Income Credit Union Status

Applicant Low-Income Credit Unions must submit official documentation that the National Credit Union Administration has designated the organization as such. For information about Low-Income Credit Unions, see *http://www.ncua.gov.*

Proof of Community Development Financial Institution Status

Applicant Community Development Financial Institutions must submit official documentation that the U. S. Department of the Treasury has designated the organization as such. For information about Community Development Financial Institutions, go to *http://www.cdfifund.gov.*

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under the announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; Standard Form 424A. Budget Information-Non-Construction Programs; Standard Form 424B, Assurances: Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Public Law 103–227. Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS ACT of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes related to nondiscrimination. By signing and submitting the applications, applicants are providing certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review referenced in *Section IV.6.*

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial service is affixed to the envelope/package containing the application(s). To be acceptable of proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applicants hand carried by applicants, applicant couriers, or by other representatives of the applicants shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.t., at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (flood, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. Determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Project Abstract	See Section IV and V	Format described in IV and V	By application due date.
Project Narrative	See Section IV and V	Format described in IV and V	By application due date.
Budget Narrative/Justification	See Section IV and V	Format described in IV.2 and V..	By application due date.
SF424	See Section IV	Format described in IV	By application due date.
SF424A	See Section IV	Format described in IV	By application due date.
SF424B	See Section IV	Format described in IV	By application due date.
Certification regarding lobbying	See Section IV	Format described in *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By Time of Award.
Certification regarding environmental tobacco smoke.	See Section IV	Format described in *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By Time of Award.
Proof of Non-Profit Status	See Section III and IV	Format described in III and IV.	By Time of Award.
Proof of Low Income Credit Union Status (if applicable).	See Section III and IV	Format described in III and IV	By Time of Award.
Proof of Community Development Financial Institution Status (if applicable).	See Section II and IV	Format described in III and IV	By Time of Award.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2).

A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Grantees must comply with terms of the Assets for Independence Act (AFIA) (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, as amended, Public Law 105–285, 42 U.S.C. 604 note) in submitting an application and administering an AFI Project. Prior to award of project funds, OCS may communicate with potential grantees to ensure that the proposed projects conform to the AFI.

Due to statutory limitations, OCS may not award any single AFI Program grant of more than $1,000,000.00.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. Please see Section IV.3 for an

explanation of due dates. Applications should be mailed to: Office of Community Services Operations Center, Assets for Independence Program, 1515 Wilson Blvd, Suite 100, Arlington, VA 22209, Attention: Administration for Children and Families, Office of Community Services, Assets for Independence Program.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. Please see Section IV.3 for an explanation of due dates. Applications should be delivered to: Office of Community Services Operations Center, Assets for Independence Program, 1515 Wilson Blvd, Suite 100, Arlington, VA 22209. Attention: Administration for Children and Families, Office of Community Services, Assets for Independence Program.

Electronic Submission: http://www.grants.gov/. Please see Section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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 following are instructions and guidelines on how to prepare the ''Project Summary / Abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

1. Criteria

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.'' List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application. The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate, (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and

other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria: Members of proposal review panels will score applications based on the following criteria, some of which include factors and sub-factors.

Approach 50 Points

Factor: Work Plan and Timeline (25 points).

The extent to which the applicant provides a clear work plan for day-to-day operations, including responsibilities of the applicant and those of all participating organizations and financial institutions. The extent to which the work plan describes all significant activities anticipated for the entire 60-month project period such as: (a) Selecting and training key staff for the project; (b) Developing strong collaborations with key government agencies, faith-based organizations, and non-profit and for-profit organizations that will support the overall asset-building strategy; (c) Establishing and maintaining the Project Reserve Account; (d) Developing protocols for managing the Project Reserve Account including a system for allocating interest income for project administration and to project participants; (e) Establishing strong working relationships with one or more financial institution(s) that will participate in the project; (f) Reaching out to community residents, employers, and other key institutions about asset-building strategies in general and the IDA program in particular; (g) Recruiting, screening, and selecting project participants; (h) Determining the unique needs of each participant or group of participants including their needs for economic education, credit repair, and other assistance, as well as determining their particular strengths; (i) Providing economic education, credit repair, asset-specific information and other training or supportive services to participants; (j) Developing savings plans with participants and working with them to save accordingly; (k) Providing payments to project participants' IDAs as match for savings; (l)Establishing and maintaining IDAs for each participant including specific arrangements concerning the accounts with financial institutions or others; (m) Assisting participants who have difficulty completing the economic education or abiding with the terms of their savings plan; (n) Ensuring that participants use IDAs only as appropriate, including for emergency expenses; (o) Ensuring that participants purchase an eligible, appreciable long-term asset within the program timeframes; (p) Providing follow-up assistance to participants, if needed; (q) Providing required financial and programmatic reports to OCS; (r) Participating actively in the national evaluation of the demonstration program including providing data and other information as required; and (s) Managing periodic internal program reviews concerning staffing, participant successes, and other issues to be addressed.

Factor: Tax Services (3 points).

The extent to which the applicant proposes to provide tax preparation assistance and assistance for claiming refundable tax credits such as Federal and State Earned Income Tax Credit and the Child Tax Credit for project participants as part of the overall program.

Factor: IDA Match Rate (5 points).

The extent to which the applicant proposes a clear and reasonable match rate or a menu of match rates for participants' IDAs that reflect the costs of eligible assets in the target community(ies).

Factor: Innovation (5 points).

The extent to which the applicant proposes any innovative strategies for vital program issues such as recruiting participants; working with local partners such as employers and financial institutions; enhancing financial education and financial literacy strategies; building partnerships with other organizations; using information technology, and so forth. The extent to which the applicant proposes a project that will be a component of other significant and comprehensive neighborhood change projects such as Empowerment Zone, Enterprise Community, Renewal Community projects, Weed and Seed projects, and so forth. The extent to which the applicant proposes a project that will integrate asset-building work with other related vital activities such as promoting healthy marriage and family formation as a means of achieving safety, permanency, and well-being for children and families.

Factor: Partners/Collaborations (12 points).

The extent to which the applicant provides a thorough and realistic plan for collaborating with an array of public and private organizations that will be involved in administering the project, describing the roles and responsibilities of each, their capacity to participate in this project, and the process for recruiting additional partners throughout the project period. If the applicant is the lead organization of a collaborative or group of organizations that will administer the project, the extent to which the applicant clearly describes its capacity and experience in managing multi-agency projects and the roles and responsibilities of each participating organization. The extent to which the applicant presents a well conceived partnership including documentation of a strong relationship with one or more Federally insured financial institution(s) where the Project Reserve Account and participant Individual Development Accounts will be established and maintained. The extent to which the applicant will secure cost-share funds from private sector sources.

Organizational Profiles 17 Points

The extent to which the applicant provides clear and convincing information that it has the capacity and relevant experience in developing and operating successful programs or initiatives, including but not limited to efforts for addressing the causes and effects of poverty. The extent to which the applicant identifies a Project Director and staff with relevant experience including specific experience with the target population, working with financial institutions and partners, and implementing successful asset-building approaches and IDA programs.

Results or Benefits Expected 10 Points

The extent to which the applicant presents clear outcome and output statements that indicate progress in achieving the objectives (as stated in the Objectives and Need for Assistance criteria section) for delivering asset-building services and affecting the economic status of project participants.

Objectives and Need for Assistance 10 Points

Factor: Goal and Objectives Statements (5 points).

The extent to which the applicant presents clear program goal(s) supporting asset-building in general and IDAs in particular. The extent to which the applicant presents a small number of clear objective statements that describe anticipated targets or results of the project, such as the following three objectives that are linked to the national AFI Program goals: (1) The increase in the percentage of project participants who are homeowners; (2) The increase in the percentage of project participants

who acquire postsecondary education; and (3) The increase in the percentage of project participants who create or expand a micro-enterprise. The extent to which the program goal(s) and objectives relate to the needs for assistance and strengths identified. The extent to which the applicant's goal(s) and objectives reflect a commitment to the AFI Program and IDAs as tools for reducing poverty.

Factor: Needs for Assistance and Strengths (5 points).

The extent to which the applicant clearly identifies the needs and strengths of the target population and community(ies) or neighborhood(s), in terms of the geographic area, potential participant income, and other compelling information such as demographics, savings/assets acquisition, or other factors. The extent to which the applicant proposes a well-conceived project that will target households with children. The extent to which the applicant proposes a well-conceived project that will enroll individuals residing within relatively well-defined neighborhoods or communities that experience high rates of poverty or unemployment.

Budget and Budget Justification 5 Points.

The extent to which the applicant presents a clear and realistic budget and justification with reasonable amounts allocated for essential outcome-oriented activities such as program administration, economic education and other training and services for project participants. The extent to which the applicant presents clear evidence, in the form of letters or other documents, that the project will be supported with substantial amounts of non-federal cash funding (no less than the amount of the requested AFI Program grant).

Evaluation 5 Points

The extent to which the applicant presents a clear strategy for using an electronic information system to manage the overall project; to manage data about the status of project participants, their savings, and so forth; and to produce semi-annual and annual reports. The extent to which the applicant presents a clear commitment to participate actively in the national evaluation of the overall AFI Program by providing relevant and timely data to OCS and by collaborating with OCS on evaluation activities throughout the five-year project period.

Project Summary and Abstract 3 Points

The extent to which the applicant presents a clear one-page document that summarizes key features of the proposed project such as: goals and objectives; information about target community(ies); account structure and program design; partner organizations; locations of service sites; and non-federal funding and other support.

2. Review and Selection Process

Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

No grant award will be made on the basis of an incomplete application.

OCS Evaluation of Applications

Applications that comply with required procedures (*e.g.*, those that are submitted timely by an eligible applicant) will be reviewed and rated by a panel based on the evaluation criteria stated in this announcement. OCS will make funding decisions based in part on the review panel scores and in part on other factors. The other factors may include: geographic distribution of AFI Projects; the applicant's record regarding timely and proper completion of federally funded projects; audit and investigative findings and issues; the applicant's progress in resolving any final audit disallowance on Federal funding; and information collected during pre-award site visits by OCS staff or representatives of OCS.

OCS encourages and will provide preference to applicants that:

—Propose projects that will enroll participants from households with children;
—Propose projects that will enroll individuals residing within relatively well-defined neighborhoods or communities that experience high rates of poverty or unemployment; or
—Propose projects with a proportionately greater amount of funds committed from private sector sources.

Please see Section V.1 for the specific evaluation criteria that relate to these preferences.

Approved But Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case ACF has the option of carrying over approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

3. Anticipated Announcement and Award Dates

ACF anticipates to award funds in the third and fourth quarters of the fiscal year.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR Part 74
45 CFR Part 92

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental) organizations.

3. Reporting Requirements

Programmatic Reports: Semi-Annually
Financial Status Reports: Semi-Annually

All grantees are required to submit semi-annual and annual program reports; grantees are also required to submit semi-annual and annual expenditure reports using the required financial standard report (SF–269) which can be found at the following URL: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

VII. Agency Contacts

Program Office Contact: James Gatz, Manager, Assets for Independence Program, Office of Community Services, 370 L'Enfant Promenade, SW., Suite 500 West, Washington, DC 20008, Phone: 202–401–4626, Fax: 202–401–5718, E-mail: *afiprogram@acf.hhs.gov.*

Grants Management Office Contact: Barbara Ziegler Johnson, Office of

Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, Washington, DC 20447, Phone: 800–281–9519, E-mail: *ocsgrants@acf.hhs.gov.*

VIII. Other Information

Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *http://www.Grants.gov*. Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html*.

Please visit the OCS Asset Building Web page at *http://www.acf.hhs.gov/assetbuilding* for additional information about this program. The Web site includes a wealth of ideas and suggestions for developing and managing an AFI Project. In particular, it includes downloadable text of the AFI Act and a synopsis of grantee responsibilities imposed by the Act. It also includes a downloadable guidebook, The AFI Project Builder, which includes many tips, suggestions and best practices for planning, starting and implementing an AFI Project. Applicants can visit the site for in-depth information regarding the requirements for applying for and implementing an AFI Project.

Applicants will be sent acknowledgements of received applications.

Dated: February 4, 2005.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 05–2512 Filed 2–8–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0021]

International Conference on Harmonisation; Draft Guidance on Q8 Pharmaceutical Development; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q8 Pharmaceutical Development.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This draft guidance describes the suggested contents for the pharmaceutical development section in the quality module of a regulatory submission in the ICH M4 Common Technical Document (CTD) format. The draft guidance is intended to assist in the development of pharmaceutical studies that provide scientific understanding to support the establishment of specifications and manufacturing controls and serve as the basis for evaluating risk management over the life cycle of the product.

DATES: Submit written or electronic comments on the draft guidance by April 11, 2005.

ADDRESSES: Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Ajaz Hussain, Center for Drug Evaluation and Research (HFD–3), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2847; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–435–5681.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

During the July 2003 ICH meeting in Brussels, agreement was reached on a common vision and approach for developing an international plan for a harmonized pharmaceutical quality system that would be applicable across the life cycle of a product. This plan emphasizes an integrated approach to review (assessment) and inspection based on scientific risk management. One aspect of the plan was the establishment of an expert working

group to develop guidance for pharmaceutical development throughout the life cycle of a product.

In November 2004, the ICH Steering Committee agreed that a draft guidance entitled ''Q8 Pharmaceutical Development'' should be made available for public comment. The draft guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

This document is a significant element in FDA's initiative, ''Pharmaceutical Current Good Manufacturing Practices for the 21 Century,'' which encourages review of current manufacturing science practices. Scientific information obtained during the design of a product and from the pharmaceutical development studies is important for the development and selection of a product formulation that meets the purpose specified in the product application.

The draft guidance describes the suggested contents for the pharmaceutical development section (section 3.2.P.2 of module 3: Quality) of a regulatory submission in the CTD format. The draft guidance is intended to assist in the development of pharmaceutical studies that provide scientific understanding to support the establishment of specifications and manufacturing controls and serve as the basis for evaluating risk management over the life cycle of the product.

This draft guidance applies to pharmaceutical studies as defined in section 3.2.P.2 of module 3 of the CTD. The draft guidance does not apply to submissions for drug products during the clinical research stages. However, the principles described in the draft guidance are important to consider during product development.

This draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: February 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2449 Filed 2–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

New Mexico State University/Food and Drug Administration Food Labeling; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Southwest Regional Small Business Representative Program (SWR SBR), in collaboration with New Mexico State University (NMSU), Department of Extension Home Economics is announcing a public workshop entitled ''NMSU/FDA Food Labeling Workshop.'' This public workshop is intended to provide information about FDA food labeling regulations and other related subjects to the regulated industry, particularly small businesses and startups.

Date and Time: The public workshop will be held on March 21, 2005, from 8 a.m. to 5 p.m. and on March 22, 2005, from 8 a.m. to 3 p.m.

Location: The public workshop will be held at NMSU, Las Cruces, NM 88003, Gerald Thomas Hall, rm. 337. Directions to the facility are available at *http://www.nmsu.edu/General/Maps/*.[1]

Contact: Gloria Hernandez, New Mexico State University, P.O. Box 30003, MSC 3AE, Las Cruces, NM 88003, 505–646–2198, FAX 505–646–1889, or e-mail: *glorhern@nmsu.edu*.

Registration: Registration by March 11, 2005, is encouraged. NMSU has an $89 registration fee to cover the cost of facilities, materials, speakers, and breaks. Seats are limited to 80 people, please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $99 payable to New Mexico State University. If you need special accommodations due to a disability, please contact Gloria Hernandez (see *Contact*) at least 7 days in advance.

Registration Form Instructions: To register, please complete the form below and send along with a check or money order for $89 payable to the New Mexico State University. Mail to: New Mexico State University, P.O. Box 30003, MSC 3AE, Las Cruces, NM 88003–8003. After March 11, 2005, the registration cost is $99. Credit card payment is not available.

Name: _____
Affiliation: _____
Mailing address: _____
City: _____
State:_____ Zip Code: _____
Phone: ( ) _____
Fax: ( ) _____
E-mail: ( ) _____
Special Accommodations Required: _____

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested at cost through the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The FDA Southwest Regional Small Business Representative previously presented this workshop in Kansas City, MO on December 21, 2001 (66 FR 65976), and in Dallas, TX on March 29, 2002 (67 FR 15211).

This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by the FDA Denver District Office. The Southwest Regional Small Business Representative presents these workshops to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include

[1]FDA has verified the Web site address but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the Small Business Representative Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

The goal of this public workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about obesity and food allergens. Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling requirements, (3) health and nutrition claims, (4) FDA's allergen declaration policy, and (5) special labeling issues such as exemptions. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and increased voluntary compliance.

Dated: February 2, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–2450 Filed 2–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2005, from 8 a.m. to 5:30 p.m., and on March 18, 2005, from 8:30 a.m. to 2:30 p.m.

Location: Holiday Inn Gaithersburg, 2 Montgomery Village Ave., Gaithersburg, MD.

Contact Person: William Freas or Pearline K. Muckelvene, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 17, 2005, the committee will hear updates on the following topics: Summary of the Department of Health and Human Services Advisory Committee on Blood Safety and Availability meeting, summary of the Transmissible Spongiform Encephalopathies Advisory Committee meeting, update on West Nile Virus guidance, and summaries of the Critical Path Initiative workshop. In the morning, the committee will also discuss and provide recommendations on the safety of albumin. In the afternoon, the committee will hear additional updates on the following topics: International agreements, and a presentation on sharing information with the public. Additionally, the committee will hear presentations, and discuss and provide recommendations on rapid freezing of plasma for transfusion. On the morning of March 18, 2005, the committee will hear presentations, and discuss and provide recommendations on the study design for the abbreviated uniform donor history questionnaire. The committee also will hear presentations related to the review of the site visit report for the Laboratory of Molecular Virology, Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review.

Procedure: On March 17, 2005, from 8 a.m. to 5:30 p.m., and on March 18, 2005, from 8:30 a.m. to 12:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 25, 2005. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon, and 3:30 p.m. and 4:45 p.m. on March 17, 2005, and between approximately 9:30 a.m. and 10 a.m. on March 18, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 9, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 18, 2005, between 1:30 p.m. and 2:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the site visit report for the Laboratory of Molecular Virology, Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Pearline K. Muckelvene at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 1, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–2452 Filed 2–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Chiropractor Loan Repayment Demonstration Project

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The authority for the Demonstration Project has been extended with respect to chiropractors (see legislative authority below). The Health Resources and Services Administration (HRSA) announces that applications from qualified chiropractors who agree to serve

underserved populations in Primary Care Health Professional Shortage Areas (HPSAs) throughout the Nation will be accepted by the National Health Service Corps (NHSC) for loan repayment awards. A two-year service commitment is required. There is no guarantee that participants in this demonstration project will have an opportunity to continue their service and loan repayments beyond the initial two-year service period. Chiropractors, with qualifying educational loans, must serve at organized primary health care sites in Primary Care HPSAs that have another NHSC clinician on staff who will be concurrently fulfilling an NHSC service commitment through the scholarship or loan repayment program and who is licensed to prescribe medications.

This demonstration project will include an evaluation component to determine whether adding chiropractors as permanent NHSC members would enhance the effectiveness of the NHSC. A maximum of 40 individuals will be awarded loan repayment contracts under this demonstration project.

Purpose: Eligible chiropractors will participate in the Loan Repayment Demonstration Project to determine whether their services will enhance the effectiveness of the NHSC.

Legislative Authority: These applications are solicited under section 338L of the Public Health Service (PHS) Act, as amended by Public Law. 107–251 and Public Law 108–447. See also H.R. Conf. Rep. No. 108–792, at 1113, 1155 (2004); S. Rep. No. 108–345, at 41–42 (2004).

Eligible Applicants: Eligible applicants must (1) be citizens or nationals of the United States, (2) possess a current unrestricted license to practice as a chiropractor in the State in which they intend to practice, (3) be negotiating or have secured employment at an eligible community site, and (4) meet the additional eligibility requirements outlined in the application materials. Chiropractors must also have a doctor of chiropractic degree from a four-year chiropractic college that is currently fully accredited by the Commission on Accreditation of the Council on Chiropractic Education, and successfully passed the entire examination by the National Board of Chiropractic Examiners.

Funding Priorities or Preferences: Priority will be given to (A) applicants who have characteristics that increase the probability of their continuing to practice in HPSAs after they have completed service, and (B) subject to paragraph (A), applicants from disadvantaged backgrounds. A funding preference will also be given to applicants serving Primary Care HPSAs of greatest shortage (based on the HPSA scores).

Statutory Matching or Cost Sharing Requirement: None.

Review Criteria: Loan repayment applications will be evaluated to determine (1) the eligibility of the applicant, and (2) the applicant's priority for funding.

Estimated Amount of this Competition: $2,000,000.

Estimated Number of Awards: 40.

Estimated or Average Size of Each Award: $50,000.

Estimated Project Period: 2 years.

Application Requests, Availability, Dates and Addresses: Application materials are available for downloading via the Web at *http://nhsc.bhpr.hrsa.gov*. Applicants may also request a hard copy of the application materials by contacting the National Health Service Corps at 1–800–638–0824. All application materials must be submitted in hard copy format. In order to be considered for an award, applications from chiropractors must be postmarked or delivered to the HRSA National Health Service Corps by no later than June 17, 2005 at 5 p.m. ET. Completed applications must be mailed or delivered to: Division of National Health Service Corps, NHSC Loan Repayment Program, c/o I.Q. Solutions, 11300 Rockville Pike, Suite 901, Rockville, MD, 20852. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications postmarked or submitted after the deadline date, or sent to any address other than that above, will be returned to the applicant and not processed. The NHSC will acknowledge receipt of the application if the applicant chooses to complete the notification postcard that is included in the application materials.

Application Availability Date: February 2005.

Application Deadline: June 17, 2005 at 5 p.m. et.

Projected Award Date: September 30, 2005.

FOR FURTHER INFORMATION CONTACT: NHSC Loan Repayment Program, 11300 Rockville Pike, Suite 901, Rockville, Maryland, 20852. Telephone: 1–800–638–0824. e-mail: *NHSC@hrsa.gov*.

Paperwork Reduction Act: The application for the Chiropractor Loan Repayment Demonstration Project has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0127. The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.162.

Dated: February 2, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–2499 Filed 2–8–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Policy on Enhancing Public Access to Archived Publications Resulting From NIH-Funded Research

ACTION: Notice; final policy statement.

SUMMARY: The National Institutes of Health (NIH) announces its policy on enhancing public access to archived publications resulting From NIH-funded research. Beginning May 2, 2005, NIH-funded investigators are requested to submit to the NIH National Library of Medicine's (NLM) PubMed Central (PMC) an electronic version of the author's final manuscript upon acceptance for publication, resulting from research supported, in whole or in part, with direct costs[1] from NIH. The author's final manuscript is defined as the final version accepted for journal publication, and includes all modifications from the publishing peer review process.

This policy applies to all research grant and career development award mechanisms, cooperative agreements, contracts, Institutional and Individual Ruth L. Kirschstein National Research Service Awards, as well as NIH intramural research studies. The policy is intended to: (1) Create a stable archive of peer-reviewed research publications resulting from NIH-funded research to ensure the permanent preservation of these vital published research findings; (2) secure a searchable compendium of these peer-reviewed research publications that NIH and its awardees can use to manage more efficiently and to understand better their research portfolios, monitor scientific productivity, and ultimately, help set

[1] Costs that can be specifically identified with a particular project or activity. NIH Grants Policy Statement, Rev. 12/2003; *http://grants.nih.gov/grants/policy/nihgps_2003/NIHGPS_Part2.htm#_Toc54600040.*

research priorities; and (3) make published results of NIH-funded research more readily accessible to the public, health care providers, educators, and scientists.

This final NIH Public Access Policy (the ''Policy'') reflects modifications and clarifications to the proposed policy released September 3, 2004, in the NIH Guide for Grants and Contracts and September 17, 2004, in the **Federal Register** and the more than 6,000 public comments received through November 16, 2004. The most significant change in the Policy from that originally proposed is to provide more flexibility for authors to specify the timing of the posting of their final manuscripts for public accessibility through PMC. The proposed policy indicated a six-month delay of posting through PMC. The Policy now requests and strongly encourages that authors specify posting of their final manuscripts for public accessibility as soon as possible (and within 12 months of the publisher's official date of final publication). The Policy also clarifies that the publication date is the publisher's official date of final publication.

DATES: Effective Date: May 2, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Extramural Research, National Institutes of Health, 6705 Rockledge Drive, Room 350, Bethesda, MD 20892–7963 or by e-mail to *PublicAccess@nih.gov.*

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I. Background

It has long been NIH policy that the results and accomplishments of the activities that it funds should be made available to the public. Principal Investigators (PI) and grantee organizations are expected to make the results and accomplishments of their activities available to the research community and to the public at large.[2] It is estimated that the results of NIH-supported research were described in 60,000–65,000 published papers in 2003.[3] We believe that widespread access to and sharing of peer-reviewed research publications generated with NIH support will advance science and improve communication of peer-reviewed, health-related information to scientists, health care providers, and the public.

As part of on-going efforts to gather perspectives on the issue of public access to research publications, the NIH held a series of meetings to hear and consider the opinions and concerns of publishers, scientists, patient advocates, and representatives of scientific associations and other organizations. The meetings were designed to ensure that discussions of stakeholder issues could occur. The NIH extended invitations to a broad base of participants to ensure balanced representation of opinions. In many cases, a participant represented more than one perspective, such as a scientist who was also a journal editor and reviewer of scientific manuscripts.

After carefully considering the views of publishers, patient advocates, scientists, university administrators, and others, the NIH published its proposed NIH Public Access Policy in the NIH Guide for Grants and Contracts on September 3, 2004, *http://grants1.nih.gov/grants/guide/notice-files/NOT-OD–04–064.html* and in the **Federal Register** on September 17, 2004, *http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/04–21097.htm* for public comment. During the comment period, the NIH received over 6,000 comments via web, fax, mail, and e-mail. Many comments were received from organizations representing multiple constituents. The NIH developed Questions and Answers to clarify the proposal as issues were raised regarding it; these are available at: *http://www.nih.gov/about/publicaccess/publicaccess_QandA.htm.*

This final Policy reflects consideration of public comments received on the proposed policy through November 16, 2004, *i.e.*, 60 days from the date of publication of the proposed policy in the **Federal Register**.

The Policy is intended to: (1) Create a stable archive of peer-reviewed research publications resulting from NIH-funded research to ensure the permanent preservation of these vital published research findings; (2) secure a searchable compendium of these peer-reviewed research publications that NIH and its awardees can use to manage more efficiently and to understand better their research portfolios, monitor scientific productivity, and ultimately, help set research priorities; and (3) make published results of NIH-funded research more readily accessible to the public, health care providers, educators, and scientists.

II. Public Comments and NIH Responses

A. Need for the Policy

The public comments were largely supportive of the proposed policy to enhance public access to archived publications resulting from NIH-funded research. Comments noted that this policy provides equal and timely access to all via the Internet and that this accessibility should improve individual health outcomes. Many scientists appreciated that the policy would improve the visibility of their work. A large number of comments suggested that publicly-funded research publications should be made accessible to the public in full-text version in a timely manner. Many commenters expressed support for the policy given their concerns about the high and rising cost of subscriptions to scholarly journals, especially in the areas of science, technology, and medicine.

Other commenters questioned the need for the policy and considered it redundant to existing information sources and systems. Some questioned the added value of the policy and noted that journals increasingly are making full-text articles available immediately upon or within one year of publication through a variety of sources. Commenters noted that many of these articles are already linkable through the NLM PubMed web-based literature retrieval system that contains citations and abstracts from thousands of journals, dating back to 1950.[4] A significant number of comments also questioned why the NLM could not simply provide a link to the publisher's Web site, or work with existing vendors to broaden offerings to include peer-reviewed publications not associated with NIH funding.

The primary purpose of the NIH Public Access Policy is the creation of a stable archive to ensure the permanent preservation of vital, peer-reviewed research publications resulting from NIH-funded research findings now and for future generations. While links exist to journal articles that are publicly accessible, these are not sufficient because publishers' Web sites are not permanently available nor consistently maintained. Additionally, the formatting of journal articles may vary

[2] NIH Grants Policy Statement, Rev. 12/2003; *http://grants2.nih.gov/grants/policy/nihgps_2003/NIHGPS_Part7.htm.*

[3] These figures are derived from searching the PubMed database for citations with 2003 publication dates that include a reference to a specific NIH grant number. The data provide useful estimates of articles funded by NIH, although individual journal counts may vary slightly if calculations are performed using other sources or search strategies.

[4] PubMed includes links to full-text articles in PMC and to several thousand journal websites. PMC is an electronic archive for full-text journal articles, offering unrestricted access to its contents. Every full-text article in PMC has a corresponding entry in PubMed.

significantly among publishers' Web sites. The Policy addresses this deficiency in that all articles in PMC, regardless of their original format, are converted into a single, explicit, and well-specified data format. This format is known as the NLM Journal Article Extensible Markup Language (XML) Document Type Definition (DTD). Further, as new needs arise, and as technology and applications change, there is a single, uniform base upon which to build.

Preservation of the biomedical literature is a responsibility that is specifically mandated in NLM's authorizing legislation, found at 42 U.S.C. 286(b)(1), and one that has successfully been carried out by the NLM since 1836. It is logical in this electronic era to expect libraries, and particularly national libraries, to continue this vital function, including keeping pace with the ever-changing technology surrounding document preservation. Updating the data formats to keep up with the changes in technology and the needs of biomedical research requires an ongoing investment in research and development, which is within the NIH mission. As the electronic article increasingly becomes the authoritative and most useful document for researchers and as scientists are actually computing on the contents of these documents—the text itself as well as the associated data—the impermanence of the publishers' Web sites presents a substantial risk. Creating such an archive is a historical and necessary NIH responsibility.

NIH believes that the NIH Public Access Policy will effectively advance its stated goals. By storing research publications from diverse sources in a searchable, electronic archive with a common format, PMC facilitates greater integration with related resources in other NLM databases such as DNA and protein sequences, protein structures, clinical trials, small molecules (PubChem), and taxonomy thus providing the opportunity to develop unprecedented scientific search and analysis capabilities for the benefit of science. One of the primary goals of PMC is the creation of a permanent, digital archive of journal literature, which by definition, means the full text must be deposited in PMC. This searchable archive will enable NIH program officials to manage their research portfolios more efficiently, monitor scientific productivity, and ultimately, help set research priorities. This strategy also will enable NIH to advance its goal of creating an end-to-end, paperless grants management process. Finally, it will make the publications of NIH-funded research more accessible to and searchable for the public, health care providers, educators, and scientists.

A few commenters asked NIH to strengthen the proposed policy to make submission to PMC a requirement instead of a request. We believe that the voluntary nature of the final policy is preferable to a ''one size fits all'' requirement, as it permits sufficient flexibility to accommodate the needs of different stakeholders and leaves the ultimate decision in the hands of our scientific investigators who are the best to judge the scientific circumstances and the time frame under which their work may be made accessible to the public at large. It is worth clarifying that NIH does not require or expect that PMC be the sole repository for NIH-funded research publications. Others may choose to post and/or archive peer-reviewed publications resulting from NIH-funded research, subject to applicable laws or permission from any copyright holders.

B. Scope of the Policy

The NIH Public Access Policy applies only to peer-reviewed research publications that have been supported, in whole or in part, with direct costs from NIH. Numerous comments reflected misunderstandings about the scope of the policy as it was proposed. Some comments sought to broaden the Policy to include publications from non-NIH-supported investigators, and others asked that it include publications that did not contain original research findings, *e.g.*, book reviews.

The Policy does not apply to contributed book chapters, editorials, reviews, or conference proceedings. Although PMC does contain articles from non-NIH-supported research, the Policy is focused on final, peer-reviewed manuscripts and publications that result from research supported, in whole or in part, with direct costs from NIH.

C. Potential for Public Misunderstanding of Research Findings

A number of comments questioned the lay public's ability to understand fully original research publications, and expressed fear that potential harm could result from misinterpretation of them.

We believe that individuals who seek to read publications concerning a particular disease, health condition, or treatment should not be denied access because of the possibility that they will misunderstand the publications. Rather, NIH encourages such individuals to become educated consumers about their health care and related research, and to consult with health care professionals for specific guidance. It is important that NIH-supported research publications be made more readily available to provide credible information and to improve public understanding of the benefits of scientific research. The public demand for credible health information is clear. About 93 million Americans searched for at least one of 16 health topics online within the past year.[5] In a 2003 survey, 58 percent of Internet users said they brought information obtained from the Internet to their doctor's office.[6]

The NIH is strongly committed to conveying the importance of the research it funds to the public. Each NIH Institute and Center has an active staff that produces high-quality educational and informational materials on various health and research topics, many of which highlight the publications of NIH-funded researchers. Institute and Center staff, often with the assistance of third parties and patient advocacy groups, works diligently to develop, review, and disseminate these products. For example, the National Library of Medicine's consumer health site, Medline Plus (*http://www.nlm.nih.gov/medlineplus/*) houses extensive information on over 650 health conditions. NIH believes that these products effectively advance NIH's strong commitment to improving public health through research.

The Policy specifically relates to original research publications. NIH needs to compile these publications into a single archive in order to manage its research portfolio better and monitor its funding choices. NIH recognizes that providing public access to this electronic archive, may also help scientists, policymakers, doctors, patients and the lay public to understand better the research that NIH funds.

D. Version Control and Quality of Manuscripts

Some commenters raised concerns about potential confusion resulting from differences between the author's final manuscript within PMC and the published version of the corresponding article at journal-sponsored websites. Others questioned how corrections, retractions, and other post-publication changes will be accommodated.

Through this Policy, NIH is requesting that NIH-funded investigators submit an

[5] Internet Health Resources, Pew Internet and American Life Project, Washington, DC 2003: *http://www.pewinternet.org/pdfs/PIP_Health_Report_July_2003.pdf.*

[6] Cybercitizen Health 3.0 Survey, Table 10 (Manhattan Research, New York, 2003).

electronic version of the author's final manuscripts resulting from research supported, in whole or in part, with direct costs from NIH, after all changes resulting from the peer review publication process have been incorporated. A growing number of journals are currently posting final author manuscripts to provide timely access to their subscribers prior to final publication of the publisher's copy edited version. In addition, under the Policy, the final manuscript will not be made available to the public through PMC until after the copyedited version is published by the journal. Corrections and other necessary revisions of author's final manuscripts will be accommodated. Furthermore, when publicly available, the published article on the journal-sponsored website and the author's final manuscript in PMC will be appropriately linked through PubMed. Corrections and post-publication comments referring to a publication are currently identified and linked in PubMed, and this capability will be linked to the corresponding manuscript in PMC. If publishers wish to provide PMC with the publisher's final version, this version will supersede the author's final manuscript in PMC.

E. Potential for Acceleration of Medical Cures

A few commenters questioned whether the proposed policy, and enhanced access to NIH-funded publications, will facilitate scientific progress and accelerate research for medical cures.

We believe that improved access through PMC to peer-reviewed, final manuscripts of NIH-supported investigators will facilitate scientific progress because it will enable NIH to manage better its research portfolio and funding choices. The NIH encourages the sharing of ideas, data, and research findings to help accomplish its important public mission to uncover new knowledge that will lead to better health for everyone. As such, we envision that the PMC resource will have widespread and varied uses for the research community. It will create a stable, permanent, and searchable archive of peer-reviewed research publications that NIH and the public can access, without a fee, to review scientific productivity, monitor the state-of-the-science, and apply such knowledge in other ways to accelerate medical research. Greater interconnectivity and functional integration between the multiple and large research data bases (*e.g.*, Genbank and PubChem) and an archive of NIH-funded publications has the potential to enhance research in novel ways.

F. Potential Economic Impact on Journal Publishers

Commenters contended that NIH had not carefully considered the potential adverse economic impact of its proposed policy on publishers, in particular, not-for-profit professional and learned societies and associations that rely on subscriptions to cover costs. The consequences of the proposed policy for many small journals, as well as bimonthly and quarterly journals, were of particular concern to some. Concern also was raised that relative to commercial publishers, not-for-profit publishers would be more disadvantaged because they often support highly specialized areas that tend to draw greater representation by NIH-funded researchers. Others questioned the fairness of allowing publishers to continue to profit by restricting access to health-related information.

Publishing patterns vary from year to year and from one journal to another. Using 2003 data, NLM estimates that, on an annual basis, publications resulting from NIH-funded research represent approximately 10 percent of the articles in nearly 5,000 journals indexed by PubMed. In addition, for only one percent of these journals do NIH-funded articles account for more than half of the total published articles.[7] As such, it is unlikely that scientists and libraries would use the NIH Public Access Policy as the rationale for replacing their journal subscriptions. If they did, they would be able to access only a fraction of a journal's content. It also is important to note that there are many other journal offerings, such as science news, industry information, literature reviews, job announcements, functional Web sites, and other time-sensitive products that bring value to the reader but are not a part of the PMC archive. Access to journal articles through the NIH archive might increase Internet traffic to those journals, by both the scientific community and the general public.

The NIH supports the current publishing process by providing its funded investigators with an estimated $30 million[8] annually in direct costs for publication expenses, including page and color charges and reprints. In addition, NIH provides funds, through indirect costs, to research institutions for library journal subscriptions and electronic site licenses. NIH also supports the current process by encouraging publication of NIH-supported original research in scientific journals.

NIH has made modifications to the proposed policy to provide greater flexibility to accommodate the range of business models represented by large commercial publishing houses through the smaller specialized journals of learned societies. The most significant change is to allow authors to specify the timing of the posting for public accessibility through PMC of their final manuscript. The NIH intends to maintain its dialogue with publishers and professional and learned societies as experience is gained with the Policy.

A NIH Public Access Advisory Working Group of the NLM Board of Regents[9] will be established. The Working Group will be composed of stakeholders that will advise NIH/NLM on implementation and assess progress in meeting the goals of the NIH Public Access Policy. Once the system is operational, modifications and enhancements will be made as needed with the Working Group, or a permanent subcommittee of the Board, providing ongoing advice on improvements.

G. Potential Impact on Journal Peer Review

NIH recognizes the enormous value and critical role that peer-reviewed journals play in the scientific quality control process. Only peer-reviewed articles accepted for publication will be posted in PMC. Some commenters asked if scientific integrity would be compromised if journals were to go out of business, thus significantly narrowing journal options for authors. A few commenters feared that the NIH proposed policy would limit an author's freedom to publish how, when, and where he or she chooses.

We do not believe that the Policy will compromise scientific integrity or significantly narrow journal options for

[7] These data are derived from searching the PubMed database for citations with 2003 publication dates that acknowledge funding from either NIH specifically or from an agency of the Public Health Service (PHS). Because some journal citations do not include a reference to the specific NIH grant number, a broader search was done for citations where the Public Health Service (PHS) is identified as the sponsor of the research. These data provide useful estimates of articles funded by NIH/PHS, although individual journal counts may vary slightly if calculations are based on other sources.

[8] The estimated $30 million is a conservative figure based on amounts spent on page charges and other publication costs on a sample of R01 grant application budgets, scaled up to provide an estimate of direct costs paid on all research grants.

[9] Established pursuant to 42 U.S.C. 286a, section 466 of the Public Health Service Act, as amended. The Board is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

authors. While NIH encourages investigators to publish and share the results of the research that it funds, NIH does not dictate the means of publishing the research it supports. This Policy is designed to preserve the critical role of journals and publishers in peer review, editing, and scientific quality control processes. It is not intended to alter in any way the manuscript submission process, investigator choice of journal for publication, or existing publication process.

NIH highly values traditional routes of research information dissemination through publication in scientific, peer-reviewed journals. Peer review is a hallmark of quality for journals and is vital for validating the accuracy and interpretation of research results. Publication in peer-reviewed journals is a major factor in determining the professional standing of scientists; institutions use publication in peer-reviewed journals in making hiring, promotion, and tenure decisions. NIH also values the communities of research created by scientific organizations and the journals they publish. By not mandating but instead requesting from our investigators that access be provided to the public within a range of acceptable delays extending from 0 to 12 months, the NIH believes that its Public Access Policy addresses the concerns raised by both for-profit and not-for-profit publishers and will ensure that peer review of scientific articles is preserved. The NIH believes that archiving and making publicly accessible NIH-funded biomedical and behavioral literature after a reasonable time delay can preserve the critical role of journals and publishers in peer review, editing, and scientific quality control. The policy should have no effect on the author's choice of journal. We expect that greater access to research publications will increase the impact of the publicly-funded research. For example, there is emerging evidence that easier access increases impact as measured by the number of times a paper is cited.[10]

H. Potential Impact on Scientists

A number of comments expressed the concern that researchers would be adversely affected by the proposed policy if publishers experienced a decline in subscriptions and subsequently chose to increase charges to authors. It was suggested that higher charges would disadvantage disproportionately researchers with more limited resources. In addition, some researchers were concerned that the proposed policy would create an additional burden on them.

NIH-funded investigators are expected to make the results and accomplishments of their activities available to the research community and to the public at large. Consequently, NIH considers publication costs, which include fees charged by a publisher, such as color and page charges, or fees for digital distribution, to be allowable charges to NIH research awards.

Concerning burden, public access submissions will provide NIH-supported investigators with an alternate means by which they can meet and fulfill the current requirement to provide a copy of each publication in their progress reports and other application and close-out procedures. It is anticipated that investigators applying for new and competing renewal support from the NIH will utilize this resource by providing links in their applications to their PMC-archived information. NIH, therefore, anticipates that this process may reduce, rather than increase, burden for investigators.

It is also worth noting that the development of a searchable archive of published findings from NIH-supported research will be a rich resource for all scientists. Access to such information not only will make it easier to investigate a specific area of research, but also may lead to identification of new research questions.

I. Open Access Publication and the NIH Public Access Policy

Some commenters believed that the NIH Public Access Policy constitutes an open access model of publishing. The NIH Policy is not a form of publishing; rather, it creates a stable archive of peer-reviewed research publications resulting from NIH-funded research. In addition, the Policy does not dictate the means of publishing but is compatible with any publishing model that authors and journals choose to employ. For example, some subscription journals already allow free electronic access to published manuscripts directly from their websites after an embargo period. In addition, one survey reports as many as 92 percent of journals allow authors to self-archive either a postprint (79 percent) or preprint (13 percent) of the article on personal Web sites or on their institution's Web site[11]. Copyright to all material deposited in PMC remains with the publisher, individual authors, or awardees, as applicable. PMC currently includes a copyright notice alerting the public to the rights of copyright holders and will continue to post this notice as it has done in the past.

J. Waiting Time to Public Access

The proposed policy published in September 2004 indicated that with the author's permission, the NIH would make the author's final manuscript available to the public no later than 6 months after the date of official publication as determined by the publisher. Many commenters considered the 6-month waiting time to be a reasonable compromise, though some believed the waiting time should be considerably shortened. Some recommended that the waiting time be 12 months or longer, particularly because 12 months rather than 6 months is currently the prevailing model among journals that already provide free, delayed, full-text access. Some commenters also noted that the vast majority of journals currently offer no free public access at all, thus arguing that a 6-month waiting time is too aggressive.

The NIH has tried to balance the legitimate needs of journal publishers with its interest in creating a permanent archive of peer-reviewed research publications resulting from NIH-funded research. There is a wide range of time-to-access policies within the publishing world. Some of the variables that affect time-to-access include differences among scientific fields (*e.g.*, clinical versus basic research), and variability in business models determined by a range of issues including number of article submissions, acceptance rate and subscription base.

After considering the views of scientists, publishers, patient advocates, librarians, research administrators, professional societies, and others, the final Policy provides authors with the ability to specify when their final manuscript will be made available to the public through PMC. Posting for public accessibility through PMC is strongly encouraged as soon as possible (and within twelve months of the publisher's official date of final publication). This Policy provides greater flexibility for participation. Further, it addresses the agency's interest in establishing a permanent archive of peer-reviewed research publications resulting from NIH-funded research in a timely manner.

K. Politicization of Science

Some commenters suggested that a centralized, government-operated repository could compromise the integrity of the scientific record, be subject to government censorship, and be susceptible to the politicization of

[10] *http://opcit.eprints.org/oacitation-biblio.html*

[11] *http://romeo.eprints.org/stats.php*

science and the variability of funding levels and changes in agency management.

Congress assigned to the NLM the responsibility to acquire, organize, disseminate, and preserve biomedical information for the benefit of public health. As part of this responsibility, the Policy will create a stable archive of peer-reviewed research publications resulting from NIH-funded research to ensure the permanent preservation of these vital published research findings. Agency policy is not to restrict or suppress the content of PMC.

L. Implementation Costs

Many commenters expressed concern that the costs associated with archiving NIH-funded manuscripts in PMC have not been clarified, or that costs are understated. Some publishers reported spending on the order of hundreds of millions of dollars over the past decade to improve online access to their journal offerings, which led to skepticism about the validity of NIH's estimates. These commenters are concerned that allocating funds for an expanded PMC archive would compete with funds available to support original research. Other commenters expressed concern that continued funding for the system may not be available in the future.

By building on an existing information technology infrastructure housed at the NLM, the NIH Public Access Policy can be an exceptionally cost-effective means to accomplish its goals of archiving, facilitating program management, and enhancing accessibility. Estimates of $2–$4 million per year reflect incremental costs to create and then maintain a Web site for submitting authors' final manuscripts and for Extensible Markup Language (XML) tagging of the manuscripts into PMC's archival format. These estimates reflect PMC's experience with a back-scanning project which has generated and tagged electronic versions of more than 200,000 printed articles in the last year. The roughly 50,000–70,000 manuscripts a year for the new NIH Policy will be tagged in a similar manner and incorporated into PMC using a single, consistent digital format. The NIH is committed to maintaining and enhancing the existing PMC infrastructure to achieve the agency's goals.

Some questioned if additional support will be provided to investigators to cover potential increases in publication costs. The NIH awards direct costs to many investigators who request publication costs in their proposed budgets. The NIH estimates that it pays over $30 million annually in direct costs for publication and other page charges in grants to its investigators. Generally, page charges for publications in professional journals are allowable, if the published paper reports work supported by the grant and the charges are levied impartially on all papers published by the journal, whether or not they are submitted by government-sponsored authors. As with all other costs, NIH expects its investigators to be careful stewards of Federal funds and to manage these resources appropriately. Grantees may rebudget funds to support these costs, but NIH will consider all other options to ensure that budgets are not affected unduly which should be achievable given the voluntary nature of this request.

M. PMC's Capacity and Functionality

Comments supporting the proposed policy noted that online access was desirable because it was centralized, cheaper than accessing a print version, and easier to access. Some comments expressed limited confidence in PMC's ability to keep pace with the current volume of publications, or to handle a large influx of additional manuscripts. Several comments requested that PMC add more functionality to address the increased amount of content.

NLM's National Center for Biotechnology Information supports many large production services, including GenBank, PubMed, and PMC, handling over 3 million queries daily from more than 1.2 million unique users. Since PMC went live in 2000, there have been no delays for any active production PMC journal due to production lags or technical problems at PMC. In addition to incorporating content provided by publishers, the PMC back-scanning project has generated and tagged electronic versions of more than 200,000 printed articles in the last year. The roughly 60,000 manuscripts a year for the new NIH Policy will be tagged in a similar manner and incorporated into PMC using a single, consistent digital format.

A commercial service monitors PMC's Web site performance and reliability. Based on over 22,000 measurements in a recent two-week period, articles were successfully returned for 98.5 percent of the requests to PMC. This compared during the same two-week period to a 92 percent average success rate for 40 of the largest commercial Web sites monitored by the same service. The average response time to download a PMC article has been 2.8 seconds.

Another key advantage of PMC is that the articles returned by a PMC search are automatically linked to a variety of research-related resources in other NLM databases, such as DNA and protein sequences, protein structures, clinical trials, small molecules (PubChem), and taxonomy. These databases also provide linkage to a broad collection of other biological and health-related information resources. Investigators applying for new and competing renewal support from the NIH can also utilize this resource by providing links in the applications to their PMC-archived information.

N. Domestic and International Coordination

A number of commenters urged the NIH to coordinate with other scientific agencies in the United States and internationally, while others countered that providing unrestricted access to non-U.S. individuals would represent a subsidization of scientific knowledge outside the United States that disadvantages American scientists.

We believe that American scientists and global health will benefit from greater access to research publications leading to increased collaborative efforts worldwide. In an increasingly interdependent world, the United States and nations around the globe not only share the risk of diseases, but also the challenge to respond. This can best be accomplished in an environment in which rapid communication is possible, wherein scientific knowledge is readily available to all, and where research is conducted based on partnership. This environment will also foster continued U.S. leadership in science.

O. Timing of the Policy's Implementation

Many commenters sought to delay the Policy's implementation, expressing strong concerns that the proposed policy had not been adequately analyzed for short- and long-term impacts. Commenters called for more dialogue and consideration. Others called for more formal studies before Policy implementation.

The request for investigators to submit the authors' final manuscripts to PMC is not a requirement. The NIH instead is providing guidance to conform to a long-standing NIH policy that the results and accomplishments of NIH-funded research activities should be made available to the public. The Policy encourages voluntary cooperation of investigators, and it does not penalize investigators who choose not to use PMC to submit pre-print hard copy versions of their manuscripts as part of their progress reporting requirements.

Timely implementation of the Policy will allow NIH to manage more efficiently and to understand better its

research portfolio, monitor scientific productivity, and ultimately, help set research priorities. Also, because many commenters highlighted the public's desire for enhanced access to scientific publications in a timely manner, NIH is confident that this Policy will not only advance science but will benefit the scientific community, the public, and the NIH.

This Policy is subject to periodic review based upon lessons learned in the course of its implementation. Issuance of this Policy is the beginning of a process that will include refinement as experience develops, outcomes are evaluated, and public dialogue among all the stakeholders is continued.

A NIH Public Access Advisory Working Group of the NLM Board of Regents [12] will be established. The Working Group will be composed of stakeholders that will advise NIH/NLM on implementation and assess progress in meeting the goals of the NIH Public Access Policy. Once the system is operational, modifications and enhancements will be made as needed with the Working Group, or a permanent subcommittee of the Board, providing ongoing advice on improvements.

P. Legal Issues

NIH received several comments and objections of a legal nature.

1. *Request vs. Required:* Some commenters argued that the proposal is mandatory, even though the proposal requests, rather than requires, submission of final manuscripts to NIH. As evidence, they note that NIH plans to monitor submissions as part of the grants close-out process and that the proposal states that the submission will fulfill the current requirement to submit one copy of each publication in the annual or final progress reports. One commenter also asserted that reading the proposal as a requirement would be consistent with House Appropriations Committee Report language in H.R. Rep. No. 108–636.

The final Policy reiterates that submission of the electronic final manuscript is voluntary and that it can serve as an alternate means for meeting current progress reporting requirements as well as application and close-out submissions in the future. The monitoring referred to in the proposed policy referred to determining whether the final manuscripts had already been submitted electronically. We have removed that language from the final Policy to avoid any confusion. The House Appropriations Report did propose requiring submission; however, the NIH Policy requesting, rather than requiring, submission is consistent with the final report language found on page 1177 of the Joint Explanatory Statement in H.R. Rep. No. 108–792.[13]

2. *Copyright:* NIH received comments that the proposal infringes on copyright interests of Federal grantees. These commenters argued that copyright interests are well-established under Federal law, that NIH has no authority to alter them, and that the proposal is not consistent with controlling Department of Health and Human Services (HHS) regulations. They believe the proposal fails to recognize the need for copyright permission from authors and/or publishers. They argue that neither the principle of fair use, nor the Federal purpose license, can be used by NIH to implement the proposal. Finally, they argue that the PMC ''open access'' submission agreement constitutes a forced license and undermines copyright.

The Policy explicitly recognizes and upholds the principles of copyright. First, submission of final manuscripts is voluntary rather than mandatory; the voluntary submission to NIH by authors and institutions under the Policy constitutes permission to post the manuscripts on PMC and release to the public after the submitter's specified post-publication delay time. The fair use exemption to copyright infringement does not apply to the government's request for the manuscripts. It applies to the public use of the manuscripts as posted on PMC and provides a limitation on such use consistent with the terms of that exemption.

NIH does not need to seek permission from journals who may acquire copyrights from authors or institutions because any copyright transfer or assignment is currently subject to the government purpose license pursuant to 45 CFR 74.36. Although the NIH is relying on permission, rather than the government purpose license, as the basis for its Policy, the government purpose license is fully available as a legal authority under which manuscripts could be reproduced, published, or otherwise used for Federal purposes. The comment that the proposal is not consistent with controlling HHS regulations granting copyright is not persuasive, since those same regulations grant the agency its government purpose license.

Finally, authors can indicate what copyright restrictions, if any, apply to their manuscripts when submitting them to PMC and can choose an appropriate PMC submission agreement that recognizes those rights.

3. *Government purpose copyright license:* NIH received a comment that the government purpose license of 45 CFR 74.36 cannot be used by the government as a basis to post final manuscripts on PMC.

Although the NIH, at this time, is not relying on the government purpose license, it is an available means for NIH to reproduce, publish or otherwise use copyrighted works resulting from NIH funding for Federal purposes, as well as to authorize others to do so. Arguments put forth and cases cited by the commenter as support for the premise that the government purpose license could not be used as a basis for PMC to post the manuscripts are not persuasive. None of the cases address circumstances where a government agency is acting to fulfill its own statutory purposes with regard to publications resulting from its own research funding. Creation of a publicly accessible, permanent archive of NIH-funded research publications is squarely within the statutory authorities of the NIH and the NLM and clearly constitutes a Federal purpose.[14]

4. *Other intellectual property concerns:* One commenter suggested that the proposed policy undermines other aspects of intellectual property because problems would result if the principle that ''the taxpayers have already paid for the research'' were also applied to patents, pharmaceuticals, and other products of government-funded research.

The NIH Public Access Policy is not based on the principle of delivering a product to the taxpayer in return for research support. The Policy calls for the voluntary submission of final author manuscripts; it does not affect the ability to copyright. Funding recipients may continue to assert copyright in works arising from NIH-funded research, and they may assign these rights to journals as is the current practice. Copyright holders may enforce these copyrights as before. A member of the public viewing or downloading a copyrighted document from PMC is subject to the same rights and restrictions as when copying an article from the library. For example, making a copy of an article for personal use is generally considered to be a ''fair use'' under copyright law. For uses that fall outside of the fair use principle, permission to reproduce copyrighted

[12] Established pursuant to 42 U.S.C. 286a, section 466 of the Public Health Service Act, as amended. The Board is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2).

[13] *http://thomas.loc.gov/home/omni2005/index.htm.*

[14] *See, e.g.*, 42 U.S.C. 241(a)(1); 42 U.S.C. 286.

materials must be obtained directly from the copyright holders. PMC currently includes a copyright notice alerting the public to the rights of copyright holders and will continue to post this notice as it has done in the past.

5. *Bayh-Dole Act:* NIH received a comment that the proposal undercuts the Bayh-Dole Act by interfering with technology transfer, because scientific publications are an important component of technology transfer, and the proposal weakens that component. This commenter also suggested the proposal undermines the Bayh-Dole principle that the private sector is the preferable vehicle to move research to the marketplace.

The NIH Public Access Policy serves to establish a permanent archive of NIH-funded research publications. It is not expected to supersede any private sector publication activity or create competition with publishers. Manuscripts that are submitted by authors will be available to the public through PMC after the time specified by the author post-publication. As such, we do not believe that the Policy will interfere with publications as a technology transfer vehicle, or that it will supersede the private sector as a vehicle to move research to the marketplace.

6. *Patent application filing concerns:* NIH received comments that because final manuscripts as submitted to NIH will be subject to Freedom of Information Act (FOIA) disclosure, they will likely be considered ''printed publications'' for purposes of the timing of filing patent applications. Commenters suggested this would be a change from current practice, which relies on the date of journal publication.

The NIH Policy requests authors to submit final manuscripts after the peer review process has been completed. Although each research institution must determine the timing of the filing of any patent applications arising from their NIH-funded work, NIH does not believe that submission to PMC under the Public Access Policy will constitute a printed publication, nor otherwise interfere with the timing of filing of patent applications. The manuscripts will not have the indicia of ''public accessibility'' that are generally relied upon as criteria by which prior art references have been judged. Until the interested public has access to the document, it would not be considered to be available as a printed publication within the meaning of 35 U.S.C. 102(a) or (b). The primary journal publication constitutes the date of publication for patent filing purposes, as it has traditionally served.

Courts have found it helpful to rely on distribution and indexing as proxies for public accessibility, and one commenter argued that the final manuscripts will be indexed by PMC prior to journal publication. However, even if indexed in preparation for posting, the publication itself will not be available to the public. Once final manuscripts are posted in the archive, indexing and search capabilities will assist user access.

Other aspects of the process of scientific publication do not establish statutory bars to patentability. For example, processes such as oral presentations at scientific meetings and submission of manuscripts and information to peer reviewers or to a journal for review have not been considered to establish a publication date for patent purposes, because these activities have not been considered to result in public availability. Similarly, there is no reason to believe submission to NIH with the expectation of confidentiality until after publication will be treated differently by the U.S. Patent and Trademark Office.

7. *Freedom of Information Act (FOIA):* Some commenters expressed concern that the final manuscripts would be subject to disclosure to the public under FOIA prior to journal publication.

NIH believes the manuscript information is protected from release under FOIA by Exemption 4.[15] In accordance with HHS FOIA regulations, if NIH receives a FOIA request for such a document, it will notify the submitter of the manuscript of the FOIA request in order to provide an opportunity for the manuscript submitter to object to any potential disclosure of the record. If the final publication is requested after the journal publication date but prior to the posting date on PMC, NIH believes that these publications are not ''agency records'' subject to FOIA. *See* 45 CFR 5.5, stating that definition of ''record'' for purposes of the HHS FOIA regulation does not include ''books, magazines, pamphlets, or other reference material in formally organized and officially designated HHS libraries where such materials are available under the rules of the particular library.''

8. *Administrative Procedures Act (APA) rule-making:* Some have commented that the proposed policy constitutes a rule-making under the Administrative Procedures Act (APA) and that NIH lacks legislative authority to adopt this policy because it is without rule-making power. They also argue that the notice and comment opportunity for the proposal was insufficient to meet rule-making requirements.

NIH agrees that authority to adopt new regulations is retained by the Secretary, Health and Human Services, and has not been delegated to NIH. However, the proposed policy is not a rule-making for which APA notice and comment, and other procedural requirements for final agency actions, attach. The APA defines a ''rule'' as ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy describing the organization, procedure, or practice requirements of an agency.'' 5 U.S.C. 551. Exempt from the formal ''rule-making'' requirements of the law are matters ''relating to agency management * * *'' and matters concerning ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' 5 U.S.C. 553.

The Policy does not require investigators to do anything other than what the current rules require. While funding recipients may follow the Policy to fulfill some of their existing reporting requirements they need not do so and may continue to provide hard copies of publications. The Policy will allow the agency to manage better its research award process and will also enable it to advance further its public health mission to support high-quality biomedical, behavioral, and clinical research and improve public health. In order to help it develop the Policy, the agency provided public notice and sought public comment on a draft policy. This notice and comment procedure were not undertaken to comply with the APA rule-making requirements; the agency does not believe that they apply because the Policy is not a rule.

9. *Regulatory Flexibility Act:* Some commenters asserted that the NIH must comply with the Regulatory Flexibility Act before it implements the proposed policy. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, was enacted to ensure that when adopting regulations, Federal agencies seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public. In particular, in accordance with the RFA, Federal agency regulations should not disproportionately affect small entities. Under the RFA, Federal agencies must determine the impact of their regulations on small entities and consider alternatives to alleviate

[15] HHS FOIA Regulations, 45 CFR 5.65(b); available at: *http://www.hhs.gov/foia/45cfr5.html#Subf.*

burdens while achieving the agency's policy goals. By definition, the RFA applies when a Federal agency publishes a general notice of proposed rule-making under 5 U.S.C. 553(b); in other words, it is triggered when an agency engages in rule-making under the APA. As noted above, this Policy is not a rule-making. Accordingly, the RFA does not apply.

10. *Paperwork Reduction Act:* Some commenters suggested that NIH must comply with the Paperwork Reduction Act (PRA) and cannot penalize investigators until Office of Management and Budget (OMB) clearance under the law is completed.

The PRA requires OMB review before an agency undertakes a ''collection of information,'' regardless of whether the collection is mandatory or voluntary. Under the regulations implementing the law, a ''collection of information'' includes ''obtaining * * * information by or for an agency by means of * * * identical reporting * * * or disclosure requirements imposed on'' ten or more people or entities in any given year. 5 CFR 1320.3. While the request to provide copies of manuscripts or publications may not fall within this definition, even if the definition is met, we need not obtain any new OMB clearance because the Policy falls within the existing, approved information collection activities concerning applications, progress and final reporting, (OMB No. 0925–0001, Expires 9/2007 and 0925–0002, Expires 6/2005).

Furthermore, while some commenters focused their PRA criticism on the fact that the agency would be unable to penalize investigators if PRA review is not conducted, we note that the Policy serves as an alternative to compliance with existing reporting activities and, therefore, a discussion of any new ''penalties'' is misplaced.

The PRA also requires that agencies ensure the public has timely and equitable access to agency public information. The final manuscripts will be submitted under confidentiality agreements and will be posted on PMC only with the permission of submitting authors. Therefore, NIH does not believe that the final manuscripts submitted by authors constitute ''agency public information'' within the meaning of the PRA until the terms of the confidentiality agreement are met and an author permits posting on PMC. At that time, NIH expects to ensure timely and equitable access. As discussed above, submission is not expected to constitute a ''publication'' for purposes of filing patent applications, nor are the documents expected to be available to the public under FOIA. Thus, the absence of public availability prior to author permission does not constitute an improperly restrictive agency arrangement.

11. *OMB Circular A–76:* Some commenters argued that the agency must undertake a cost-comparison under OMB Circular A–76 to determine that the cost of the plan is less expensive than the cost of the present system of scientific publishing before implementing the Policy.

This criticism is based on the assumption, in the words of one commenter, that ''NIH wants PMC to become an in-house electronic publisher of these final manuscripts.'' This conclusion misstates the Policy and NIH's goals. The NIH Policy is to maintain copies of final manuscripts in a permanent, public archive so that the published results of NIH-funded research are permanently and readily accessible to NIH and others. This archive will be contained in the NIH's existing, electronic archive for scientific publications, PMC. The PMC archive has provided this service for the agency and others when articles are voluntarily provided to it. Electronic copies of publications are available through PMC in the same way that hard copies of publications are available from the NIH's National Library of Medicine.

The NIH Policy does not create any new obligations under OMB Circular A–76. Insofar as the activities of PMC are subject to the requirements of the Circular and related laws, those activities will continue to be reviewed and all applicable requirements will be met.

The NIH Public Access Policy is to establish a permanent archive of NIH-funded research publications. It is not expected to supersede any private sector publication activity or create competition with publishers.

12. *Constitutional concerns/Executive Order (E.O.) 12630:* One commenter suggested that the proposal implicates Executive Order 12630, which requires government officials to review actions that may have ''takings'' implications and to ''be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning out and carrying out governmental actions * * *.''

The purpose of E.O. 12630 is to ensure that government officials do not unintentionally exercise the government's power of eminent domain, resulting in an unanticipated or undue drain on the government treasury. NIH believes that its Policy is consistent with E.O. 12630 and that no additional review is required. The private property at issue is the funding recipient's ability to assert copyright pursuant to 45 CFR 74.36. The NIH Policy does not interfere with that right, as authors and institutions will be voluntarily submitting copies of final manuscripts to NIH, and copyright may be asserted and enforced as it has been traditionally. Further, the same regulation that allows the funding recipient to assert copyright grants the government corresponding rights to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so. A voluntary request for the same use already allowed to the government by regulation is consistent with E.O. 12630 and does not trigger additional review.

13. *Information Quality Act:* One commenter asked whether the Federal Information Quality Act (IQA), 44 U.S.C. 3516 note, applies to documents contained in the electronic archive of publications created through the NIH Public Access Policy.

The NIH Public Access Policy calls for the centralized storage of NIH-funded scientific publications in PMC, an electronic archive of scientific publications operated by the National Library of Medicine. The NIH will include in its electronic archive a statement explaining that the views contained in the archived publications and manuscripts are those of the authors, and do not necessarily reflect the views of the government. Thus, publication in PMC does not make an article/scientific manuscript subject to the NIH Information Quality Guidelines.

III. Text of Final Policy Statement

The NIH Public Access Policy (the ''Policy'') on enhancing public access to archived publications resulting from NIH-funded research follows:

Beginning May 2, 2005, NIH-funded investigators are requested to submit an electronic version of the author's final manuscript upon acceptance for publication, resulting from research supported, in whole or in part, with direct costs [16] from NIH. The author's final manuscript is defined as the final version accepted for journal publication, and includes all modifications from the publishing peer review process.

This Policy applies to all research grant and career development award mechanisms, cooperative agreements, contracts, Institutional and Individual Ruth L. Kirschstein National Research Service Awards, as well as NIH intramural research studies. The Policy applies to peer-reviewed research publications, resulting from research

[16] *See* footnote 1.

supported in whole or in part with direct costs from NIH, but it does not apply to book chapters, editorials, reviews, or conference proceedings.

Under this Policy, electronic submission will be made directly to the NIH National Library of Medicine's (NLM) PubMed Central (PMC): *http://www.pubmedcentral.nih.gov*. PMC is the NIH digital repository of full-text, peer-reviewed biomedical, behavioral, and clinical research journals. It is a publicly-accessible, stable, permanent, and searchable electronic archive.

At the time of submission, the author will specify the timing of the posting of his or her final manuscript for public accessibility through PMC. Posting for public accessibility through PMC is requested and strongly encouraged as soon as possible (and within twelve months of the publisher's official date of final publication).

The publisher may choose to furnish PMC with the publisher's final version, which will supersede the author's final version. Also, if the publisher agrees, public access to the publisher's final version in PMC can occur sooner than the timing originally specified by the author for the author's final version.

Effective with progress reports submitted for Fiscal Year 2006 funding, this Policy provides an alternative means, via PMC, for NIH-supported investigators to fulfill the existing requirement to provide publications as part of progress reports. Though the NIH anticipates that investigators will use this opportunity to submit their manuscripts, sending electronic copies is voluntary and will not be a factor in the review of scientific progress.

By creating an archive of peer-reviewed, NIH-funded research publications, NIH is helping health care providers, educators, and scientists to more readily exchange research results and the public to have greater access to health-related research publications. As the archive grows, the public will be more readily able to access an increasing number of these publications.

Once the system is operational, modifications and enhancements will be made as needed. An NIH Public Access Advisory Working Group will be established to advise NIH/NLM on implementation and assess progress in meeting the goals of the NIH Public Access Policy.

This Policy is intended to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Additional details for the public and for submitting authors pertaining to the implementation of this Policy are available at: *http://www.nih.gov/about/publicaccess/index.htm*.

Dated: February 2, 2004.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 05–2542 Filed 2–7–05; 11:27 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4932-FA–03]

Announcement of Funding Awards For the Rural Housing and Economic Development Program Fiscal Year 2004

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Rural Housing and Economic Development Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Jackie L. Williams, Ph.D., Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7137, Washington, DC 20410–7000; telephone 202–708–2290 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 800–877–8339. For general information on this and other HUD programs, call Community Connections at 800–998–9999 or visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development program was authorized by the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1999. The competition was announced in the NOFA published April 23, 2004 (69 FR 22320). Applications were rated and selected for funding on the basis of selection criteria contained in that notice.

The Catalog of Federal Domestic Assistance number for this program is 14.250.

The Rural Housing and Economic Development Program is designed to build capacity at the state and local level for rural housing and economic development and to support innovative housing and economic development activities in rural areas. Eligible applicants are local rural non-profit organizations, community development corporations, federally recognized Indian tribes, state housing finance agencies, and state community and/or economic development agencies. The funds made available under this program were awarded competitively, through a selection process conducted by HUD.

Prior to the rating and ranking of the Fiscal Year (FY) 2004 applications, Rural Enterprises of Oklahoma, Inc. in Durant, Oklahoma, was awarded $150,000, and Eastern Shore of Virginia, Habitat for Humanity, in Exmore, Virginia, was awarded $149,683 as a result of funding errors during the previous year's funding. For the FY2004 competition, a total of $24,619,153 was awarded to 105 projects nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: December 5, 2004.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A Fiscal Year 2004 Funding Awards for the Rural Housing and Economic Development Program

Recipient	City	State	Award
Rural Alaska Community Action Program, Inc	Anchorage	AK	$150,000
Collaborative Solutions, Inc	Birmingham	AL	400,000
The Hale Empowerment and Revitalization Organization (HERO)	Greensboro	AL	138,168
Ark of Love Ministries, Inc	Hayneville	AL	146,150

Recipient	City	State	Award
Health Services Center, Inc	Anniston	AL	50,000
Alabama Rural Heritage Foundation, Inc	Thomaston	AL	150,000
Mississippi County Arkansas E.O.C.	Blytheville	AR	101,087
Chicot Housing Assistance Corporation	Lake Village	AR	125,000
Crawford-Sebastian Community Development Council, Inc	Fort Smith	AR	150,000
South Arkansas Community Development	Arkadelphia	AR	150,000
Navajo Partnership for Housing, Inc	Saint Michaels	AZ	400,000
Arizona Department of Housing	Phoenix	AZ	400,000
Moenkopi Developers Corporation	Tuba City	AZ	121,900
Hualapal Indian Tribe	Peach Springs	AZ	150,000
White Mountain Apache Tribe	Whiteriver	AZ	150,000
Housing Assistance Corporation	Fresno	CA	400,000
Self-Help Enterprises	Visalia	CA	400,000
Imperial Valley Habitat For Humanity	El Centro	CA	400,000
Santa Ysabel Band of Diegueno Indians	Santa Ysabel	CA	400,000
Cultural Marketing Center	Fresno	CA	150,000
Relational Culture Institute	Fresno	CA	150,000
Bishop Paiute Tribe	Bishop	CA	142,212
Yolo Housing Foundation	Woodland	CA	69,872
Intertribal Economic Alliance	Boulder	CO	400,000
Everglades Community Association, Inc	Florida City	FL	400,000
Clay County Habitat for Humanity/Middleburg	Middleburg	FL	73,186
Florence Villa Community Development Corporation	Winter Haven	FL	150,000
Seminole Tribe of Florida	Hollywood	FL	150,000
Southwest United Empowerment Zone, Inc	Vienna	GA	400,000
JCVISION and Associates, Inc	Hinesville	GA	398,028
Crisp Area Habitat for Humanity, Inc	Cordele	GA	21,826
Maui Economic Opportunity, Inc	Wailuku	HI	150,000
Shoshone-Bannock Tribes	Fort Hall	ID	380,310
Coeru d'Alene Tribe	Plummer	ID	150,000
Original Town of Liberal Revitalization, Incorporated (OTLR), Inc	Liberal	KS	150,000
Frontier Housing, Inc	Morehead	KY	400,000
Southern Kentucky Economic Development Corporation (SKED)	Somerset	KY	400,000
Kentucky Housing Corporation	Frankfort	KY	400,000
Hazard Perry County Housing Development Alliance, Inc	Hazard	KY	150,000
Purchase Area Housing Corporation	Mayfield	KY	150,000
Owsley County Action Team	Booneville	KY	150,000
Low Income Housing Coalition East Kentucky, Inc	Prestonsburg	KY	84,000
Louisiana Technical College Tallulah Foundation	Tallulah	LA	150,000
Seventh District Pavilion, Inc	Crowley	LA	150,000
Growth Council of Oxford Hills	South Paris	ME	150,000
Penobscot Indian Nation	Old Town	ME	87,350
Pokagon Band of Potawatomi Indians	Dowagiac	MI	150,000
Choctaw Housing Authority	Choctaw	MS	400,000
Life Renewal Ministries, Inc	Starkville	MS	400,000
Mississippi Homebuyer Education Center-Mississippi Housing Initiative	Jackson	MS	150,000
Action for Eastern Montana, Inc	Glendive	MT	393,033
Kootenai River Development Council, Inc	Libby	MT	150,000
Native American Development Corporation	Billings	MT	150,000
Anaconda Local Development Corporation	Anaconda	MT	145,418
Eastern Band of Cherokee Indians	Cherokee	NC	400,000
Haliwa-Saponi Indian Tribe, Inc	Hollister	NC	399,580
Turtle Mountain Band of Chippewa	Abercrombie	ND	150,000
Ho-Chunk Community Development Corporation	Walthill	NE	350,000
West Central Nebraska Development District, Inc	Ogallala	NE	150,000
Women's Rural Entrepreneurial Network-WREN	Bethlehem	NH	400,000
Eastern Plains Housing Development Corporation	Clovis	NM	400,000
Dona Ana County Colonias Development Council	Las Cruces	NM	400,000
Pueblo of San Juan	San Juan Pueblo	NM	400,000
Las Cruces Affordable Housing, Inc	Las Cruces	NM	150,000
Centro Fuerza y Unidad, Dona Ana County, NM (CFU)	Mesquite	NM	139,920
Pueblo de Cochiti	Cochiti Pueblo	NM	150,000
Sandoval County Economic Development Corporation	Bernalillo	NM	150,000
Housing & Economic Rural Opportunity, Inc	Las Cruces	NM	150,000
Akwesasne Indian Housing Authority	Hogansburg	NY	395,034
Albany County Rural Housing Alliance, Inc	Voorheesville	NY	150,000
Bishop Sheen Ecumenical Housing Foundation, Inc	Rochester	NY	100,000
WSOS Community Action Commission, Inc	Fremont	OH	150,000
Jackson-Vinton Community Action, Inc	Wellston	OH	150,000
Citizen Potawatomi Nation	Shawnee	OK	400,000
Rural Enterprise of Oklahoma, Inc	Durant	OK	400,000
Umpqua Community Development Corporation	Roseburg	OR	65,000
Mennonite Economic Development Associates	Lancaster	PA	150,000
Waccamaw Regional Council of Governments	Georgetown	SC	150,000

Recipient	City	State	Award
South Carolina Center for Fathers and Families	Columbia	SC	150,000
Central South Dakota Enhancement District	Pierre	SD	146,423
Miner County Community Revitalization	Howard	SD	150,000
West Tennessee Legal Services, Inc	Jackson	TN	400,000
LeMoyne-Owen College Community Development Corporation	Memphis	TN	149,955
Douglass-Cherokee Economic Authority, Inc	Morristown	TN	149,237
Aid to Distressed Families of Appalachian Counties, Inc. (ADFAC)	Oak Ridge	TN	65,665
Proyecto Azteca	San Juan	TX	400,000
Azteca Community Loan Fund	San Juan	TX	400,000
Neighborhood Housing Services of Dimmit County, Inc	Carrizo Springs	TX	400,000
Community Development Corporation of South Texas, Inc. (CDCST)	McAllen	TX	400,000
El Paso Empowerment Zone Corporation	El Paso	TX	400,000
ACCION Texas, Inc	San Antonio	TX	150,000
Statewide Consolidated CDC	Beaumont	TX	149,717
Community Development Corporation of Utah	Salt Lake City	UT	400,000
Northwestern Band of Shoshone	Brigham City	UT	150,000
Neighborhood Nonprofit Housing Corporation	Logan	UT	150,000
Southeast Rural Community Assistance Project, Inc	Roanoke	VA	150,000
Southern Puget Sound Inter-Tribal Housing Authority	Shelton	WA	395,012
World Vision, Inc	Federal Way	WA	400,000
The Alesek Institute	Fife	WA	136,070
Spokane Tribe of Indians	Wellpinit	WA	150,000
Red Cliff ABND of Lake Superior Chippewas	Bayfield	WI	400,000
West Central Wisconsin Community Action Agency, Inc. (West CAP)	Glenwood City	WI	250,000
Northwoods Niijii Enterprise Community, Inc	Crandon	WI	150,000
Southern Appalachian Labor School	Kincaid	WV	400,000
Kanawha Institute for Social Research & Action, Inc. (KISRA)	Dunbar	WV	150,000
Total	.....	.....	24,619,153.

[FR Doc. E5–527 Filed 2–8–05; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Kaua'i Cave Arthropods: the Kaua'i Cave Wolf Spider (*Adelocosa Anops*) and the Kaua'i Cave Amphipod (*Spelaeorchestia Koloana*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service, we) announces the availability of the Draft Recovery Plan for the Kaua'i Cave Arthropods: the Kaua'i Cave Wolf Spider (*Adelocosa anops*) and the Kaua'i Cave Amphipod (*Spelaeorchestia koloana*) for public review and comment.

DATE: Comments on the draft recovery plan must be received on or before April 11, 2005.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (telephone: 808–792–9400) and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, at the above Service address. An electronic copy of the draft recovery plan is also available at *http>//endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Lorena Wada, Fish and Wildlife Biologist, at the above Service address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species; establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

Section 4(f) of the Endangered Species Act, (16 U.S.C. 1531 *et seq.*) requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during the public comment period on each new or revised recovery plan. Substantive technical comments may result in changes to a recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal agency or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

Two species of cave arthropod, the Kaua'i cave wolf spider and the Kaua'i cave amphipod, collectively the Kaua'i cave arthropods, are federally listed as endangered. These arthropods are only known from a small number of caves in the Kõloa District on the island of Kaua'i. Of the caves surveyed to date, the cave wolf spider has only been documented to occur in five caves, and currently is only observed regularly in one of these caves. The cave amphipod has been documented to occur in nine caves, and is currently observed regularly in two of these caves.

The Kaua'i arthropods occur in subterranean passages, cracks, and voids (mesocaverns) where there is little or no light penetrance and the relative humidity is high and constant (at or approaching 100 percent). These conditions are most frequently

encountered in the dark zones of caves and/or mesocaverns. Viable populations of these arthropods require a dependable source of nutrient input, typically in the form of roots from overlying perennial plants.

The primary threats to these species include: Small populations and restricted range; urban and agricultural development as well as quarrying operations; non-native species preying upon or competing with them for limited food resources; human visitation and uses of caves; urban and commercial pesticide; biocontrol agents; and extended drought which alters the high-humidity environment to which these arthropods are adapted, which also facilitates invasion by nonnative species.

Downlisting to threatened may be considered for both species when nine viable populations, spread across the known range, are shown to be: (1) Self-sustaining; (2) stable or increasing; (3) protected from non-native/predatory species, human visitation to caves, bio-control agents, pesticides, development or other damaging land uses; and (4) with the habitat being utilized in a fashion consistent with conservation, as evidenced by monitoring over a 10-year period.

Delisting of both species may be considered when 12 viable populations, spread across the known range, are shown to be: (1) Self-sustaining; (2) stable or increasing; (3) protected from non-native/predatory species, human visitation to caves, bio-control agents, pesticides, development or other damaging land uses; and (4) with the habitat being utilized in a fashion consistent with conservation, as evidenced by monitoring over a 20-year period. In addition, a post-delisting monitoring plan and agreement to continue post-delisting monitoring must be in place and ready for implementation at the time of delisting. Monitoring populations following delisting will verify the ongoing recovery and conservation of the species and provide a means of assessing the continuing effectiveness of management actions.

Public Comments Solicited

We solicit written comments on the draft recovery plan as described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 18, 2004.

David J. Wesley,

Acting Regional Director, Region 1.

[FR Doc. 05–2492 Filed 2–8–05; 8:45 am]

BILLING CODE 4310–55–P

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 Tribal-State Compacts between the Eastern Shawnee Tribe, the Choctaw Tribe, the Citizen Potawatomi Nation and the State of Oklahoma are considered to have been approved and are in effect.

DATES: *Effective Dates:* February 9, 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 these compacts before the date that is 45 days after the date these compacts were submitted. These compacts authorize Indian tribes to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), these compacts are considered to have been approved, but only to the extent they are consistent with IGRA.

Dated: January 28, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–2462 Filed 2–8–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489, ES–053126]

Group No. 38, Illinois; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers.

The lands we surveyed are:

Fourth Principal Meridian, Illinois

T. 8 S., Rs. 4 and 5 W.

The plat of survey represents the dependent resurvey of portions of the township boundaries, portions of the subdivisional lines and the survey of the Lock and Dam No. 24 acquisition boundary, in Township 8 South, Ranges 4 and 5 West, of the Fourth Principal Meridian, in the State of Illinois, and was accepted on January 28, 2005.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: January 28, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–2506 Filed 2–8–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska Region, Chukchi Sea/Hope Basin and Norton Basin Planning Areas

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for information and nominations.

SUMMARY: The Secretary's decision to consider offering the Chukchi Sea/Hope Basin Planning Area and the Norton Basin Planning Area in the OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month ''special-interest'' process beginning with

publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale for these separate planning areas. In the past MMS has issued separate Calls for these areas; however, because the areas are both ''special-interest areas'' and tentative process milestones are the same, the decision was made to combine the Calls.

DATES: Nominations and comments on the Call must be received on or before May 10, 2005.

FOR FURTHER INFORMATION CONTACT: Please call Phyllis Casey at (907) 334–5272 or Steve Flippen at (907) 334–5268 in MMS's Alaska OCS Region regarding questions on the Call.

SUPPLEMENTARY INFORMATION: The objective of this ''special-interest'' leasing option is to foster exploration in a frontier OCS area with potential oil and gas resources, but due to high economic costs, may have questionable industry interest. This allows us to offer the option, but with minimal upfront time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with sales in the Chukchi Sea/Hope Basin and the Norton Basin that would offer only very small, very focused areas of specific interest for exploration and to request nominations of such areas. The lease sales are being proposed to provide opportunities for industry to pursue the high resource potential of the Chukchi Sea area in conjunction with potential natural gas resources that may extend into the adjacent Hope Basin area. The Norton Basin may contain quantities of natural gas, which might be used for western Alaska communities if economically feasible. Comments are also being requested from the general public on this special-interest leasing process, including the terms and conditions of the sales. The MMS will consider all comments and nominations in the decisions on whether and where within the Chukchi Sea/Hope Basin or Norton Basin to proceed with leasing and on the terms and conditions of lease sale proposals. A decision to offer a nominated area for leasing will be conditioned on a commitment from industry to explore the area leased within a specific time period. Any lease sale would be open competitively to all qualified bidders.

This is the third Call issued for the Chukchi Sea/Hope Basin for this 5-year program. The first two Calls were published in the **Federal Register** on March 25, 2003, and January 30, 2004, respectively. No interest was expressed for either Call; therefore, the process was stopped and deferred to this year. If no interest is expressed in response to this third Call, Sale 193 may be called again later this year.

This is the fourth Call issued for the Norton Basin for this 5-year program. The first three Calls were published in the **Federal Register** on January 22, 2002, March 25, 2003, and January 30, 2004, respectively. No interest was expressed for any of these Calls; therefore, the process was stopped and deferred to this year. This is the last Call scheduled to be issued for Norton Basin in this 5-year program.

This Call does not indicate a preliminary decision to lease in the areas described below. If the MMS decides to proceed with the sale process, the MMS will make the final decision on the specific areas for possible leasing at a later date in the presale process and in compliance with the 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and the OCS Lands Act (OCSLA). The MMS may adjust the dimensions of a nominated area after discussions with the nominating company.

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCSLA, as amended (43 U.S.C. 1331–1356, [1994]), and the regulations issued thereunder (30 CFR part 256 and 30 CFR part 260); and in accordance with the OCS Oil and Gas Leasing Program 2002 to 2007, approved June 27, 2002.

2. Purpose of Call

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special-interest lands. The Call also serves to initiate public outreach to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with Sec. 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, ''* * * to insure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time.'' The objective of the ''special-interest'' leasing process is to encourage exploration in a frontier OCS area that might contain natural gas for potential use in local communities, as well as oil to meet national energy needs. The sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Chukchi Sea/Hope Basin and Norton Basin are sought from all interested parties. Comments are also being sought on the terms, conditions, and economic incentives of a sale in the Chukchi Sea/Hope Basin and Norton Basin. Industry and other interested parties are strongly encouraged to contact the MMS, Alaska OCS Region, Phyllis Casey at (907) 334–5272 or Steve Flippen at (907) 334–5268, with questions or to discuss interest in these areas. This early planning and consultation step is particularly important to this special-interest lands process. The MMS will base its decision on whether to proceed with the presale process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR part 256 and 30 CFR part 260. Commenters are also encouraged to submit comments and suggestions on the ''special-interest'' leasing process in general using this process.

This Call is being issued in accordance with the OCS Oil and Gas Leasing Program 2002 to 2007, approved June 27, 2002. The program offers two sales in the Chukchi Sea/Hope Basin during the 5-year program. If no interest is expressed in response to this third Call, Sale 193 will not be held for this 5-year program. However, a new Call for the Chukchi Sea/Hope Basin for Sale 203 is scheduled to be issued November 2005 with a tentative sale date in May 2007. No more than two rounds of lease issuance in the Chukchi Sea/Hope Basin were to occur during this 5-year program. This is the fourth Call issued for the Norton Basin Program Area. The first three Calls were published in the **Federal Register** on January 22, 2002, March 25, 2003, and January 30, 2004, respectively. No interest was expressed for any Call. This is the last Call scheduled for the Norton Basin in this 5-year program.

3. Description of Areas

Chukchi Sea/Hope Basin: This area is located offshore the State of Alaska in the Chukchi Sea, between Cape Krusenstern and Point Barrow. The Chukchi Sea area consists of approximately 6,155 whole and partial blocks (about 34 million acres). It extends offshore from about 10 to approximately 200 miles in water depths from about 32 feet to approximately 230 feet. A small portion

of the northeast corner of the area drops to approximately 3,000 feet. The Hope Basin area consists of approximately 1,243 whole and partial blocks (about 6½ million acres). It extends offshore from about 3 to approximately 110 miles in water depths from about 32 feet to approximately 230 feet.

Norton Basin: This area is located offshore the State of Alaska in the northern Bering Sea, west and south off the coast of the Seward Peninsula. It consists of approximately 4,742 whole and partial blocks (about 25 million acres). It extends offshore from about 3 to approximately 320 miles in water depths from about 25 feet to approximately 650 feet.

Page-size maps of the areas accompany this Notice. Large scale Call maps showing the boundaries of the areas on a block-by-block basis are available without charge from the Public Information Office at the address given below, or by telephone request at (907) 334–5206 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available at the following location: Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503.

In addition, the OPDs are available on the MMS Web site at *http://www.mms.gov/ld/alaska.htm.*

4. Instructions on Call

The Call for Information Maps and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the above address.

The Call maps delineate the areas that are the subject of this Call. Respondents are requested to indicate very specific areas of interest in and comment on the Federal acreage within the boundaries of the Call areas that they wish to have included in a proposed sale in the Chukchi Sea/Hope Basin or Norton Basin.

If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, in envelopes labeled *''Attn: Comments on Call for Information and Nominations for Proposed 2005 Lease Sale in Chukchi Sea/Hope Basin.''* or *''Attn: Comments on Call for Information and Nominations for Proposed 2005 Lease Sale in Norton Basin.''*, as appropriate.
- You may fax your comments to MMS at (907) 334–5242.
- You may also comment using Public Connect at: *https://ocsconnect.mms.gov/pcs-public.*
- Finally, you may hand-deliver comments weekdays between 8 am and 5 pm to the Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503.

Please note that all comments need to identify which areas they pertain to.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. *Areas of Interest to the Oil and Gas Industry.* Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify and offer only small-focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call maps by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call maps. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information. The telephone number and the name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. *Terms, Conditions, and Economic Incentives Pertaining to Lease Issuance.* Respondents are requested to comment on the terms, conditions, and economic incentives pertaining to lease issuance for any leases that may be issued as a result of a sale in the Chukchi Sea/Hope Basin or Norton Basin. The MMS is aware of the lack of infrastructure and distance from shore to some of the blocks in this area and will consider these factors in designing any incentives. The following are being considered for use in this sale:

—Lease term of 10 years
—Submission of an exploration plan within 8 years of lease issuance
—Economic incentives similar in form to those contained in the Notice of Sale for Beaufort Sea Sale 186 (68 FR 50549) and those proposed for Beaufort Sea Sale 195 (69 FR 61402). Incentives for Beaufort Sea Sale 186 were:
—Royalty suspension volumes for oil production (with possible consideration for gas)
—Reduced rental rates
—Lower minimum bid requirements

C. *Relation to Coastal Management Plans (CMPs).* Comments also are sought on potential conflicts with approved local CMPs that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

5. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. We will use responses to:

—Determine whether to proceed with a competitive oil and gas lease sale in the Chukchi Sea/Hope Basin or Norton Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the public outreach for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions/mitigating measures
—Identify potential conflicts between oil and gas activities and the Alaska CMP

6. Existing Information

An extensive environmental, social, and economic Studies program has been underway in the Alaska OCS Region since 1976, including studies in these

areas. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

The MMS has had two past sales in the Chukchi Sea area. In May 1988, Sale 109 was held and resulted in 350 leases being issued. In August 1991, Sale 126 was held and resulted in 28 leases being issued. There were four exploratory wells drilled, but all have been permanently plugged and abandoned. All 378 leases have since been relinquished or expired. No lease sales have been held in the Hope Basin area. The MMS has had one past sale in the Norton Basin area. In March 1983, Sale 57 was held and resulted in 59 leases being issued. There were six exploratory wells drilled, but all have been permanently plugged and abandoned. All 59 leases have been relinquished or expired. The Alaska OCS Region document ''Undiscovered Oil and Gas Resources, Alaska Federal Offshore, December 2000 Update'' (*www.mms.gov/alaska/re/uogr/uogr.pdf*), estimates the undiscovered conventionally recoverable resources at:

Area	Oil and NGL (BBO)			Gas (TCFG)			BOE (BBO)			MPhc
	F95	Mean	F05	F95	Mean	F05	F95	Mean	F05	
CHUKCHI SHELF	8.60	15.46	25.03	13.56	60.11	154.31	11.32	26.21	49.60	1.00
HOPE BASIN	0.00	0.09	0.28	0.00	3.38	11.06	0.00	0.69	2.25	0.61
NORTON BASIN	0.00	0.05 (NGL)	0.15	0.00	2.71	8.74	0.00	0.53	1.70	0.72

BBO, billions of barrels of oil and natural gas liquids; TCFG, trillions of cubic feet; BOE, total oil and gas in billions of energy-equivalent barrels (5,620 cubic feet of gas=1 energy-equivalent barrel of oil); reported MEAN, resource quantities at the mean in cumulative probability distributions; F95, the resource quantity having a 95-percent probability of being met or exceeded; F05, the resource quantity having a 5-percent probability of being met or exceeded; MPhc, marginal probability for hydrocarbons for basin, i.e., chance for the existence of at least one pool of undiscovered, conventionally recoverable hydrocarbons somewhere in the basin. Resource quantities shown are risked, that is, they are the product of multiplication of conditional resources and Mphc. All liquid resources in Norton basin are natural gas liquids that would only be recovered by natural gas production.

Information on the Studies program, completed studies, and a program status report for continuing studies in these areas is available on the MMS Web site at *http://www.mms.gov/alaska*, or may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 334–5230, or by written request at the address stated under Description of Area. A request may also be made via the Alaska OCS Region Web site at *www.mms.gov/alaska/ref/pubindex/pubsindex.htm.*

7. Tentative Schedules

If MMS receives specific nominations from industry in response to this Call and decides to proceed with the pre-sale process, the following is a list of tentative milestone dates applicable to a Chukchi Sea/Hope Basin and/or a Norton Basin sale in 2006:

	Tentative process milestones for proposed 2006 Chukchi Sea/Hope Basin Sale and Norton Basin Sale
Call published/public outreach initiated	February 2005.
Comments due on Call	May 2005.
Decision whether to proceed/Area Identification	June 2005.
NEPA analysis	February 2006.
Consistency Determination/Proposed Notice of Sale	May 2006.
Governor's Comments due	July 2006.
Final Notice of Sale published	August 2006.
Sale	September 2006.

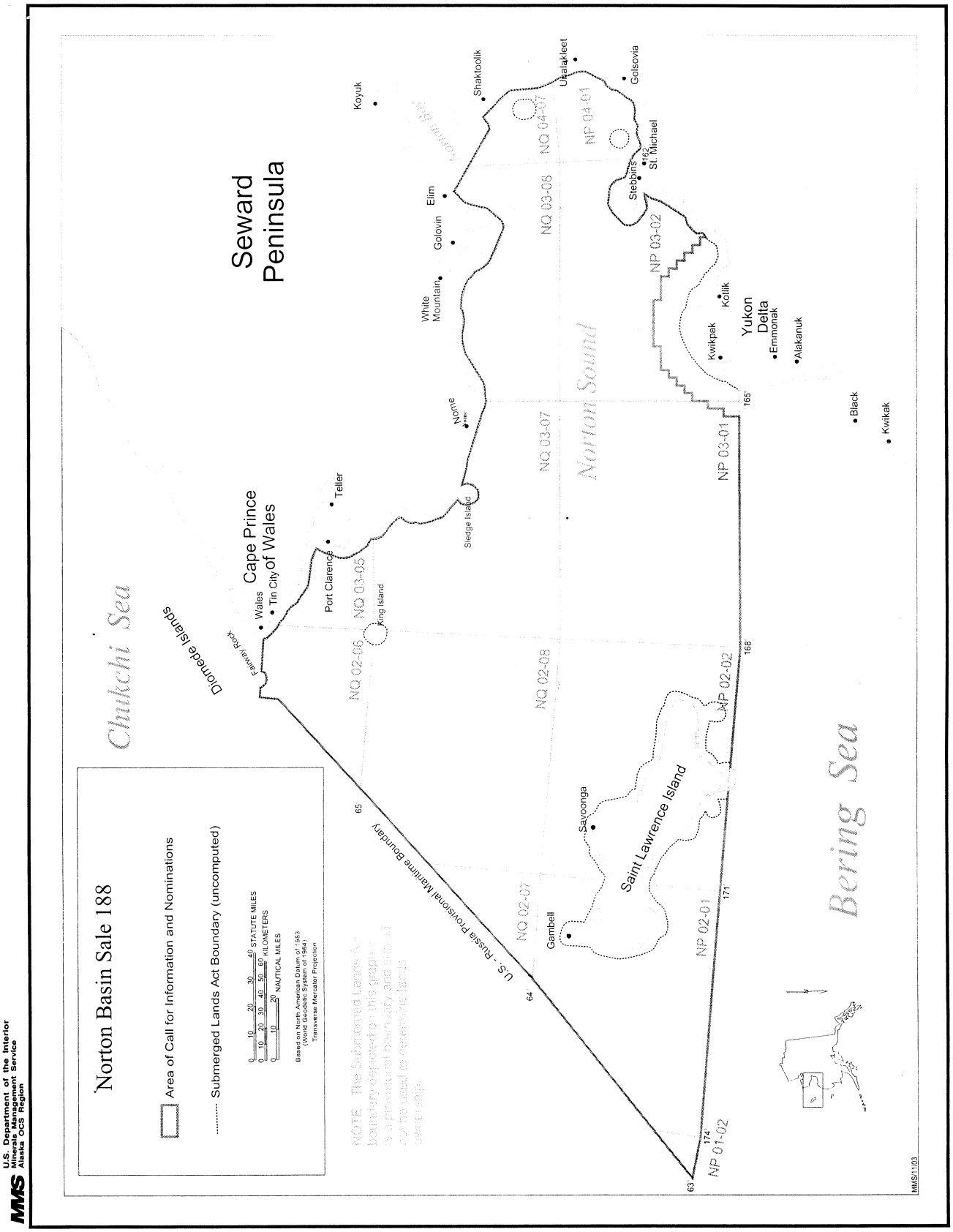
If MMS determines that an EIS might be required, this scheduled may be lengthened by 6 months.

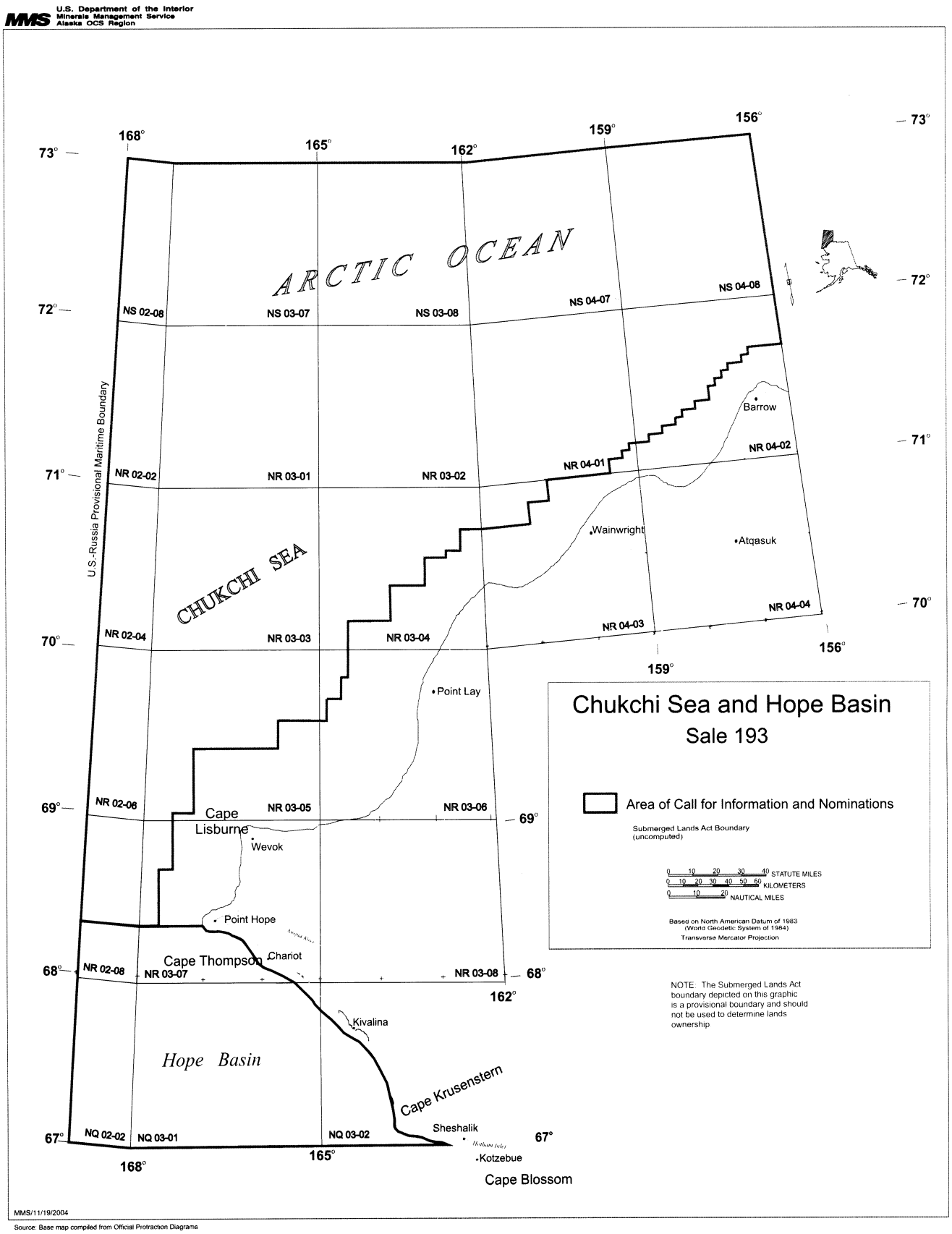
Approved: January 24, 2005.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P


Norton Basin Sale 188
Area of Call for Information and Nominations
Submerged Lands Act Boundary (uncomputed)
STATUTE MILES
KILOMETERS
NAUTICAL MILES
Based on North American Datum of 1983 (World Geodetic System of 1984) Transverse Mercator Projection
NOTE: The Submerged Lands Act boundary depicted on this graphic is of an unofficial nature and should not be used to determine lands ownership.
U.S. Department of the Interior
Minerals Management Service
Alaska OCS Region
MMS
Chukchi Sea
Diomede Islands
Cape Prince of Wales
Wales
Tin City
Fanway Rock
Port Clarence
Teller
King Island
Koyuk
Seward Peninsula
Shaktoolik
Unalakleet
Golsovia
Elim
Golovin
White Mountain
Nome
Sledge Island
Stebbins
St Michael
NQ 02-06
NQ 03-05
NQ 02-08
NQ 03-07
NQ 03-08
NQ 04-07
NP 04-01
NP 03-02
NP 03-01
NP 02-02
NP 02-01
NP 01-02
Norton Sound
Kotlik
Kwikpak
Yukon Delta
Emmonak
Alakanuk
Black
Kwikak
Sayoonga
Gambell
Saint Lawrence Island
U.S. - Russia Provisional Maritime Boundary
Bering Sea
63
64
65
165
168
171
174
MMS/11/03


MMS
U.S. Department of the Interior
Minerals Management Service
Alaska OCS Region
ARCTIC OCEAN
CHUKCHI SEA
Hope Basin
U.S.-Russia Provisional Maritime Boundary
NS 02-08
NS 03-07
NS 03-08
NS 04-07
NS 04-08
NR 02-02
NR 03-01
NR 03-02
NR 04-01
NR 04-02
NR 02-04
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NR 03-07
NR 03-08
NQ 02-02
NQ 03-01
NQ 03-02
Barrow
Wainwright
Atqasuk
Point Lay
Cape Lisburne
Wevok
Point Hope
Cape Thompson
Chariot
Kivalina
Cape Krusenstern
Sheshalik
Kotzebue
Cape Blossom
Chukchi Sea and Hope Basin
Sale 193
Area of Call for Information and Nominations
Submerged Lands Act Boundary
(uncomputed)
STATUTE MILES
KILOMETERS
NAUTICAL MILES
Based on North American Datum of 1983
(World Geodetic System of 1984)
Transverse Mercator Projection
NOTE: The Submerged Lands Act boundary depicted on this graphic is a provisional boundary and should not be used to determine lands ownership
MMS/11/19/2004
Source: Base map compiled from Official Protraction Diagrams

[FR Doc. 05–2523 Filed 2–8–05; 8:45 am]
BILLING CODE 4310–MR–C

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–505]

Certain Gun Barrels Used in Firearms Training Systems; Notice of Commission Issuance of a Limited Exclusion Order and a Cease and Desist Order Against a Respondent Found in Default

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order against a respondent found in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Beamhit, LLC, and Safeshot, LLC, both of Columbia, Maryland, and Safeshot, Inc., of New York, New York. 69 FR 12346 (March 16, 2004). The complainants alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gun barrels used in firearms training systems by reason of infringement of claims 1, 2, 4, 5, 8, 15, 21, 22, and 26 of U.S. Patent No. 5,829,180 (''180 patent'') and claims 1–3, 7, 9, 14–18, 20, 24, 27, 32, 33, 37–40, 44, 45, 49–51, and 54 of U.S. Patent No. 6,322,365 (''the '365 patent''). The complaint named Widec S.A. Décolletage (''Widec''), of Moutier, Switzerland, AMI Corp. SA (''AMI''), of Moutier, Switzerland, Crown AirMunition Holding, of Hilversum, The Netherlands, AirMunition International Corp. of Hilversum, The Netherlands, AirMunition Industries S.A., of Belprahon-Moutier, Switzerland, and AirMunition North America, Inc., of Norcross, Georgia as respondents.

On April 27, 2004, complainants filed a motion, pursuant to Commission Rule 210.16, for an order to show cause and entry of a default judgement against Crown AirMunition Holding, AirMunition International Corp., AMI Corp. SA, and AirMunition North America Inc. (collectively ''the AirMunition respondents''). The Commission investigative attorney (''IA'') supported the motion. None of the respondents responded to the motion. On May 12, 2004, the administrative law judge (''ALJ'') issued Order No. 6, requiring the AirMunition respondents to show cause why they should not be held in default, having not responded to either the complaint or the notice of investigation. The respondents did not respond to the show cause order. On August 16, 2004, complainants filed a motion for an order finding the AirMunition respondents in default due to the respondents' failure to respond to the ALJ's show cause order.

On September 21, 2004, the ALJ issued an ID finding the AirMunition respondents in default. Pursuant to Commission Rule 210.16(b)(3), the ALJ also found that the AirMunition respondents had waived their right to appear, be served with documents or contest the allegations in the complaint. No petitions for review of this ID were filed. On October 12, 2004, the ALJ's ID became the Commission's final determination after the Commission issued a notice indicating that it would not review the ID. On October 12, 2004, pursuant to Commission Rule of Practice and Procedure 210.16(c)(1), 19 CFR 210.16(c)(1), complainants filed a declaration seeking immediate entry of relief against the AirMunition respondents.

The complainants and the non-defaulting respondents, Widec and AMI, filed a joint motion to terminate the investigation as to Widec and AMI on September 2, 2004. The joint motion was based on a proposed consent order, filed pursuant to a settlement agreement and a limited license. The IA filed a response in support of the motion on September 13, 2004. The ALJ issued an initial determination (''ID'') on September 21, 2004, terminating the investigation as to Widec and AMI. No petitions for review of this ID were filed. On October 12, 2004, the Commission issued a notice indicating that it would not review the ID, thereby adopting the ALJ's ID as the Commission's final determination.

On November 10, 2004, the Commission requested that the parties brief the isssues of remedy, the public interest, and bonding with respect to the defaulting AirMunition respondents. On November 22, 2004, complainants and the IA submitted their main briefs, and on December 1, 2004, the complainants and the IA submitted reply briefs. Complainants and the IA both maintained that the appropriate remedy is a limited exclusion order and a cease and desist order.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to the defaulting AirMunition respondents. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c) 19 CFR 210.16(c), the Commission presumed the facts alleged in the amended complaint to be true.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain gun barrels used in firearms training systems by reason of infringement of one or more of the following claims: claims 1, 2, 4, 5, 8, 15, 21, 22, or 26 of the '180 patent or claims 1–3, 7, 9, 14–18, 20, 24, 27, 32, 33, 37–40, 44, 45, 49–51, or 54 of the '365 patent. The order covers certain gun barrels used in firearms training systems that are manufactured abroad by or on behalf of, or imported by or on behalf of the AirMunition respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission also determined to issue a cease and desist order prohibiting AirMunition North America Inc. from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for certain gun barrels covered by the above-mentioned claims of the '180 patent and '365 patent. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order and cease and desist

order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. [The Commission's orders were delivered to the President on the day of their issuance.]

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c)).

Issued: February 3, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2459 Filed 2–8–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–511]

Certain Pet Food Treats; Notice of Decision Not to Review an Initial Determination Granting Motion of Alan Lee Distributors, Inc. for Summary Determination of Non-Infringement; Termination of the Investigation as to Alan Lee Distributors, Inc.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) granting the motion of Alan Lee Distributors, Inc. (ADI) for summary determination of non-infringement in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 8, 2004, based on a complaint filed by Thomas J. Baumgartner and Hillbilly Smokehouse, Inc., both of Rogers, Arkansas. 69 FR 32044. The complaint alleges violations of section 337 of the Tariff Act of 1930, 337 U.S.C. § 1337, in the importation into the United States, sale for importation, or sale within the United States after importation of certain pet food treats that infringe U.S. Design Patent No. 383,886 (''the 886'patent''). The notice of investigation lists six companies as respondents, including ADI.

On December 13, 2005, ADI filed a motion for partial summary determination of non-infringement. Complainants filed a response in opposition to the motion. The Commission investigative attorney filed a response in support of the motion. On January 10, 2005, the ALJ issued an ID (Order No. 13) granting ADI's motion for summary determination. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and 210.42 (h)(3) of the Commission Rules of Practice and Procedure, 19 CFR § 210.42(h)(3).

Issued: February 3, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–2461 Filed 2–8–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested:

ACTION: 60-Day notice of information collection under review: Search for artifacts and memorabilia.

The Department of Justice (Department), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 11, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Osteika, New Building Projects Office, Suite 750, Techworld, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Search For Artifacts and Memorabilia.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The search document is used to aid the Historic Archives Program with discovering and obtaining artifacts and memorabilia pertaining to the history, mission, and

spirit of the Bureau of Alcohol, Tobacco, Firearms and Explosives to develop exhibits for the new National Headquarters building.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,900 respondents will complete a 10 minute search document.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 317 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: February 4, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–2484 Filed 2–8–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 4, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316) (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Veterans' Employment and Training Service.

Type of Review: Revision of a currently approved collection.

Title: VETS Manager's Report and SF–269A.

OMB Number: 1293–0009.

Frequency: Quarterly.

Affected Public: State, local, or tribal government.

Number of Respondents: 1,653.

Number of Annual Responses: 6,612.

Total Burden Hours: 25,918.

Estimated Time Per Response:

Report	Respondents	Frequency	Responses	Avg. time per responses (hours)	Burden
Manager's Report	1,600	Quarterly	6,400	4.00	25,600
SF 269A	53	Quarterly	212	1.50	318
Total:	1,653		6,612		25,918

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Manager's Report addresses the local employment service office's compliance with Federal law and regulations and performance with respect to services and priorities for veterans and other eligible persons.

The data from the SF–269A will be used by the Veterans' Employment and Training Service for program budgeting and administration purposes, and to meet the mandated reporting requirements.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E5–529 Filed 2–8–05; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–020)]

NASA Advisory Council, Financial Audit Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Financial Audit Committee (NFAC).

DATES: Friday, February 25, 2005, 10 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ermerdene Lee, Office of the Chief Financial Officer, National Aeronautics and Space Administration, Washington, DC 20546. (202) 358–4529, e-mail *elee1@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Committee Administration
—FACA/NAC Committee Requirements
—NASA 2004 Financial Audit Summary
—NASA Financial Management Improvement Plan
—Operation Clean Opinion

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before

receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information no less than 3 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information in advance by contacting Ermerdene Lee via e-mail at *elee1@hq.nasa.gov* or by telephone at (202) 358–4529.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–2448 Filed 2–8–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–016)]

NASA Summit Industry Panel 2005; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Summit Industry Panel 2005.

DATES: Wednesday, February 23, 2005, 1 p.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, Auditorium—West Lobby.

FOR FURTHER INFORMATION CONTACT: Mr. John White, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–5157. Persons with disabilities who require assistance should indicate this.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Vision for Space Exploration
—Integrated Space Operations Summit Update
—Industry Panel Team Activities

Attendees will be requested to sign a register. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: January 31, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–2447 Filed 2–8–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–021)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that TPH Acquisition, LLLP, D/b/a The Parts House, of 10321 Fortune Parkway, Bldg. 400, Jacksonville, FL 32256, has applied for an Exclusive license to practice the inventions described in NASA Case Number LAR–16324–1 for which a U.S. Patent was issued and LAR–16324–2 for which a Patent Application was filed, both entitled ''Self-Activating System And Method For Alerting When An Object Or A Person Is Left Unattended'' and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, Langley Research Center, Mail Stop 141, Hampton, VA 23681–2199. Telephone 757–864–2470; Fax 757–864–9190.

Dated: February 3, 2005.

Keith T. Sefton,

Deputy General Counsel (Administration and Management).

[FR Doc. 05–2513 Filed 2–8–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Literature (Reading in America): February 22, 2005, from Room 722. This meeting, from 1 p.m. to 2 p.m., will be closed.

Music (NEA Jazz Masters—Radio Project): February 22, 2005, from Room 703. This meeting, from 2 p.m. to 2:30 p.m., will be closed.

Theater (Shakespeare in American Communities): March 2, 2005, from Room 521. This meeting, from 2 p.m. to 2:30 p.m., will be closed.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506 or call (202) 682–5691.

Dated: February 5, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–2497 Filed 2–8–05; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 52, ''Early Site Permits (ESP); Standard Design Certifications; and Combined Licenses for Nuclear Power Plants''.

2. *Current OMB approval number:* 3150–0151.

3. *How often the collection is required:* On occasion and every 10 to 20 years for applications for renewal.

4. *Who is required or asked to report:* Designers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

5. *The number of annual respondents:* 2.666 (2 early site permit applicants, 2 combined license applicants, and 4 design certification applicants are expected over a 3 year period.).

6. *The number of hours needed annually to complete the requirement or request:* 205,161 hours.

7. *Abstract:* 10 CFR Part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit, and an operating license with conditions (combined licenses), manufacturing licenses, standard design approvals, and pre-application reviews of site suitability issues. Part 52 also establishes requirements for renewal of those approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information from the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, combined licenses, and manufacturing licenses for nuclear power plants.

Submit, by April 11, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate 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 or other forms of information technology?

A copy of the draft supporting statement 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. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 2nd day of February, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 05–2482 Filed 2–8–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through January 2006.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

James D. Foster,

Associate Director for Economic Policy, Office of Management and Budget.

Appendix C

(Revised January 2005)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January 2006. A copy of the updated appendix can be obtained in electronic form through the OMB home page at *http://www.whitehouse.gov/omb/circulars/a094/a94_appx-c.html*, the text of the main body of the Circular is found at *http://www.whitehouse.gov/omb/circulars/a094/a094.html*, and a table of past years' rates is located at *http://www.whitehouse.gov/omb/circulars/a094/DISCHIST–2005.pdf.* Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381).

Nominal Discount Rates. A forecast of nominal or market interest rates for 2005 based on the economic assumptions from the 2006 Budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-Year	5-Year	7-Year	10-Year	30-Year
3.7	4.1	4.4	4.6	5.2

Real Discount Rates. A forecast of real interest rates from which the inflation premium has been removed and based on the economic assumptions from the 2006 Budget is presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-Year	5-Year	7-Year	10-Year	30-Year
1.7	2.0	2.3	2.5	3.1

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 05–2474 Filed 2–8–05; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 14, 2005:

A Closed Meeting will be held on Tuesday, February 15, 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), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 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 closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, February 15, 2005, will be:

Formal orders of investigations;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature; and
Litigation 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) 942–7070.

Dated: February 7, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2662 Filed 2–7–05; 3:59 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–51125; File No. SR–PCX–2005–15)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating To Primary Only Orders

February 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2005, the Pacific Exchange, Inc. (''PCS'' and ''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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposed to amend its PCXE Rule 7.31(x) to provide that the Primary Only Order (''PO Order'') may apply to Nasdaq securities traded on the Archipelago Exchange (''ArcaEx'') facility, and may be either market or limit orders. The test of the proposed rule change is available on the PCX's Web site *(http://www.pacificex.com)*, at the PCX's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Section 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

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to amend PCXE Rule 7.31(x) to clarify that PO Orders may also apply to Nasdaq securities, and may be either market or limit orders.

Currently, PCXE Rule 7.31(x) defines PO Orders as market orders that are routed to the primary market, and applies only to exchange-listed securities.[3] ArcaEx proposes to expand the PO Order functionality to include Nasdaq securities and modify Rule 7.31(x) accordingly. As such, the Exchange proposes to delete the language in PCXE Rule 7.31(x), which limits the PO Order functionality to exchange-listed securities only and proposes minor changes to indicate that PO Orders may be either market or limit orders. Further, PO market orders in Nasdaq securities received prior to 6:28 a.m. PT will be marked ''OO'' (On-Open[4]) and will be routed to Nasdaq for possible participation in Nasdaq's Opening Cross. The unexecuted shares that are sent back to ArcaEx after the Market Order Auction[5] will be processed as regular market orders in the Core Session as described in PCXE Rule 7.37. Any PO Market orders marked OO that are sent back to ArcaEx before ArcaEx conducts the Market Order Auction will be cancelled back to the customer.

The Exchange believes that implementing these changes will

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] The Exchange currently interprets and will continue to interpret under this proposal the term ''primary market'' as the market which has the authority to declare a regulatory halt.

[4] ''On Open'' or ''OO'' is a marking recognized by the Nasdaq stock market as an order type executable only during Nasdaq's Opening Cross. Further, market orders sent with an ''OO'' designator are treated as market on-open orders by Nasdaq.

[5] *See* PCXE Rule 7.35.

provide investors and ETP Holders [6] with greater opportunities for executing orders on the opening. Further, the Exchange believes that the proposal is merely a minor technical change to the existing PO Order type to enable this functionality for Nasdaq securities and to expand its applicability to limit orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will 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.

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed modifications, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comment@sec.gov*. Please include File Number SR–PCX–2005–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. 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–PCX–2005–15 and should be submitted on or before March 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2478 Filed 2–8–05; 8:45 am]

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[6] *See* PCXE Rule 1.1(n).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51126, File No. SR–Phlx–2004–90

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Remote Streaming Quote Traders

February 2, 2005.

I. Introduction

On December 9, 2004, the Philadelphia Stock Exchange, Inc., (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a new category of options market-making participant on the Exchange, a Remote Streaming Quote Trader (''RSQT''). The Exchange also proposes to amend various Exchange rules to apply to and govern RSQTs. The proposed rule change was published for notice and comment in the **Federal Register** on December 27, 2004.[3] No comment letters were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Under the proposal, an RSQT would be a Registered Options Trader (''ROT'') that is a member or a member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit quotations electronically through the Exchange's Automated Options Market System (''AUTOM'') in eligible options to which such RSQT has been assigned.[4] An RSQT would be permitted to submit such quotations electronically only from off the floor of the Exchange.[5] Also, an RSQT would be permitted to trade in a market-making capacity only in classes of options in which he is assigned.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50877 (December 17, 2004), 69 FR 77295.

[4] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange listed equity options and index options orders to the Exchange trading floor. *See* Phlx Rule 1080.

[5] Phlx Rule 1014 defines an ROT as a regular member or a foreign currency options participant of the Exchange located on the trading floor. Notwithstanding this provision, an RSQT would be permitted to submit electronic quotations only from off the floor of the Exchange. *See* proposed Phlx Rule 1014(b)(ii)(B).

A. Appointment of RSQTs

The Exchange's Options Allocation, Evaluation and Securities Committee (''OAESC'') currently has the authority to appoint Streaming Quote Traders (''SQTs'')[6] under Phlx Rule 507 and to assign SQTs to one or more Streaming Quote Options.[7] Under the proposal, the OAESC would appoint and assign RSQTs in one or more Streaming Quote Options in a fashion similar to the current practice of appointing and assigning SQTs in Streaming Quote Options. Phlx Rule 507, which sets forth the solicitation, application, and review process to be followed by the OAESC in appointing SQTs, would be modified to include RSQTs.

The current requirements for SQT applicants under Phlx Rule 507 for assignment in Streaming Quote Options would apply to RSQT applicants as well. Specifically, RSQTs would be required to submit an application for assignment in writing to the Exchange. The proposed amendments to Phlx Rule 507(b)(ii) would mandate that no application for assignment as an RSQT in Streaming Quote Options would be approved by the OAESC without a written certification signed by an officer (Vice President or above) of the Exchange's Financial Automation Department[8] indicating that the RSQT applicant has sufficient technological ability to support his/her continuous quoting requirements as set forth in Phlx Rule 1014(b)(ii) and that the RSQT applicant has successfully completed, or is scheduled to complete, testing of its quoting system with the Exchange.

Phlx also proposes to approve and appoint RSQTs who demonstrate additional qualifications. Specifically, an RSQT applicant would be required to demonstrate that it has: (1) Significant market-making and/or specialist experience in a broad array of securities; (2) superior resources, including capital, technology, and personnel; (3) demonstrated history of stability, superior electronic capacity, and superior operational capacity; (4) proven ability to interact with order flow in all types of markets; (5) existence of order flow commitments; (6) willingness to accept assignments as an RSQT in options overlying 400 or more securities; and (7) willingness and ability to make competitive markets on Phlx and otherwise to promote Phlx in a manner that is likely to enhance the ability of Phlx to compete successfully for order flow in the options it trades.

The Exchange represents that any future changes to, or termination of, order flow commitments would not be used by the Exchange to terminate, or take remedial action against, an RSQT. Further, the Exchange would not take remedial action against an RSQT solely because orders subject to any such commitments were not subsequently routed to the Exchange. The Exchange also represents that the final factor listed above would not be applied in any way to restrict, either directly or indirectly, RSQTs' activities as market makers or specialists on other exchanges or to restrict how RSQTs handle orders to which they owe a duty of best execution.

Finally, proposed amendments to Phlx Rule 1014 would prohibit any person who is either directly or indirectly affiliated with an RSQT from being a specialist, RSQT, SQT, or non-SQT ROT[9] in options in which such affiliated RSQT is assigned. The purpose of this provision is to prevent multiple affiliated parties from quoting electronically in the same option and, thus, receiving multiple automatic allocations for the same or affiliated beneficial account owners.

B. Limitations on Access Due to Systems Constraints

Proposed amendments to Phlx Rule 507(b)(iii) would clarify that, as in the case of SQTs, the Exchange's Board of Governors may defer qualifying applications for RSQT status based on system constraints, capacity restrictions, or other factors relevant to the maintenance of a fair and orderly market. The basis for such deferral, however, would be required to have been objectively determined by the Board and subject to Commission approval or effectiveness pursuant to a filing under section 19(b) of the Act, as amended.[10] In such an event, the OAESC would be required to provide written notification to any SQT or RSQT applicant whose application is the subject of such limitation(s) or deferral, describing the objective basis for such (limitations) or deferral.

C. RSQT Obligations

Under the proposal, an RSQT would be required to quote continuous, two-sided markets in not less than 60% of the series in each Streaming Quote Option in which such RSQT is assigned.[11] An RSQT who receives Directed Orders (as defined in proposed Phlx Rule 1080(1)(i)(A)),[12] however, would be required to quote continuous, two-sided markets in not less than 100% of the series in each Streaming Quote Option in which such RSQT receive Directed Orders. Moreover, all RSQT quotations would be subject to the same minimum size requirement as that currently imposed on SQTs.

The proposal also would require an RSQT to maintain information barriers reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in options assigned to the RSQT or act as a specialist or market maker in any security underlying options assigned to the RSQT. Phlx further proposes to require that an RSQT comply with the requirements of Phlx Rule 1020 regarding restrictions on the flow of privileged information between the affiliate and the specialist organization.

D. Trade Allocation

Phlx Rule 1014(g)(vii) currently governs the allocation of trades executed in Streaming Quote Options traded on Phlx XL. Under the proposal, RSQTs would receive the same allocation under the algorithm described in the rule as SQTs. The proposal also provides that current rules applicable to out-of-crowd SQTs regarding participation in non-electronic orders traded in the crowd would apply to RSQTs. Specifically, an

[6] An SQT is a ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may submit such quotations only while such SQT is physically present on the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(A).

[7] Streaming Quote Options are the specific issues in which SQTs may generate and submit option quotations from on the floor of the Exchange. *See* Phlx Rule 1080(k).

[8] The Exchange's Financial Automation Department is responsible for the design, development, implementation, testing, and maintenance of the Exchange's automated trading systems, surveillance systems, and back office systems. It is also responsible for monitoring the quality of performance and operational readiness of such systems, in addition to user training and validation of user technology as it pertains to such users' interface with the Exchange's systems.

[9] A non-SQT ROT is a ROT who is neither an SQT nor an RSQT. *See* proposed Phlx Rule 1014(b)(ii)(C).

[10] 15 U.S.C. 78s(b).

[11] For example, if an RSQT is assigned in one Streaming Quote Option that includes five series (A, B, C, D, and E), such RSQT would be required to quote continuous, two-sided markets in three of those series in order to fulfill the 60% quoting requirement. If such an RSQT initially submits quotations in series A, B, and C, and the size associated with the quotation in Series A is exhausted, such SQT would be required either to refresh its quotation in Series A while continuing to submit quotations in Series B and C, or to submit new quotations in any three of the five series, in order to fulfill the 60% quoting requirement.

[12] *See* Securities Exchange Act Release No. 50856 (December 14, 2004) 69 FR 76817 (December 22, 2004) (notice of SR–Phlx–2004–91). The proposed provision regarding RSQTs who receive Directed Orders would have no relevance unless the separate proposal, that would create a Directed Order process, is approved by the Commission.

RSQT would not participate in a trade with a non-electronic order, unless the order is executed at the price quoted by the RSQT at the time of execution.

The proposal also would add a new definition of ''Actual Size'' to Phlx Rule 1014(g)(v)(B). A crowd participant's Actual Size would be defined as the number of contracts on which the person responsible for allocating the trade bases allocation of the order among crowd participations on parity. Specifically, for orders handled manually by the specialist, if at the time of the execution of an order in a particular series a specialist, SQT, or RSQT is disseminating an electronic quotation at the Exchange's disseminated price in that series, such specialist, SQT, or RSQT's disseminated size would be his or her Actual Size. The purpose of this provision is to establish a definition of Actual Size for specialists, out-of-crowd SQTs and RSQTs, whose electronically submitted quotations are on parity with other crowd participants. Because the rest of Phlx Rule 1014(g)(v) refers to allocation of orders to ''crowd participants'' on parity, such specialist, SQT, or RSQT are deemed a crowd participant for purposes of this definition.

E. Elimination of ''SQT Zones''

Commentary .05(b) to Phlx Rule 1014 provides that an SQT may be assigned to, and submit quotes electronically in, all of the options located within a specified physical zone on the Exchange Options Floor (''SQT Zone''). Because the entire Exchange floor is currently considered one SQT Zone, Phlx proposes to delete this provision. The elimination of this provision would allow SQTs and RSQTs to stream electronic quotations floor-wide.

F. Book Sweep

Phlx Rule 1080(c)(iii)(B) governs a feature of AUTOM known as ''Book Sweep'' as it relates to Streaming Quote Options traded on Phlx XL. When a specialist or an SQT has engaged Book Sweep and such specialist or SQT submits a quotation that locks or crosses a limit order on the book that represents the Exchange's best bid or offer, such limit order would be executed automatically up to the size associated with the specialist's or SQT's quotation.[13] Phlx proposes that an RSQT quotation would also initiate Book Sweep. Under the proposal, an RSQT also would be permitted to manually initiate Book Sweep by sending a manual quote in situations were the RSQT's automatic generation of electronic quotations is suspended due to, for example, a system malfunction.

G. Book Match

Book Match is a feature of AUTOM that currently provides automatic executions for inbound AUTOM-delivered customer and off-floor broker-dealer[14] orders against customer limit orders on the book. Phlx Rule 1080(g) states that, in Streaming Quote Options, the contra-side to automatically executed inbound eligible orders can be a limit order on the book or specialist and/or SQT electronic quotes (''electronic quotes'') at the disseminated price, where the Exchange's disseminated size includes a limit order on the book and/or electronic quotes at the disseminated price. Under the proposal, the contra-side to an inbound eligible order could also be an RSQT electronic quote.

H. Firm Quotations

The Exchange proposes to amend Phlx Rule 1082 in a number of ways to capture the firm quote requirements applicable to RSQTs. Phlx also proposes to clarify that if the Exchange's disseminated size in a particular series in a Streaming Quote Option is exhausted at that particular price level, and no specialist, SQT, or RSQT has revised his or her quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, the Exchange would automatically disseminate the specialist's most recent disseminated price prior to the time of such exhaustion with a size of one contract.

I. Additional Amendments

Finally, the proposal amends Phlx's rules to clarify the obligations that would apply to RSQTs. Because of the unique nature of an RSQT (*i.e.,* participating as an Exchange market maker from off the floor of the Exchange), the proposal would amend Phlx Rule 1014 and commentaries thereto to clarify the obligations that would apply to RSQTs. Moreover, the Exchange proposes to amend certain Exchange Option Floor Procedure Advices to make them applicable to RSQTs. Likewise, the Exchange proposes to amend Phlx Rule 1017 to permit RSQTs to participate in opening transactions by submitting electronic quotations to interact with opening orders. Lastly, the Exchange would amend Phlx Rule 1080, Commentary .01(b)(ii) to clarify that the specialist determine which options pricing model to select per option in non-Streaming Quote Options only.

III. Discussion

After careful review, 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[15] and, in particular, the requirements of section 6 of the Act.[16] Specifically, the Commission finds that the proposal to add a new category of options market-making participant, RSQT, to the Phlx XL trading platform is consistent with section 6(b)(5) of the Act[17] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

A. Appointment of RSQTs

RSQTs must meet the current requirements applicable for SQT applicants for assignment in Streaming Quote Options. The Commission believes that these requirements are consistent with the Act.

In addition, although RSQTs are expected to demonstrate additional qualifications, including willingness and ability to make competitive markets on Phlx and otherwise to promote Phlx in a manner that is likely to enhance the ability of Phlx to compete successfully for order flow in the options it trades, The Commission emphasizes that Phlx should not interpret this proposed obligation to in any way directly or indirectly restrict a market participant that is appointed as an RSQT on Phlx from performing market-making or specialist activities on other markets.

Under the proposal, RSQTs are also expected to demonstrate the existence of order flow commitments. The Commission notes, however, that any future change to, or termination of, order flow commitments may not be used by the Exchange to terminate, or take remedial action against, an RSQT. Also, the Exchange would not be permitted to take remedial action against an RSQT solely because orders

[13] Book Sweep functions only in situations where the Exchange's disseminated best bid or offer is represented by a limit order on the limit order book and such bid or offer is, or is equal to, the National Best Bid/Offer.

[14] Phlx Rule 1080(b)(i)(C) defines an ''off-floor broker-dealer'' as a broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer, including a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker.

[15] The Commission has considered the amended proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

subject to any such commitments were not subsequently routed to the Exchange.

Finally, Phlx rules prohibit any person who is either directly or indirectly affiliated with an RSQT from being a specialist, RSQT, SQT, or non-SQT ROT in options in which such affiliated RSQT is assigned. The Commission believes this prohibition is important because of the potential for allocations of trades to be based, in part, on a Phlx XL Participant's quote or order at the best bid or offer, not based on the size of such Participant's quote or order.[18]

B. Limitations on Access Due to Systems Constraints

In addition, the Commission notes that proposed amendments to Phlx Rule 507(b)(iii), which would allow the Exchange's Board of Governors to defer qualifying applications for RSQT status based on systems constraints, capacity restrictions, or other relevant factors, grant the Exchange no authority at this time. Specifically, the proposed amendments to Phlx Rule 507(b)(iii) would not permit Phlx to place any limitations on its members under this rule, unless such limitations were objectively established and filed with the Commission under section 19(b) of the Act.[19]

C. RSQT Obligations

Proposed Phlx Rule 1014 sets forth the obligations that an RSQT would be required to fulfill. Specifically, an RSQT would be required to quote continuous, two-sided markets in not less than 60% of the series in each Streaming Quote Option in which such RSQT is assigned. The Commission believes that these obligations for RSQTs are consistent with the Act. In particular, the Commission believes that RSQT's affirmative obligations are sufficient to justify the benefits they receive as market makers.[20] In this regard, the Commission believes that Phlx rules impose such affirmative obligations on RSQTs.

Under the proposal, an RSQT also would be obligated to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in options assigned to the RSQT or that act as a specialist or market maker in any security underlying options assigned to the RSQT. The Commission believes that the requirement that there be an information barrier between an RSQT and its affiliates should reduce the opportunity for unfair trading advantages and misuse of material, non-public information.

D. Trade Allocation

The Commission believes that the trade allocation algorithm that would apply to RSQTs is consistent with the Act. The Commission believes that treating RSQTs and SQTs the same under Phlx Rule 1014(g)(vii) should encourage RSQTs to quote competitively.

E. Book Sweep and Book Match

The Commission notes that Phlx proposes to include RSQT quotes in the Exchange's Book Sweep and Book Match features. The Commission believes that including RSQT quotes in Book Match, and allowing RSQT quotes to initiate Book Sweep, should result in customers receiving quicker, more efficient executives of trades.

F. Firm Quotations

The Commission believes that the proposed amendments to the Exchange's Firm Quote requirement are consistent with the Act. The Commission notes that, among other things, the proposal clarifies that the Exchange will automatically disseminate a quotation if the disseminated size in a particular series in a Streaming Quote Option is exhausted at that particular price level, and no specialist, SQT, or RSQT has revised its quotation immediately following the exhaustion. The Commission believes that this clarification more accurately describes the size for which the specialist is firm when the disseminated size in a particular series has been exhausted.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.[21]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Phlx–2004–90) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2476 Filed 2–8–05; 8:45 am]

BILLING CODE 8010–10–M

[18] *See* Securities Exchange Act Release No. 50788 (December 3, 2004), 69 FR 71860 (December 10, 2004) (SR–Phlx–2004–57).

[19] 15 U.S.C. 78s(b).

[20] For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange. *See* 12 CFR 221.5(c)(6).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51127; File No. SR–Phlx–2005–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Article III, Section 3–6 and Article IV, Section 4–1 of Its By-laws

February 2, 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 January 31, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Article III, Section 3–6 and Article IV, Section 4–1 its By-Laws to convert one of the On-Floor Equity Governor positions on the Board of Governors into a Philadelphia Board of Trade, Inc. (''PBOT'') representative Governor position.

The text of the proposed amendments to Article III, Section 3–6 and Article IV, Section 4–1 of the Exchange's By-laws is set forth below.

Italics indicate new text; brackets indicate deletions.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Article III

Sec. 3–6

Open Meetings of Nominating and Elections Committee—Recommendations—Notice

(a) The Nominating and Elections Committee shall hold at least two (2) open meetings during the month of January in each year for the purpose of receiving recommendations as to candidates for positions as On-Floor Governors. Recommendations for On-Floor Governors may be made by any member, participant or Member Organization Representative or by any member of the Nominating and Elections Committee then in office. *With respect to the On-Floor PBOT Governor, recommendations shall be submitted by the PBOT Board of Governors.* Recommendations may be submitted in writing or they may be presented in person. Notice of such meetings and of the period within which recommendations may be submitted in writing or presented in person shall be given by the Secretary of the Exchange to all members, participants and Member Organization Representatives.

(b) No change.

* * * * *

Article IV

Sec. 4–1

Number and Composition

The management of the business and affairs of the Exchange shall be vested in the Board of Governors. The Board of Governors shall be composed of the Chairman of the Board of Governors, who shall be the individual then holding the office of Chief Executive Officer of the Exchange, and 21 Governors as hereafter provided. There shall be five (5) Governors (On-Floor Governors) consisting of: [Two (2)] *One (1)* Governor[s] who [are] *is an* industry Governor[s] and [are] *is a* member[s] primarily engaged in business on the Exchange's Equity Floor or *a* general partner[s], executive officer[s] (vice president and above) or member[s] associated with *a* member organization[s] primarily engaged in business on the Exchange's Equity Floor (On-Floor Equity Governor[s]); *one (1) Governor who is an industry Governor and is a member of the Philadelphia Board of Trade (On-Floor PBOT Governor)*; one (1) Governor who is an industry Governor and is a member primarily engaged in business as a specialist on the Exchange's Equity Options Floor or a general partner, executive officer (vice president and above) or a member associated with a member organization primarily engaged in specialist business on the Exchange's Equity Options Floor (On-Floor Equity Options Specialist Governor); one (1) Governor who is an industry Governor and is a member primarily engaged in business as a registered options trader on the Exchange's Equity Options Floor or a general partner, executive officer (vice president and above) or a member associated with a member organization primarily engaged in registered options trader business on the Exchange's Equity Options Floor (On-Floor Equity Options Registered Options Trader Governor); and one (1) Governor who is an industry Governor and is a member primarily engaged in business on the Exchange's Equity Options Floor as a floor broker (On-Floor Equity Options Broker Governor). There shall be five (5) Governors (Off-Floor Governors) who are industry Governors and are general partners, executive officers (vice president or above), or members or participants associated with member or participant organizations which conduct a non-member or nonparticipant public customer business and shall individually not be primarily engaged in business activities on the Exchange Floor (Off-Floor Governors). There shall be eleven (11) nonindustry Governors, of whom at least five (5) shall be public Governors. There also shall be one (1) On-Floor and one (1) Off-Floor Vice Chairman of the Board of Governors.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

The purpose of the proposed rule change is to change the composition of the Phlx's Board of Governors to better reflect the Exchange's business by replacing an On-Floor Equity Governor position with a PBOT representative Governor position. PBOT is a subsidiary of the Exchange.

With regard to changes to By-Law Article III, Sections 3–6 and Article IV, Section 4–1, the proposed amendment converts an On-Floor Equity Governor position into that of a PBOT representative Governor position. Recommendations for the PBOT Governor position candidate would be submitted to the Nominating and Elections Committee by the PBOT Board of Governors.[3] The Phlx's Board of Governors believes that such a change in composition is appropriate to reflect the investment in and strategic initiatives regarding the Exchange's ownership interests in the PBOT. The Phlx believes that the new Board of Governors composition, with a PBOT representative Governor, would more accurately represent the strategic ownership and on-going business interests of the Exchange while still affording appropriate proportional representation of On-Floor Governors—three from the options trading floor, one from the equities trading floor and one from the PBOT.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(3) of the Act,[5] in particular, in that it assures a fair representation of its members in the selection of its directors and administration of its affairs and that it is designed, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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 solicited or received.

[3] To the extent that the proposed rule change runs counter to the Commission's recent governance and transparency proposals, Securities Exchange Act Release No. 50699 (November 18, 2004), 69 CFR 71125 (December 8, 2004), the Phlx will conform its By-laws accordingly. Telephone conversation among Scott Donnini, Vice President, Phlx, Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, Gordon Fuller, Counsel to the Assistant Director, Division, Commission and Geraldine Idrizi, Attorney, Division, Commission, on January 26, 2005.

[4] 15 U.S.C. 78f(b)

[5] 15 U.S.C. 78f(b)(3).

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 shall:

(a) By order approve such rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–Phlx–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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–11 and should be submitted on or before March 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–2477 Filed 2–8–05; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before April 11, 2005.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Robert Dillier, Public Affairs Specialist, Office of Communications, Small Business Administration, 409 3rd Street SW., Suite 7450, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert Dillier, Public Affairs Specialist, (202) 205–6086 *robert.dillier@sba.gov* Curtis B. Rich, Management Analyst, (202) 205–7030 *curtis.rich@sba.sba.*

SUPPLEMENTARY INFORMATION:

Title: ''U.S. Small Business Administration Advisory Committee Membership-Nominee Information.''

Description of Respondents: To collect information for Candidates for Advisory Council.

Form No: 898.

Annual Responses: 100.

Annual Burden: 100.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–2527 Filed 2–8–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10007 and # 10008]

Indiana Disaster # IN–00001 Disaster Declaration

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1573–DR), dated 01/21/2005.

Incident: Severe Winter Storms and Flooding.

Incident Period: 01/01/2005 and continuing.

Effective Dates: 01/21/2005.

Physical Loan Application Deadline Date: 03/22/2005.

EIDL Loan Application Deadline Date: 10/21/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/21/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Bartholomew	Benton	Blackford	Boone
Brown	Carroll	Cass	Clark
Clay	Clinton	Crawford	Daviess
Decatur	Delaware	Dubois	Floyd
Fountain	Gibson	Grant	Greene

[6] 17 CFR 200.30–3(a)(12).

Hamilton	Hancock	Harrison	Hendricks
Henry	Howard	Huntington	Jackson
Jay	Jennings	Johnson	Knox
Lawrence	Madison	Marion	Martin
Miami	Monroe	Montgomery	Morgan
Orange	Owen	Parke	Pike
Posey	Putnam	Randolph	Rush
Scott	Shelby	Sullivan	Tippecanoe
Tipton	Vanderburgh	Vermillion	Vigo
Wabash	Warren	Warrick	Washington
Wells	White		

Contiguous Counties:

Indiana		
Adams	Allen	Fayette
Franklin	Fulton	Jasper
Jefferson	Kosciusko	Newton
Perry	Pulaski	Ripley
Spencer	Wayne	Whitley
Illinois		
Clark	Crawford	Edgar
Edwards	Gallatin	Iroquois
Lawrence	Vermilion	Wabash
White		
Kentucky		
Daviess	Hardin	Henderson
Jefferson	Meade	Oldham
Trimble	Union	
Ohio		
Darke	Mercer	

The Interest Rates are:

Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	5.800
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.750

The number assigned to this disaster for physical damage is 100076 and for economic injury is 100080 (Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–2453 Filed 2–8–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses; SBA's Very Small Business Program or awarded through the SBA's 8(a) Business Development Program.

DATES: This waiver is effective February 24, 2005.

FOR FURTHER INFORMATI0N 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, SBA's Very Small Business Program or awarded through the 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 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 November 2, 2004 to waive the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing.

In response, on December 6, 2004, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing. In response to this notice, no comments were received from any interested parties. SBA has determined that there are no small business manufacturers of this class of product, and is therefore granting the waiver of the Nonmanufacturer Rule for Adhesives and Sealants Manufacturing, NAICS 325520.

Authority: 15 U.S.C. 637(a)(17).

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 05–2526 Filed 2–8–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice of meeting.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee (NPOAG ARC). This notice informs the public of the date, location, and agenda for the meeting.

Dates and Location: The NPOAG ARC will meet February 23–25, 2005, at the Holiday Inn Sunspree Resort, 520 Historic Nature Trail, Gatlinburg, TN 37738. The meeting will begin at 8:30 a.m. on Wednesday, February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Manager, Executive Resource Staff, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, or *Barry.Brayer@faa.gov*, or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO 80525, telephone (970) 225–3563, or *Karen_Trevino@nps.gov*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000, enacted on April 5, 2000, as Public Law. 106–181 (Pub. L. 106–181), required the establishment of a National Parks Overflights Advisory Group within 1 year after its enactment. The NPOAG was to be a balanced group representative of general aviation, commercial air tour operations, environmental concerns, and Indian tribes. The duties of the NPOAG included providing advice, information, and recommendations to the Director, NPS, and to the Administrator, FAA, on the implementation of Pub. L. 106–181, on quiet aircraft technology, on other measures that might accommodate interests to visitors to national parks, and, at the request of the Director and Administrator, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

On March 12, 2001, the FAA and NPS announced the establishment of the NPOAG (48 FR 14429). The advisory group has held five meetings: August 28–29, 2001, in Las Vegas, Nevada; October 4–5, 2002, in Tusayan, Arizona; October 20–21, 2003 in Jackson, Wyoming; March 18–19, 2004, in Boulder City, NV; and September 9–10, 2004, in Washington, DC.

On October 10, 2003, the Administrator signed Order No. 1110–138 establishing the NPOAG as an aviation rulemaking committee. The current members of the NPOAG ARC are Heidi Williams (general aviation), Richard Larew, Elling Halverson, and Alan Stephen (commercial air tour operations), Chip Dennerlein and Charles Maynard (environmental interests), and Germaine White and Richard Deertrack (Indian tribes). The FAA and NPS are soliciting two additional members to represent environmental interests.

Agenda for the February 23–25, 2005 Meeting

The NPOAG ARC will review tribal issues, prevention and mitigation of significant adverse environmental impacts, modifications to interim operating authority, new entrant operators and increased operations of existing operators, and quiet technology. A final agenda will be available the day of the meeting.

Attendance at the Meeting

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may accommodate your attendance.

Record of the Meeting

If you cannot attend the meeting, a summary record of the meeting will be made available through the National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 350, Ft. Collins, CO 80525, telephone (970) 225–3563.

Issued in Washington, DC, on February 2, 2005.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 05–2592 Filed 2–7–05; 12:52 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2005–20301]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The Federal Register Notice with a 60-day comment period soliciting comments was published on September 21, 2004.

DATES: Comments must be submitted before March 30, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. 5309 and 5307 Capital Assistance Programs (*OMB Number: 2132–0502*).

Abstract: 49 U.S.C. 5309 Capital Program and Section 5307 Urbanized Area Formula Program authorize the Secretary of Transportation to make grants to State and local governments and public transportation authorities for financing mass transportation projects. Grant recipients are required to make information available to the public and to publish a program or projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and be published in a newspaper circulated in the affected area. FTA also uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. The information submitted ensures FTA's compliance with applicable federal laws and OMB Circular A–102.

Estimated Total Annual Burden: 225,997 hours.

Addresses: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology,

Issued: February 3, 2005.

Ann M. Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 05–2472 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Traffic Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 6, 2004 [FR Doc. 04–17991, Vol. 69, No. 151, Page 47980].

DATES: Comments must be submitted on or before March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Marcia Tarbet at the National Highway Traffic Safety Administration, Office of Planning, Evaluation, and Budget (NOP–321), 202–366–2570, 400 Seventh Street, NW., 5208N, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Highway Crash Data Collection for the Evaluation of Antilock Brake Systems (ABS) and Rear Impact Guards on Heavy Vehicles.

OMB Number: 2127–0614.

Type of Request: Request for public comment on proposed collection of information.

Abstract: As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Federal Motor Vehicle Safety Standards (FMVSS) 105 (49 CFR 571.105) and FMVSS 121 (49 CFR 571.12) require ABS and a malfunction indicator lamp (MIL) on all new heavy vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or more. Implementation of the standards was performed over a three-year period; air-brake truck tractors manufactured on or after March 7, 1997, air-brake trailers and single-unit trucks manufactured on or after March 1, 1998, and hydraulic brake trucks manufactured on or after March 1, 1999.

FMVSS 223 (49 CFR 571.223) and 224 (49 CFR 571.224) set minimum requirements for the geometry, configuration, strength and energy absorption capability of rear impact guards on full trailers and semi-trailers over 10,000 pounds GVWR manufactured on or after January 26, 1998. NHTSA's Office of Planning, Evaluation, and Budget is planning a highway crash data collection effort that will provide adequate information to perform an evaluation of the effectiveness of ABS and rear impact guards for heavy trucks. This study will estimate the actual safety benefits (crashes, injuries, and fatalities avoided) achieved by the standards and provide a basis for assessing whether the standards are functioning as intended. Highway crash data will be analyzed to the extent that the experiences of heavy trucks equipped with ABS and rear impact guards can be compared with the experiences of heavy trucks not so equipped.

Affected Public: State and Local Governments in North Carolina.

Estimated Total Annual Burden: The annual burden is estimated to be 4,036 hours.

Addresses: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, February 2, 2005.

Noble N. Bowie,

Associate Administrator for Planning, Evaluation, and Budget.

[FR Doc. 05–2468 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–20046; Notice 1]

Bridgestone/Firestone North America Tire, LLC. Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North America Tire, LLC has determined that approximately 323 size 445/50R22.5 20 Ply, Load Range 'L', Bridgestone S892 tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' FMVSS No. 109 (S4.3(c)) requires that each tire shall have permanently molded into or onto both sidewalls the maximum load rating of the tire.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliance with S4.3(c) relates to the sidewall markings. Bridgestone/Firestone Tochigi, Japan Plant produced approximately 323 tires with incorrect markings. The noncompliant tires were marked: ''Max Load 4540 Kg (10,000 lbs.)@ 790 kPa (115 psi).'' The correct marking required by FMVSS No. 109 is as follows: ''Max Load 4625 Kg (10,200 lbs.)@ 830 kPa (120 psi).''

Bridgestone/Firestone believes that the noncompliance described herein is inconsequential as it relates to motor

vehicle safety because these tires are typically used on vehicles with tandem axles having a maximum load carrying capacity of 8,500 lbs. per tire (one side of the axle). Thus the tires can easily accommodate the load they will likely carry. The difference between actual and correct stampings is minimal compared to the practical 8,500 lbs. per tire application. Therefore, Bridgestone/Firestone believes this noncompliance is particularly unlikely to have an adverse affect on motor vehicle safety and is clearly inconsequential in that regard. The noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: March 11, 2005.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 2, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–2470 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20288, Notice 1]

Cross Lander USA; Receipt of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

In accordance with the procedures of 49 CFR part 555, Cross Lander USA (''Cross Lander'') has applied for a Temporary Exemption from the automatic restraint requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection.'' The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

I. Background

Cross Lander seeks to import and distribute a multipurpose passenger vehicle, the Cross Lander 244X, manufactured in Romania. According to the petitioner, the 244X was previously known as ''ARO,'' and was ''built for extreme off road use and such were used by many armies and NATO forces.'' Over 360,000 ARO vehicles were manufactured from 1957 until 1989. The petitioner describes the 244X as similar in off-road capability to Hummer H–1 vehicles manufactured by General Motors. Although Cross Lander has negotiated with an air bag manufacturer for the design and testing of an air bag system for its vehicle, completion of the air bag development is not economically viable without additional revenue generated through immediate sales of the 244X in the United States.

A description of the 244X is set forth in the petition (Docket No. NHTSA–2005–20288). For additional information on the 244X, please go to *http://www.crosslander4x4.com/.*

II. Why Cross Lander Needs a Temporary Exemption

Because of an unexpected change in the choice of engine equipped on the 244X, the Gross Vehicle Weight Rating (GVWR) of the 244X is less than 5,500 pounds. However, in preparing the 244X for sale in the United States, the petitioner anticipated that the vehicle would have a higher GVWR. Because a heavier vehicle would not have been subject to the applicable automatic restraint requirements of FMVSS No. 208, the petitioner was not prepared to equip the 244X with a suitable air bag system.

According to the petitioner, the cost of making the 244X compliant with FMVSS No. 208 on short notice is beyond the company's current capabilities. Thus, Cross Lander requests a two-year exemption in order to develop a compliant automatic restraint system.

The petition indicates that Cross Lander has invested over $2 million into the company. The petitioner's draft financial statements indicate a net loss of $653,307 for the fiscal year ending 12/31/2002, and a net loss of $383,633 for the for the fiscal year ending 12/31/2003.[1] Additionally, a 2004 cash flow analysis projects a net loss of $1,602,433.[2] The agency requested that Cross Lander provide updated financial statements for years 2002 through 2004 and will examine this information before arriving at our decision on this application.

The petitioner expected to derive initial revenue from sales of dealership licenses. However, if the Cross Lander MPV cannot be sold in the United States, no additional dealership licenses will be sold, and existing dealers would be entitled to a full refund. In short, the company would cease operations unless it is able to begin selling their product in the immediate future.

III. Why Compliance Would Cause Substantial Economic Hardship and How Cross Lander Has Tried in Good Faith To Comply With FMVSS No. 208 and the Bumper Standard

As previously discussed, the petitioner contends that failure to obtain a two-year exemption from the requirements of FMVSS No. 208 would result in Cross Lander closing its operations because it would not be able to sell any vehicles or maintain its dealer network.

Cross Lander examined several air bag manufacturers and chose Siemens to develop its air bag system. The estimated cost of developing an advanced air bag system to meet FMVSS No. 208 is $1.2 million. The project would take approximately 18 months.[3] Because Cross Lander has no current vehicles for sale in the United States, it is impossible to finance this project without a source of revenue. The petitioner contends that a two-year exemption would allow the Cross Lander to successfully develop a suitable air bag system.

IV. Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and the objectives of the Safety Act. Specifically:

1. The petitioner argues that the 244X is likely to be used extensively off-road and would not travel frequently on

[1] *See* Petition Attachment Draft Financial Statements (Docket No. NHTSA–2005–20288).

[2] *See* Petition Attachment 1 (Docket No. NHTSA–2005–20288).

[3] *See* Siemens Report, Attachment 2 (Docket No. NHTSA–2005–20288).

public roads. In fact, the vehicle is designed specifically for that purpose and is not equipped with many ''comfort features'' normally associated with everyday driving. The vehicle is also equipped with a special, heavy-duty suspension. Further, the vehicle's top speed is set relatively low at 70 mph.

2. The petitioner argues that a series of crash tests, including the dynamic FMVSS No. 214 test indicate that the 244X is ''very crashworthy.''

3. The petitioner suggests that over 100 people in the U.S. and 1,200 people in Romania may be in danger of losing their jobs if Cross Lander is forced to close its U.S. operations.

4. Finally, the petitioner states that 244X purchasers will be sufficiently warned about the lack of air bags. First, ''significant'' warning labels would inform the driver that the exempted vehicle is not equipped with air bags. Second, this information would also appear in the owner's manual. Third, an instructional video accompanying each 244X would again warn drivers that the vehicle does not come with air bags.

V. How You May Comment on Cross Lander Application

We invite you to submit comments on the application described above. You may submit comments [identified by DOT Docket Number NHTSA–2005–20288] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket in order to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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 you may visit *http://dms.dot.gov.*

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 11, 2005.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

FOR FURTHER INFORMATION CONTACT: George Feygin in the Office of Chief Counsel, NCC–112 (Phone: 202–366–2992; Fax 202–366–3820; E-Mail: *George.Feygin@nhtsa.dot.gov).*

Issued on: February 3, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–2473 Filed 2–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information 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 determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 11, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–357 is used by the policyholder to claim disability insurance on National Service Life Insurance and the United States Government Life Insurance policies. The information collected is used to determine the policyholders eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden Per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Dated: January 31, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2533 Filed 2–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0594]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information 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 on information needed to determine the type of educational benefit payable to Selected Reservist members.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 11, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0594'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: 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.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000.

Dated: January 31, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2534 Filed 2–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0568]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information 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 previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from accredited and nonaccredited educational institutions.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 11, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0568'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 previously 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.

Affected Public: Not-for-profit institutions, business or other for-profit.

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: January 31, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–2535 Filed 2–8–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on February 28–March 3, 2005, at the Watergate Hotel, 2650 Virginia Avenue NW., Washington, DC. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. each day.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the February 28 and March 2 sessions from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program and the administrative details of the review process. The meeting will be closed on February 28–March 3 from 9 a.m. to 5:30 p.m. for the Board's review of research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these project to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P). Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (202) 254–0054.

Dated: January 28, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–2537 Filed 2–8–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Grant an Exclusive License

AGENCY: Department of Veterans Affairs, Office of Research and Development.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs, Office of Research and Development, intends to grant to Marine Polymer Technologies, Inc., 102 Water Street, Danvers, MA 01923–3727 USA an exclusive license to practice U.S. Patent Application Serial No.10/257,176 filed October 10, 2002, entitled ''Compositions and Methods for Tissue Preservation'' and U.S. Patent Application Serial No. 09/546,860 issuing as U.S. Patent 6,569,615 B1, entitled ''Compositions and Methods for Tissue Preservation''.

DATES: Comments must be received within fifteen (15) days from the date of this published Notice.

ADDRESSES: Send comments to: Robert W. Potts, Director of Technology Transfer, Department of Veterans Affairs, Office of Research and Development Attn: 12TT, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 254–0260; Facsimile: (202) 254–0473; e-mail: *bob.potts@hq.mail.va.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *http://www.uspto.gov*.

SUPPLEMENTARY INFORMATION: It is in the public interest to so license this invention as Marine Polymer Technologies, Inc., submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the Department of Veterans Affairs Office of Research and Development receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Approved: January 31, 2005.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 05–2536 Filed 2–8–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,

February 9, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0033; AD–FRL–7969–9]

RIN 2060–AK51

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 11, 2002, pursuant to section 112 of the Clean Air Act (CAA), the EPA issued national emission standards to control hazardous air pollutants emitted from catalytic cracking units, catalytic reforming units, and sulfur recovery units at petroleum refineries. This action promulgates amendments to several sections of the existing standards. The amendments will change the affected source designations and add new compliance options for catalytic reforming units that use different types of emission control systems, new monitoring alternatives for catalytic cracking units and catalytic reforming units, and a new procedure for determining the metal or total chloride concentration on catalyst particles. The amendments will also defer technical requirements for most continuous parameter monitoring systems, clarify testing and monitoring requirements, and make editorial corrections.

DATES: The final amendments will be effective on April 11, 2005, unless we receive significant adverse comments by March 11, 2005, or by March 28, 2005 if a public hearing is requested. If such comments are received, we will publish a timely withdrawal in the **Federal Register** indicating which amendments, paragraph, or section will become effective and which amendments, paragraph, or section are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of the direct final amendments for which we do not receive adverse comment will become effective on April 11, 2005.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2002–0033, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* National Emission Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2002–0033. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form in Docket ID No. OAR–2002–0033 (or A–97–36), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0884, fax number (919) 541–3470, e-mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	32411	Petroleum refineries that operate catalytic cracking units, catalytic reforming units, or sulfur recovery units.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1561 of the NESHAP for petroleum refineries: Catalytic cracking units, catalytic reforming units, and sulfur recovery units. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's direct final rule amendments will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the direct final rule amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 11, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the final amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Comments. We are publishing the amendments as a direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendments contained in this direct final rule in the event that significant adverse comments are filed. If we receive any significant adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Direct Final Rule Amendments
A. How are we changing the affected source designations?
B. How are we changing the testing and monitoring requirements for catalytic cracking units?
C. What new procedure is available for determining the metal or total chloride concentration on catalyst particles?
D. What new alternative is available for calculating the volumetric flow rate of exhaust gases from catalytic cracking units?
E. What new monitoring alternative is available for a catalytic cracking unit with a wet scrubber if the unit is subject to the new source performance standards for petroleum refineries?
F. How are we clarifying the emission limitations for catalytic reforming units?
G. How are we changing the monitoring requirements for catalytic reforming units?
H. What new options are available for a catalytic reforming unit with an internal scrubbing system?
I. What new options are available for a catalytic reforming unit with a different type of control system?
J. How are we changing the requirements for continuous parameter monitoring systems?
K. What corrections are we making?
III. Summary of Non-Air Health, Environmental, Energy, and Cost Impacts
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

On April 11, 2002 (67 FR 17762), we issued the national emission standards for hazardous air pollutants (NESHAP) for catalytic cracking units (CCU), catalytic reforming units (CRU), and sulfur recovery units (SRU) at petroleum refineries (40 CFR part 63, subpart UUU). The NESHAP establish emissions limits for hazardous air pollutants (HAP) emitted from vents on the three types of process units, as well as work practice standards for by-pass lines. The NESHAP implement section 112(d) of the CAA by requiring all petroleum refineries that are major sources to meet standards reflecting the application of the maximum achievable control technology (MACT).

After publication of the NESHAP, two industry trade associations and various individual refineries raised issues and questions regarding the applicability of the NESHAP and the technical requirements for installation, operation, and maintenance of continuous parameter monitoring systems (CPMS). The industry representatives and a control technology manufacturer also requested that we clarify the requirements for CRU depressurizing and purging, add more compliance provisions for CRU with internal scrubbing systems, and include new provisions for CRU that use emission control technologies other than scrubbers. The industry representatives also requested clarification of various performance testing and monitoring provisions. Other questions were raised at an implementation workshop held in January 2003. Today's direct final rule amendments respond to the issues raised since promulgation and will reduce compliance uncertainties, encourage the use of new control technologies, and improve understanding of the NESHAP requirements.

In addition, since publication of the NESHAP, we have identified a number of minor technical and editorial errors requiring correction. Rather than publish a separate notice of corrections, we are including those changes along with the amendments.

II. Summary of the Direct Final Rule Amendments

A. How Are We Changing the Affected Source Designations?

One of the issues raised by the industry representatives concerns the language in 40 CFR 63.1562 where we identified the affected sources as each CCU that regenerates catalyst, each CRU that regenerates catalyst, and each SRU and the tail gas treatment unit serving it. In designating the affected source as the unit rather than the vent or group of vents on the unit (as originally proposed), we inadvertently made the NESHAP more stringent for some facilities, and these facilities did not have an opportunity to comment on the change. Therefore, we are revising the designation of affected sources to be

more consistent with the rule as proposed. The direct final rule amendments define the process unit affected sources as:

- The process vent or group of process vents on fluidized CCU units that is associated with regeneration of the catalyst used in the unit (*i.e.*, the catalyst regeneration flue gas vent).
- The process vent or group of process vents on CRU (including but not limited to semi-regenerative, cyclic, or continuous processes), that is associated with regeneration of the catalyst used in the unit. This affected source includes vents that are used during the unit depressurization, purging, coke burn, and catalyst rejuvenation.
- The process vent or group of process vents on Claus or other types of sulfur recovery plant units or the tail gas treatment units serving sulfur recovery plants that is associated with sulfur recovery.

B. How Are We Changing the Testing and Monitoring Requirements for Catalytic Cracking Units?

The initial compliance provisions in 40 CFR 63.1564(b)(1) require the owner or operator to install, operate, and maintain a CPMS according to the requirements in 40 CFR 63.1572 and Table 3 to subpart UUU. Facilities that are not subject to the new source performance standards (NSPS) for petroleum refineries and that elect to meet the particulate matter (PM) or nickel (Ni) limit in the NESHAP are required to monitor the gas flow rate to a wet scrubber. After promulgation, industry representatives recommended that we revise the CCU monitoring requirements to allow gas flow rate measurements before or after the control device. The direct final rule amendments revise the requirements in Table 3 to subpart UUU to allow measurement of the gas flow rate entering or exiting the control device. This change will improve implementation of the NESHAP and avoid unnecessary costs of changing current practices. The direct final rule amendments also revise the footnotes to Tables 3 and 7 to subpart UUU to change the citation for the alternative method for determining gas flow rate from 40 CFR 63.1573(a) to 40 CFR 63.1573(a)(1) to accommodate the new alternative for calculating the volumetric flow rate of exhaust gases when computing the PM emissions rate.

The initial compliance provisions in 40 CFR 63.1564(b)(2) require the owner or operator to conduct a performance test for certain CCU according to the requirements in Table 4 to subpart UUU. After promulgation, industry representatives recommended that we delete the sampling rate requirements cited for EPA Method 29 (40 CFR part 60, appendix A). According to the commenters, the sampling rate requirement is unnecessary because the method already includes appropriate sampling requirements. We agree and have deleted the 0.028 dry standard cubic meters per minute (dscm/min)/0.74 dry standard cubic feet per minute (dscf/min) sampling rate requirement from Table 4 to subpart UUU.

C. What New Procedure Is Available for Determining the Metal or Total Chloride Concentration on Catalyst Particles?

The owner or operator of a CCU subject to a Ni limit for inorganic HAP emissions must determine the equilibrium catalyst (E-cat) Ni concentration value during the initial performance test and at frequent intervals afterward for monitoring requirements. Several methods are currently used within the industry for this purpose and are referenced in the NESHAP, as well as any alternative method satisfactory to the Administrator. Industry experts and vendors recommended that the NESHAP allow a new procedure that was not fully developed at the time the NESHAP were promulgated. The direct final rule amendments add the new procedure, ''Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)'' to appendix A of subpart UUU. This procedure can be used to analyze catalyst particles (Ni compounds and total chlorides) from CCU, CRU, and other processes specified within EPA regulations. The direct final rule amendments revise Table 4 to subpart UUU to reference the new procedure.

D. What New Alternative is Available for Calculating the Volumetric Flow Rate of Exhaust Gases From Catalytic Cracking Units?

The initial compliance provisions in 40 CFR 63.1564(b)(4) require the owner or operator of a CCU subject to the PM limit in the NSPS for petroleum refineries to compute the PM emission rate using Equation 1 of 40 CFR 63.1564. This calculation requires measurement of the volumetric flow rate of exhaust gas from the catalyst regenerator (''Q_r''). The direct final rule amendments revise the definition of ''Q_r'' to refer to a new alternative procedure in 40 CFR 63.1573(a)(2) that can be used to determine the volumetric flow rate of exhaust gas. This procedure can be used by plants that have a gas analyzer installed in the catalytic cracking regenerator exhaust vent prior to the addition of air or other gas streams. The new alternative allows measurement of the flow rate after an electrostatic precipitator, but requires measurement of the flow rate before a carbon monoxide boiler.

E. What New Monitoring Alternative is Available for a Catalytic Cracking Unit With a Wet Scrubber if the Unit Is Subject to the New Source Performance Standards for Petroleum Refineries?

The NSPS for petroleum refineries (40 CFR part 60, subpart J) require a continuous opacity monitoring system (COMS) for a fluidized CCU to demonstrate continuous compliance with the opacity limit in 40 CFR 60.102(a)(2). Subpart UUU requires facilities that are already subject to the NSPS to meet the NSPS requirements, including the opacity limit and COMS requirements.

Technical experience has shown that COMS are not feasible for wet scrubber PM control systems. We have already acknowledged the technical problems associated with the use of COMS on wet scrubbers by requiring other monitoring methods (CPMS for pressure drop and liquid-to-gas ratio). However, these requirements apply under other compliance options and not to CCU already subject to the NSPS.

Some facilities with CCU subject to the NSPS use wet scrubbers to meet the PM limit and already have alternative monitoring requirements approved under the NSPS. For these reasons, one industry representative requested that the NESHAP accept alternative monitoring requirements that have already been approved under the NSPS. Therefore, we are adding a new paragraph (f) to 40 CFR 63.1573 to provide for use of the approved alternative under subpart UUU.

Monitoring alternatives for CCU subject to the NSPS that have already been approved may not meet the criteria for MACT standards. For example, the alternative may not include provisions for demonstrating continuous compliance such as meeting an operating limit, collecting and reducing monitoring data, and recordkeeping/reporting requirements. While we cannot automatically approve an alternative that we have not seen, we see no reason to require a second formal approval process for the same control system and emission limit. To this end, we have added procedures for requesting alternative requirements specific to this situation.

We are requiring that an owner or operator submit a copy of the approved alternative monitoring method in the notification of compliance status (or

before), along with a brief description of the continuous monitoring system, the applicable operating limit, and the continuous compliance requirements. We will contact you within 30 calendar days after receipt, to tell you if the alternative is approved. This alternative does not eliminate your responsibility to comply with the opacity limit, which would remain applicable for enforcement purposes. This option is not available to facilities that elect to comply with the NSPS requirements in subpart UUU. These facilities must request an alternative monitoring method under the procedures in 40 CFR 63.8(f).

F. How Are we Clarifying the Emission Limitations for Catalytic Reforming Units?

The requirements for organic HAP emissions in 40 CFR 63.1566(a)(3) state that the CRU emissions and operating limits in Tables 15 and 16 to subpart UUU apply to emissions from process vents that occur during depressuring and purging operations. The NESHAP specify in 40 CFR 63.1566(a)(4) that the limits do not apply to depressurizing and purging operations when the reactor vent pressure is 5 pounds per square inch (psig) or less. Applicable process vents include those used during unit depressurization, purging, coke burn, catalyst rejuvenation, and reduction or activation purge. Industry representatives noted the current language is unclear as to whether the limits apply only to the initial depressurization cycle or include subsequent depressuring and purging cycles when the reactor pressure is greater than 5 psig. In response, we are amending 40 CFR 63.1566(a)(3) to clarify our intent regarding the control of organic HAP emissions from CRU depressurizing and purging.

Our intent in the NESHAP was that the organic HAP requirements apply to the initial depressuring and catalyst purging operations that occur prior to coke burn-off. Organic HAP emissions are expected during the initial depressurization and catalyst purge cycles. No additional organic HAP emission controls are used during coke burn-off, beyond the combustion process inherent during this process, and our data indicate there are minimal organic emissions from coke burn-off and subsequent CRU regeneration cycle purges.

Industry representatives suggested that we limit the applicability of the emissions limit to only the initial depressuring and first nitrogen purge. We do expect that, after some number of purges, the HAP concentration in the purge may be less than the required outlet HAP concentration from a combustion control device. Under the NESHAP, all purges greater than 5 psig go to a combustion control device (or equivalent combustion device), regardless of the HAP concentration in the affected stream.

Initially, we attempted to specify the number of purges to be controlled because the organic HAP emissions would generally be very low beyond the first or second purge. However, our information indicates that the purging processes vary widely (*e.g.*, different systems use different purge gases, different purge temperatures, and different amounts of purge gas per unit of catalyst). Consequently, specifying the number of purges that must be controlled does not necessarily reflect a performance level. Additionally, recent data show that, for some CRU purge conditions, subsequent purges after the initial nitrogen purge may contain substantial amounts of benzene—on the order of 100 parts per million by volume (ppmv), which translates to emissions of about 1 ton per year (tpy). For other process purging conditions, however, subsequent purges have very low levels of HAP. We concluded that mandating specific purging conditions would reduce operator flexibility and would make compliance, for certain CRU processes, to be technically infeasible. We decided, therefore, to clarify that uncontrolled purging operations greater than 5 psig are acceptable if the total organic carbon (TOC) concentration is less than the currently required outlet concentration of a combustion control device (*i.e.*, less than 20 ppmv), and to provide compliance options for these purges.

Furthermore, the background information supporting the performance achievable by a combustion control device indicates that the 20 ppmv emissions limit was established ''by compound exit concentration'' rather than by a specified indicator of TOC, such as propane. As the primary HAP of concern from these CRU depressuring and purging vents is benzene, it is more appropriate to establish the 20 ppmv emission limit as hexane (*i.e.*, a C_6 hydrocarbon) rather than as propane. We are, therefore, changing the CRU TOC concentration requirements (which are used as a surrogate for organic HAP) to 20 ppmv TOC or nonmethane TOC (dry basis as hexane), corrected to 3 percent oxygen. This applies to both the concentration limit for the control device and the concentration limit for emissions discharged directly to the atmosphere.

This approach adds compliance options for ''uncontrolled'' purging cycles that are greater than 5 psig and less than 20 ppmv TOC (dry basis as hexane). First, the purging conditions used by the plant to remove organic HAP from the CRU catalyst during controlled purges prior to direct release to the atmosphere must be specified in the operation, maintenance, and monitoring plan. An initial performance test is conducted on the first directly released catalyst purge (following the purging conditions specified in the plan) to demonstrate that the purges specified in the plan effectively achieve the required emission limit. Subsequently, adherence to the purging procedures as specified in the plan is used to demonstrate continuous compliance.

Industry representatives also requested that we clarify the emission limits for organic HAP emissions from CRU in 40 CFR 63.1567(a) to indicate which limits apply when different reactors in the CRU are regenerated in separate regeneration systems. The direct final rule amendments state that, in this case, the emission limits in Table 22 to subpart UUU apply to each separate regeneration system. The direct final rule amendments also clarify that the TOC outlet concentration limit is 20 ppmv dry basis as hexane.

In response to industry comments, we expanded the number of test methods that can be use to measure organic HAP emissions. For the 98 percent mass emission reduction standard, you can use EPA Method 25 in 40 CFR part 60, appendix A, to directly measure nonmethane TOC as carbon or the combination of EPA Methods 25A and 18 in 40 CFR part 60, appendix A, to determine nonmethane TOC emissions. If the outlet TOC concentration is expected to be less than 50 ppmv (as carbon), you can use EPA Method 25A to measure the TOC concentration as hexane. For the 20 ppmv concentration limit, you can measure the TOC concentration using EPA Method 25A or determine the nonmethane TOC concentration using the combination of Methods 25A and 18. We made changes to the equations in 40 CFR 63.1564 and relevant tables to make these distinctions. We also added a definition of ''nonmethane TOC'' to 40 CFR 63.1579.

The direct final rule amendments also clarify the inorganic HAP emission and operating limits to indicate that the requirements apply to each applicable CRU process vent during coke burn-off and catalyst rejuvenation. In response to industry comments, we are also changing the compliance equations in

40 CFR 63.1567 to allow for hydrogen chloride (HCl) measurements below detectable limits of the method after correction for oxygen content.

G. How Are we Changing the Monitoring Requirements for Catalytic Reforming Units?

The NESHAP allow plants to measure and record the pH of the water (or scrubbing liquid) exiting the scrubber at least once an hour as an alternative to a pH CPMS. After promulgation, industry representatives recommended that we allow alkalinity measurements as an alternative to pH. Alkalinity measurements are more reliable because they give the actual acid content of the water (or scrubbing liquid) while pH measurements indicate only how much (more or less) acid is needed. We agree and have changed 40 CFR 63.1573(b) to allow plants to measure and record the alkalinity of the water (or scrubbing liquid) exiting the wet scrubber at least once an hour during coke burn-off and catalyst rejuvenation using titration as an alternative to a CPMS. We have also changed Tables 23, 24, 25, and 28 to subpart UUU to include the alternative for alkalinity measurements. In response to industry comments, we have also allowed the pH alternative to apply to CRU meeting the HCl percent reduction standard.

The NESHAP allow plants to measure the catalytic regenerator exhaust gas flow rate from a CCU as an approved alternative to a CPMS if the unit does not introduce any other gas streams into the catalyst regeneration vent (*i.e.*, complete combustion units with no additional combustion devices). In response to industry comments, we have expanded the alternative in 40 CFR 63.1573(a) to apply to CRU that operate as a constant pressure system during the coke burn and rejuvenation cycles.

After promulgation, industry representatives recommended that we also expand the CRU monitoring requirements to allow gas flow rate measurements before or after the control device. We agree and have changed Tables 24 and 25 of subpart UUU accordingly.

In response to questions raised at implementation workshops for plant personnel, we have added provisions to the performance test requirements for CRU to reflect differences among semi-regenerative, cyclic, and continuous processes. The direct final rule amendments require plants to test semi-regenerative and cyclic units during the coke burn-off and catalyst rejuvenation cycle. However, the tests cannot be done during the first hour or the last 6 hours of the cycle for a semi-regenerative unit, or during the first hour or the last 2 hours of the cycle for a cyclic regeneration unit. Plants must conduct the performance test for a continuous regeneration unit no sooner than 3 days after the process unit or control system startup.

H. What New Options Are Available For a Catalytic Reforming Unit With an Internal Scrubbing System?

Industry representatives expressed concern that the NESHAP do not contain provisions allowing a CRU with an internal scrubbing system to meet the percent reduction standard instead of the concentration limit for HCl emissions.

The direct final rule amendments change the rule language related to the HCl emissions limits (and other provisions) by removing the phrase ''using a control device.'' These changes allow CRU with an internal scrubbing system or alternative emissions reduction technique to meet either the percent reduction standard or concentration limit. To improve understanding of the NESHAP, we have added a definition for ''internal scrubbing system.'' The direct final rule amendments also add provisions to Tables 23 through 28 to subpart UUU for CRU with an internal scrubbing system meeting the HCl percent reduction standard and CRU with a fixed-bed or moving-bed gas-solid adsorption system.

The direct final rule amendments establish operating limits and compliance provisions specific to CRU with an internal scrubbing system meeting the HCl percent reduction standard. The operating limits require plants to maintain the daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system and the daily average liquid-to-gas ratio at or above the limit established during the performance test. Plants must conduct performance tests to demonstrate initial compliance with the applicable HCl emission standard and to establish operating limits. Performance test procedures are given for each type of system. To demonstrate continuous compliance, plants must install, operate, and maintain CPMS to monitor during coke burn-off and catalyst rejuvenation, the daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system, and the daily average liquid-to-gas ratio. Plants may use pH strips as an approved alternative to a pH CPMS, or discrete titration as an alternative to a CPMS for alkalinity.

I. What New Options Are Available For a Catalytic Reforming Unit With a Different Type of Control System?

Industry representatives and technology vendors expressed concern that the NESHAP do not include compliance provisions for continuous CRU that may use process modifications, pollution prevention control techniques, or alternative control systems other than internal or external (add-on) wet scrubbers to comply with the emission limitations. A refinery process design firm provided data indicating that gas-solid adsorption systems can meet the HCl emission limitations for CRU. The system also acted as a pollution prevention technique by reducing the total amount of chloriding agent needed during catalyst regeneration. The direct final rule amendments add provisions to accommodate these control scenarios. The new provisions improve the NESHAP by encouraging the use of new technologies that meet the MACT level of control.

Plants with a fixed-bed gas-adsorption system must meet two operating limits during coke burn-off and catalyst rejuvenation:

- The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test; and
- The HCl concentration in the adsorption system exhaust gas must not exceed the limit established during the performance test.

Plants must conduct a performance test to demonstrate initial compliance and to establish operating limits. To demonstrate continuous compliance, plants must install, operate, and maintain CPMS to monitor the daily average temperature of the gas entering or exiting the adsorption system. In addition, plants must monitor HCl during coke burn-off and catalyst rejuvenation using a colormetric tube sampling system to measure the concentration in the adsorption system exhaust and at a point within the adsorbent bed not to exceed 90 percent of the total length of the bed. If the HCl concentration at the sampling location with the adsorption bed exceeds the operating limit, plants must follow the procedures in their operation and maintenance plan. These procedures must require, at a minimum, that plants remeasure the HCl concentration at both the adsorption system exhaust and at the sampling location within the adsorbent bed and replace the sorbent material in the bed before the next regeneration cycle if the HCl

concentration at either location is above the operating limit.

The direct final rule amendments also establish operating limits and compliance provisions for CRU with moving-bed gas-solid adsorption systems. The operating limits are:

- The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test;
- The weekly average chloride level on the sorbent entering the adsorption system must not exceed the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ system); and
- The weekly average chloride level on the sorbent exiting the adsorption system must not exceed the design or manufacturer's recommended limit (1.8 weight percent for the Chlorsorb™ system).

Plants must conduct a performance test to demonstrate initial compliance and to establish an operating limit for the daily average gas temperature. To demonstrate continuous compliance, plants must monitor the daily average gas temperature using a CPMS. To demonstrate continuous compliance with the operating limits for chloride level, plants must collect and analyze samples of the sorbent entering and exiting the system for total chloride concentration using the new procedure, ''Determination of Metal Concentration on Catalyst Particles (Instrument Analyzer Procedure)'' in appendix A of these direct final amendments or the specified methods in EPA Publication No. SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (Revision 5, April 1998). Plants must determine and record the weekly chloride content and maintain the weekly average chloride content below the design operating limits.

J. How Are We Changing The Requirements For Continuous Parameter Monitoring Systems?

The technical specifications for CPMS in Table 41 to subpart UUU were added to the NESHAP after proposal based on provisions we have included in other NESHAP. We included these provisions to ensure that CPMS are installed, calibrated, and operated in a manner that would yield accurate and reliable information on the performance of control devices. Industry representatives objected to the inclusion of such detailed requirements after proposal with no opportunity to comment on the provisions.

We have decided not to include the performance specifications for CPMS in the rule at this time. As discussed in the preamble to the Generic MACT NESHAP amendments (67 FR 46260, July 12, 2002), we are currently developing Performance Specification (PS–17) for CPMS and quality assurance procedures that will apply to all sources subject to NESHAP under 40 CFR part 63. A proposed rule for these specifications is expected to be available in 2005. This approach will avoid the possibility that the specifications ultimately issued for all NESHAP differ significantly from those in the Petroleum Refineries NESHAP.

The NESHAP state that each CPMS must be installed, operated, and maintained according to the requirements in Table 41 of subpart UUU and in a manner consistent with the manufacturer's or other written procedures that provide adequate assurance that the equipment will monitor accurately. The amendments remove the reference to Table 41 from 40 CFR 63.1572(c) for those CPMS that will be covered by PS–17 and quality assurance procedures. Until PS–17 is available, facilities must install, operate, and maintain CPMS in a manner consistent with the manufacturer's or other written procedures that provide adequate assurance that the equipment will monitor accurately.

Table 41 to subpart UUU also contains requirements for pH strips and colormetric sampling systems. These requirements were added to the NESHAP in response to comments and are not expected to be covered by the new PS–17 and quality assurance procedures. Consequently, we have not removed these requirements from the table.

K. What Corrections Are We Making?

We are correcting numbering errors and citations in several sections of the NESHAP. We are also amending the rule to correct publication errors in various tables.

We are correcting a unit conversion error in Tables 1 through 3 to subpart UUU. These tables cite the incremental PM emission rate for discharged gases that pass through an incinerator or waste heat boiler in which auxiliary or supplemental liquid or solid fossil fuel is burned as 43.0 grams per Megajoule of heat input attributable to the liquid or solid fossil fuel. The corrected value is 43.0 grams per Gigajoule; no change is being made to the English unit equivalent limit (0.10 pound per million British thermal units). We are making several minor corrections to these tables to ensure that both limits are cited consistently and accurately.

We are correcting Table 5 to subpart UUU to list the proper test methods required for PM performance tests for metal HAP emissions. The amended table requires EPA Method 5B or 5F (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for a unit without a wet scrubber; EPA Method 5B is required to determine PM emissions and associated moisture content for a unit with a wet scrubber.

We are correcting Table 6 to subpart UUU to specify the use of Equation 1 (the proper equation for calculation of coke burn-off) rather than Equation 2.

We are correcting Table 18 to subpart UUU to correct a typographical error in a cross reference to certain requirements for flares in the NESHAP General Provisions (40 CFR part 63, subpart A).

We are correcting Tables 31, 33, and 34 to subpart UUU to clarify the monitoring and compliance requirements for a sulfur recovery unit subject to the TRS limit. Under this option, the owner or operator may use a TRS continuous emission monitoring system or CPMS, and the continuous compliance requirements depend on the type of monitoring system. The direct final rule amendments separate the requirements according to the type of monitoring system and clarify that compliance is based on a 12-hour rolling average like the NSPS requirements.

We also are clarifying our comment in the explanation column of Table 44 for the citation 40 CFR 63.6(i), which allows facilities to request a 1-year extension of compliance if necessary to install controls. We are revising the table to state that the extension of compliance under 40 CFR 63.6(i)(4) is not applicable to a facility that installs catalytic cracking feed hydrotreating and receives an extended compliance date under 40 CFR 63.1563(c). We are also revising Table 44 to subpart UUU to change the citation to 40 CFR 63.9(b)(3) to indicate its current reserved status under the NESHAP General Provisions (40 CFR part 63).

III. Summary of Non-Air Health, Environmental, Energy, and Cost Impacts

The NESHAP will reduce emissions of many HAP emitted from the affected sources at petroleum refineries, including particulate metals, organics, and reduced sulfur compounds. When fully implemented, we estimate that HAP emissions will be reduced by nearly 11,000 tpy. Emissions of other pollutants such as volatile organic

compounds, particulate matter, carbon monoxide, and hydrogen sulfide will be reduced by about 60,000 tpy.

There will not be any adverse non-air health, environmental, energy, cost (or economic) impacts as a result of the direct final rule amendments because no new requirements are imposed on any facility. The new option for CRU will allow for the use of new control technology to meet the HCl emission limitations, which may reduce the costs and energy impacts of add-on controls.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the direct final rule amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The direct final rule amendments consist primarily of new compliance options, clarifications, and corrections to the NESHAP that impose no new information collection requirements on industry or EPA. However, the OMB has previously approved the information collection requirements in the existing regulation (40 CFR part 63, subpart UUU) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0554, EPA Information Collection Request (ICR) number 1844.02. A copy of the OMB approved ICR may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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 purpose 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 respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

There will be a positive impact on small entities because the direct final rule amendments add new compliance provisions to increase flexibility, decrease unnecessary costs, and make clarifying changes to improve implementation of the NESHAP. These changes are voluntary and do not impose new costs. We have, therefore, concluded that today's direct final rule amendments will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments

to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year. No new costs are attributable to the direct final rule amendments. Thus, today's direct final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the direct final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The direct final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the direct final rule amendments. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

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

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because the NESHAP (and subsequent amendments) are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy, Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in the regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule amendments include a new procedure, ''Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure).'' This procedure was developed in consultation with industry experts and equipment vendors for the purpose of determining the metal or total chloride concentration on catalyst particles. This new procedure was not fully developed at the time the NESHAP were issued and reflects current practices used by many plants within the industry. The new procedure is not mandatory; plants also may use one of several existing EPA methods in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication SW–846, Revision 5, April 1998) or an alternative method satisfactory to the Administrator.

Consistent with the NTTAA, we conducted a search to identify voluntary consensus standards for use in determining the metal or total chloride concentration on catalyst particles. This search identified one voluntary consensus standard, ASTM D7085–04, ''Standard Guide for Determination of Chemical Elements in Fluid Catalytic Cracking Catalysts by X-Ray Fluorescence Spectrometry (XRF).'' This method contains detailed sample preparation procedures that may be a useful supplement to the instrumental method included in the direct final rule amendments. However, we have not adopted ASTM D7085–04 as an alternative to the instrumental method because the method does not include equivalent procedures for determining zero and calibration drift, instrument energy calibration, and calibration accuracy, or specific quality assurance procedures for analyzing calibration standards or catalyst samples.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The direct final rule amendments will be effective on April 11, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 1, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart UUU—[AMENDED]

■ 2. Section 63.1562 is amended by revising paragraphs (b)(1) through (3) to read as follows:

§ 63.1562 What parts of my plant are covered by this subpart?

* * * * *

(b) * * *

(1) The process vent or group of process vents on fluidized catalytic cracking units that are associated with regeneration of the catalyst used in the unit (*i.e.*, the catalyst regeneration flue gas vent).

(2) The process vent or group of process vents on catalytic reforming units (including but not limited to semi-regenerative, cyclic, or continuous processes) that are associated with regeneration of the catalyst used in the unit. This affected source includes vents that are used during the unit depressurization, purging, coke burn, and catalyst rejuvenation.

(3) The process vent or group of process vents on Claus or other types of sulfur recovery plant units or the tail gas treatment units serving sulfur recovery plants, that are associated with sulfur recovery.

* * * * *

■ 3. Section 63.1564(b)(4) is amended by revising the definition of the symbol ''Q_r'' for Equation 1 of to read as follows:

§ 63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?

* * * * *

Q_r = Volumetric flow rate of exhaust gas from catalyst regenerator before adding air or gas streams. Example: You may measure upstream or downstream of an electrostatic precipitator, but you must measure upstream of a carbon monoxide boiler, dscm/min (dscf/min). You may use the alternative in either § 63.1573(a)(1) or (a)(2), as applicable, to calculate Q_r;

* * * * *

■ 4. Section 63.1566 is amended by:

■ a. Revising paragraphs (a)(1)(ii) and (a)(3);

■ b. Revising paragraph (b)(4)(i) introductory text;

■ c. Revising the definitions of the symbols ''E'' and ''M_c'' in Equation 1 of paragraph (b)(4)(i);

■ d. Revising Equation 2 of paragraph (b)(4)(i);

■ e. Redesignating paragraph (b)(5) as (b)(4)(ii);

■ f. Revising Equation 4 in the newly designated paragraph (b)(4)(ii); and

■ g. Redesignating paragraphs (b)(6) through (b)(9) as (b)(5) through (b)(8).

The revisions and additions read as follows:

§ 63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?

(a) * * *

(1) * * *

(ii) You can elect to meet a TOC or nonmethane TOC percent reduction standard or concentration limit, whichever is less stringent (Option 2).

* * * * *

(3) Except as provided in paragraph (a)(4) of this section, the emission limitations in Tables 15 and 16 of this subpart apply to emissions from catalytic reforming unit process vents associated with initial catalyst depressuring and catalyst purging operations that occur prior to the coke burn-off cycle. The emission limitations in Tables 15 and 16 of this subpart do not apply to the coke burn-off, catalyst rejuvenation, reduction or activation vents, or to the control systems used for these vents.

* * * * *

(b) * * *

(4) * * *

(i) If you elect the percent reduction standard under Option 2, calculate the emission rate of nonmethane TOC using Equation 1 of this section (if you use Method 25) or Equation 2 of this section (if you use Method 25A or Methods 25A and 18), then calculate the mass emission reduction using Equation 3 of this section as follows:

* * * * *

(Eq. 1)

Where:

E = Emission rate of nonmethane TOC in the vent stream, kilograms-C per hour;

* * * * *

M_c = Mass concentration of total gaseous nonmethane organic (as carbon) as measured and calculated using Method 25 in appendix A to part 60 of this chapter, mg/dscm; and

* * * * *

$$E = K_5\left(C_{TOC} - \tfrac{1}{6}C_{methane}\right)Q_s \qquad \text{(Eq. 2)}$$

Where:

K_5 = Constant, 1.8×10^{-4} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (gram-C per gram-mole-hexane) (kilogram per gram) (minutes per hour), where the standard temperature (standard cubic meter) is at 20 degrees C (uses 72g-C/g.mole hexane);

C_{TOC} = Concentration of TOC on a dry basis in ppmv as hexane as measured by Method 25A in appendix A to part 60 of this chapter;

$C_{methane}$ = Concentration of methane on a dry basis in ppmv as measured by Method 18 in appendix A to part 60 of this chapter. If the concentration of methane is not determined, assume $C_{methane}$ equals zero; and

Q_s = Vent stream flow rate, dry standard cubic meters per minute, at a temperature of 20 degrees C. * * *

$$C_{NMTOC,\,3\%O_2} = \left(C_{TOC} - \tfrac{1}{6}C_{methane}\right)\left(\frac{17.9\%}{20.9\% - \%O_2}\right) \qquad \text{(Eq. 4)}$$

Where:

$C_{NMTOC,\,3\%O_2}$ = Concentration of nonmethane TOC on a dry basis in ppmv as hexane corrected to 3 percent oxygen.

■ 5. Section 63.1567 is amended by:
■ a. Revising paragraphs (a)(1) introductory text and (a)(1)(i);
■ b. Redesignating paragraphs (b)(4) through (b)(6) as paragraphs (b)(5) through (b)(7); and
■ c. Adding new paragraph (b)(4).

The addition and revisions read as follows:

§ 63.1567 What are my requirements for inorganic HAP emissions from catalytic reforming units?

(a) * * *

(1) Meet each emission limitation in Table 22 to this subpart that applies to you. If you operate a catalytic reforming unit in which different reactors in the catalytic reforming unit are regenerated in separate regeneration systems, then these emission limitations apply to each separate regeneration system. These emission limitations apply to emissions from catalytic reforming unit process vents associated with the coke burn-off and catalyst rejuvenation operations during coke burn-off and catalyst regeneration. You can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to meet a percent reduction standard for hydrogen chloride (HCl) emissions (Option 1); or

* * * * *

(b) * * *

(4) Use the equations in paragraphs (b)(4)(i) through (iv) of this section to determine initial compliance with the emission limitations.

(i) Correct the measured HCl concentration for oxygen (O_2) content in the gas stream using Equation 1 of this section as follows:

$$C_{HCl,\,3\%O_2} = \left(\frac{17.9\%}{20.9\% - \%O_2}\right) C_{HCl} \qquad \text{(Eq. 1)}$$

Where:

$C_{HCl,3\%}O_2$ = Concentration of HCl on a dry basis in ppmv corrected to 3 percent oxygen or 1 ppmv, whichever is greater;

C_{HCl} = Concentration of HCl on a dry basis in ppmv, as measured by Method 26A in 40 CFR part 60, appendix A; and

$\%O_2$ = Oxygen concentration in percent by volume (dry basis).

(ii) If you elect the percent reduction standard, calculate the emission rate of HCl using Equation 2 of this section; then calculate the mass emission reduction from the mass emission rates using Equation 3 of this section as follows:

$$E_{HCl} = K_6 C_{HCl} Q_s \qquad \text{(Eq. 2)}$$

Where:

$E_{HCl,}$ = Emission rate of HCl in the vent stream, grams per hour;

K_6 = Constant, 0.091 (parts per million) $^{-1}$ (grams HCl per standard cubic meter) (minutes per hour), where the standard temperature (standard cubic meter) is at 20 degrees Celsius (C); and

Q_s = Vent stream flow rate, dscm/min, at a temperature of 20 degrees C.

$$HCl\%reduction = \frac{E_{HCl,\,i} - E_{HCl,\,o}}{E_{HCl,\,i}} \times 100\% \qquad \text{(Eq. 3)}$$

Where:

$E_{HCl,i}$ = Mass emission rate of HCl at control device inlet, g/hr; and

$E_{HCl,o}$ = Mass emission rate of HCl at control device outlet, g/hr.

(iii) If you are required to use a colormetric tube sampling system to demonstrate continuous compliance with the HCl concentration operating limit, calculate the HCl operating limit using Equation 4 of this section as follows:

$$C_{HCl,\,ppmvLimit} = 0.9 C_{HCl,\,AveTube} \left(\frac{C_{HCl,\,RegLimit}}{C_{HCl,\,3\%O_2}}\right) \qquad \text{(Eq. 4)}$$

Where:

$C_{HCl,ppmvLimit}$ = Maximum permissible HCl concentration for the HCl concentration operating limit, ppmv;

$C_{HCl,AveTube}$ = Average HCl concentration from the colormetric tube sampling system, calculated as the arithmetic average of the average HCl concentration measured for each performance test run, ppmv or 1 ppmv, whichever is greater; and

$C_{HCl,RegLimit}$ = Maximum permissible outlet HCl concentration for the applicable catalytic reforming unit as listed in Table 22 of this subpart, either 10 or 30 ppmv.

(iv) If you are required to use a colormetric tube sampling system to demonstrate continuous compliance with the percent reduction operating limit, calculate the HCl operating limit using Equation 5 of this section as follows:

$$C_{HCl,\,\%Limit} = 0.9 C_{HCl,\,AveTube} \left(\frac{100 - \%HClReduction_{Limit}}{100 - \%HClReduction_{Test}}\right) \qquad \text{(Eq. 5)}$$

Where:

$C_{HCl,\%Limit}$ = Maximum permissible HCl concentration for the percent reduction operating limit, ppmv;

$\%HCl\ Reduction_{Limit}$ = Minimum permissible HCl reduction for the applicable catalytic reforming unit as listed in Table 22 of this subpart, either 97 or 92 percent; and

$\%HCl\ Reduction_{Test}$ = Average percent HCl reduction calculated as the arithmetic average HCl reduction calculated using Equation 3 of this section for each performance source test, percent.

* * * * *

■ 6. Section 63.1572 is amended by revising paragraphs (c) introductory text and (c)(1) to read as follows:

§ 63.1572 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(c) You must install, operate, and maintain each continuous parameter monitoring system according to the requirements in paragraphs (c)(1) through (5) of this section.

(1) The owner or operator shall install, operate, and maintain each continuous parameter monitoring system in a manner consistent with the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately. The owner or operator shall also meet the equipment specifications in Table 41 of this subpart if pH strips or colormetric tube sampling systems are used.

* * * * *

■ 7. Section 63.1573 is amended by:

■ a. Revising paragraphs (a) and (b); and

■ b. Adding new paragraph (f).

The revisions and addition read as follows:

§ 63.1573 What are my monitoring alternatives?

(a) *What are the approved alternatives for measuring gas flow rate?* (1) You may use this alternative to a continuous parameter monitoring system for the catalytic regenerator exhaust gas flow rate for your catalytic cracking unit if the unit does not introduce any other gas streams into the catalyst regeneration vent (i.e., complete combustion units with no additional combustion devices). You may also use this alternative to a continuous parameter monitoring system for the catalytic regenerator atmospheric exhaust gas flow rate for your catalytic reforming unit during the coke burn and rejuvenation cycles if the unit operates as a constant pressure system during these cycles. If you use this alternative, you shall use the same procedure for the performance test and for monitoring after the performance test. You shall:

(i) Install and operate a continuous parameter monitoring system to measure and record the hourly average volumetric air flow rate to the catalytic cracking unit or catalytic reforming unit regenerator. Or, you may determine and record the hourly average volumetric air flow rate to the catalytic cracking unit or catalytic reforming unit regenerator using the appropriate control room instrumentation.

(ii) Install and operate a continuous parameter monitoring system to measure and record the temperature of the gases entering the control device (or exiting the catalyst regenerator if you do not use an add-on control device).

(iii) Calculate and record the hourly average actual exhaust gas flow rate using Equation 1 of this section as follows:

$$Q_{gas} = (1.12\text{scfm/dscfm}) \times (Q_{air} + Q_{other}) \times \left(\frac{Temp_{gas}}{293^{\circ}K}\right) \times \left(\frac{latm.}{P_{vent}}\right) \qquad \text{(Eq. 1)}$$

Where:

Q_{gas} = Hourly average actual gas flow rate, acfm;

1.12 = Default correction factor to convert gas flow from dry standard cubic feet per minute (dscfm) to standard cubic feet per minute (scfm);

Q_{air} = Volumetric flow rate of air to regenerator, as determined from the control room instrumentations, dscfm;

Q_{other} = Volumetric flow rate of other gases entering the regenerator as determined from the control room instrumentations, dscfm. (Examples of ''other'' gases include an oxygen-enriched air stream to catalytic cracking unit regenerators and a nitrogen stream to catalytic reforming unit regenerators.);

$Temp_{gas}$ = Temperature of gas stream in vent measured as near as practical to the control device or opacity monitor, °K. For wet scrubbers, temperature of gas prior to the wet scrubber; and

P_{vent} = Absolute pressure in the vent measured as near as practical to the control device or opacity monitor, as applicable, atm. When used to assess the gas flow rate in the final atmospheric vent stack, you can assume P_{vent} = 1 atm.

(2) You may use this alternative to calculating Q_r, the volumetric flow rate of exhaust gas for the catalytic cracking regenerator as required in Equation 1 of § 63.1564, if you have a gas analyzer installed in the catalytic cracking regenerator exhaust vent prior to the addition of air or other gas streams. You may measure upstream or downstream of an electrostatic precipitator, but you shall measure upstream of a carbon monoxide boiler. You shall:

(i) Install and operate a continuous parameter monitoring system to measure and record the hourly average volumetric air flow rate to the catalytic cracking unit regenerator. Or, you can determine and record the hourly average volumetric air flow rate to the catalytic cracking unit regenerator using the catalytic cracking unit control room instrumentation.

(ii) Install and operate a continuous gas analyzer to measure and record the concentration of carbon dioxide, carbon monoxide, and oxygen of the catalytic cracking regenerator exhaust.

(iii) Calculate and record the hourly average flow rate using Equation 2 of this section as follows:

$$Q_r = \frac{79 \times Q_{air} + (100 - \%O_{xy}) \times Q_{oxy}}{100 - \%CO_2 - \%CO - \%O_2} \qquad \text{(Eq. 2)}$$

Where:

Q_r = Volumetric flow rate of exhaust gas from the catalyst regenerator before adding air or gas streams, dscm/min (dscf/min);

79 = Default concentration of nitrogen and argon in dry air, percent by volume (dry basis);

$\%O_{xy}$ = Oxygen concentration in oxygen-enriched air stream, percent by volume (dry basis);

Q_{oxy} = Volumetric flow rate of oxygen-enriched air stream to regenerator as determined from the catalytic cracking unit control room instrumentations, dscm/min (dscf/min);

$\%CO_2$ = Carbon dioxide concentration in regenerator exhaust, percent by volume (dry basis);

CO = Carbon monoxide concentration in regenerator exhaust, percent by volume (dry basis); and

$\%O_2$ = Oxygen concentration in regenerator exhaust, percent by volume (dry basis).

(b) *What is the approved alternative for monitoring pH or alkalinity levels?* You may use the alternative in paragraph (b)(1) or (2) of this section for a catalytic reforming unit.

(1) You shall measure and record the pH of the water (or scrubbing liquid) exiting the wet scrubber or internal scrubbing system at least once an hour during coke burn-off and catalyst rejuvenation using pH strips as an alternative to a continuous parameter monitoring system. The pH strips must meet the requirements in Table 41 of this subpart.

(2) You shall measure and record the alkalinity of the water (or scrubbing liquid) exiting the wet scrubber or internal scrubbing system at least once an hour during coke burn-off and catalyst rejuvenation using titration as an alternative to a continuous parameter monitoring system.

* * * * *

(f) *How do I apply for alternative monitoring requirements if my catalytic cracking unit is equipped with a wet scrubber and I have approved alternative monitoring requirements under the new source performance standards for petroleum refineries?*

(1) You may request alternative monitoring requirements according to the procedures in this paragraph if you meet each of the conditions in paragraphs (f)(1)(i) through (iii) of this section:

(i) Your fluid catalytic cracking unit regenerator vent is subject to the PM limit in 40 CFR 60.102(a)(1) and uses a wet scrubber for PM emissions control;

(ii) You have alternative monitoring requirements for the continuous opacity monitoring system requirement in 40 CFR 60.105(a)(1) approved by the Administrator; and

(iii) You are required by this subpart to install, operate, and maintain a continuous opacity monitoring system for the same catalytic cracking unit regenerator vent for which you have approved alternative monitoring requirements.

(2) You can request approval to use an alternative monitoring method prior to submitting your notification of compliance status, in your notification of compliance status, or at any time.

(3) You must submit a copy of the approved alternative monitoring requirements along with a monitoring plan that includes a description of the continuous monitoring system or method, including appropriate operating parameters that will be monitored, test results demonstrating compliance with the opacity limit used to establish an enforceable operating limit(s), and the frequency of measuring and recording to establish continuous compliance. If applicable, you must also include operation and maintenance requirements for the continuous monitoring system.

(4) We will contact you within 30 days of receipt of your application to inform you of approval or of our intent to disapprove your request.

■ 8. Section 63.1574 is amended by:

■ a. Revising paragraph (a)(3)(ii);

■ b. Revising paragraph (c); and

■ c. Revising the first sentence of paragraph (f) introductory text, revising paragraph (f)(2) introductory text, revising paragraphs (f)(2)(vi) and (f)(2)(x), and adding new paragraphs (f)(2)(xi) and (xii).

The revisions read as follows:

§ 63.1574 What notifications must I submit and when?

(a) * * *

(3) * * *

(ii) For each initial compliance demonstration that includes a performance test, you must submit the notification of compliance status, including the performance test results, no later than 150 calendar days after the compliance date specified for your affected source in § 63.1563.

* * * * *

(c) If you startup your new or reconstructed affected source on or after April 11, 2002, you must submit the initial notification no later than 120 days after you become subject to this subpart.

* * * * *

(f) As required by this subpart, you must prepare and implement an operation, maintenance, and monitoring plan for each control system and continuous monitoring system for each affected source. * * *

(2) Each plan must include, at a minimum, the information specified in paragraphs (f)(2)(i) through (xii) of this section.

* * * * *

(vi) Procedures you will use to determine the HCl concentration of gases from a catalytic reforming unit when you use a colormetric tube sampling system, including procedures for correcting for pressure (if applicable to the sampling equipment) and the sampling locations that will be used for compliance monitoring purposes.

* * * * *

(x) Maintenance schedule for each monitoring system and control device for each affected source that is generally consistent with the manufacturer's instructions for routine and long-term maintenance.

(xi) If you use a fixed-bed gas-solid adsorption system to control emissions from a catalytic reforming unit, you must implement corrective action procedures if the HCl concentration measured at the selected compliance monitoring sampling location within the bed exceeds the operating limit. These procedures must require, at minimum, repeat measurement and recording of the HCl concentration in the adsorption system exhaust gases and at the selected compliance monitoring sampling location within the bed. If the HCl concentration at the selected compliance monitoring location within the bed is above the operating limit during the repeat measurement while the HCl concentration in the adsorption system exhaust gases remains below the operating limit, the adsorption bed must be replaced as soon as practicable. Your procedures must specify the sampling frequency that will be used to monitor the HCl concentration in the adsorption system exhaust gases subsequent to the repeat measurement and prior to replacement of the sorbent material (but not less frequent than once every 4 hours during coke burn-off). If the HCl concentration of the adsorption system exhaust gases is above the operating limit when measured at any time, the adsorption bed must be replaced within 24 hours or before the next regeneration cycle, whichever is longer.

(xii) Procedures that will be used for purging the catalyst if you do not use a control device to comply with the organic HAP emission limits for catalytic reforming units. These procedures will include, but are not limited to, specification of the minimum

catalyst temperature and the minimum cumulative volume of gas per mass of catalyst used for purging prior to uncontrolled releases (i.e., during controlled purging events); the maximum purge gas temperature for uncontrolled purge events; and specification of the monitoring systems that will be used to monitor and record data during each purge event.

■ 9. Section 63.1576 is amended by revising paragraph (a)(2) to read as follows:

§ 63.1576 What records must I keep, in what form, and for how long?

(a) * * *

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

* * * * *

■ 10. Section 63.1579 is amended by:

■ a. Adding, in alphabetical order, new definitions for the terms ''Internal scrubbing system'' and ''Nonmethane TOC''; and

■ b. Revising the definition for the term ''TOC.''

The additions and revision read as follows:

§ 63.1579 What definitions apply to this subpart?

* * * * *

Internal scrubbing system means a wet scrubbing, wet injection, or caustic injection control device that treats (in-situ) the catalytic reforming unit recirculating coke burn exhaust gases for acid (HCl) control during reforming catalyst regeneration upstream of the atmospheric coke burn vent.

* * * * *

Nonmethane TOC means, for the purposes of this subpart, emissions of total organic compounds, excluding methane, that serve as a surrogate measure of the total emissions of organic HAP compounds including, but not limited to, acetaldehyde, benzene, hexane, phenol, toluene, and xylenes and nonHAP VOC as measured by Method 25 in appendix A to part 60 of this chapter, by the combination of Methods 18 and 25A in appendix A to part 60 of this chapter, or by an approved alternative method.

* * * * *

TOC means, for the purposes of this subpart, emissions of total organic compounds that serve as a surrogate measure of the total emissions of organic HAP compounds including, but not limited to, acetaldehyde, benzene, hexane, phenol, toluene, and xylenes and nonHAP VOC as measured by Method 25A in appendix A to part 60 of this chapter or by an approved alternative method.

* * * * *

■ 11. Tables 1 through 44 to subpart UUU of part 63 are amended to remove the phrase, ''you must'' and add in its place the phrase ''you shall'' in the introductory text and in the last column heading, where applicable (i.e., Tables 1 through 3, 6 through 10, 13 through 17, 20 through 24, 27 through 31, 34 through 37, 39, and 41 through 43).

■ 12. Table 1 to subpart UUU of part 63 is amended to revising entries 1 and 2 to read as follows:

TABLE 1 TO SUBPART UUU OF PART 63—METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS.

* * * * *

For each new or existing catalytic cracking unit . . .	You shall meet the following emission limits for each catalyst regenerator vent . . .
1. Subject to new source performance standard (NSPS) for PM in 40 CFR 60.102.	PM emissions must not the exceed 1.0 kilogram (kg) per 1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or in supplemental liquid or solid fossil fuel, the incremental rate of PM emissions must not exceed 43.0 grams per Gigajoule (g/GJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.
2. Option 1: NSPS requirements not subject to the NSPS for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.
* * * * * *	

■ 13. Table 3 to subpart UUU of part 63 is revised to read as follows:

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(b)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If your catalytic cracking unit is . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
1. Subject to the NSPS for PM in 40 CFR 60.102.	Any size	Electrostatic precipitator or wet scrubber or no control device.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If your catalytic cracking unit is . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
2. Option 1: NSPS limits not subject to the NSPS for PM in 40 CFR 60.102.	Any size	Electrostatic precipitator or wet scrubber or no control device.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the gas flow rate entering or exiting the control device [1] and the voltage and secondary current (or total power input) to the control device.
	c. Any size	i. Wet scrubber	(1) Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate entering or exiting the control device [1], and total liquid (or scrubbing liquor) flow rate to the control device. (2) If you use a wet scrubber of the non-venturi jet-ejector design, you're not required to install and operate a continuous parameter monitoring system for pressure drop.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regnerator vent.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1].
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1]; or continuous parameter monitoring systems to measure and record the gas flow rate entering or exiting the control device [1] and the voltage and secondary current (or total power input) to the control device.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If your catalytic cracking unit is . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
	c. Any size	Wet scrubber	(1) Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate entering or exiting the control device [1], and total liquid (or scrubbing liquor) flow rate to the control device. (2) If you use a wet scrubber of the non-venturi jet-ejector design, you're not required to install and operate a continuous parameter monitoring system for pressure drop.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate [1].
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1].
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the control device [1]; or continuous parameter monitoring systems to measure and record the gas flow rate entering or exiting the control device [1] and the voltage and secondary current (or total power input) to the control device.
	c. Any size	Wet scrubber	Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate entering or exiting the control device [1], and total liquid (or scrubbing liquor) flow rate to the control device.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate [1].

[1] If applicable, you can use the alternative in § 63.1573(a)(1) instead of a continuous parameter monitoring system for gas flow rate.

■ 14. Table 4 to subpart UUU of part 63 is amended by revising entries 2, 3, 4, and 5; revising footnote 1; and adding new footnote 2 to read as follows:

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS (NSPS) FOR PARTICULATE MATTER (PM)

* * * * * * *

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You shall . . .	Using . . .	According to these requirements . . .
* *	* *	* *	* *
2. Option 1: Elect NSPS	a. Measure PM emissions.	Method 5B or 5F (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5B (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dry standard cubic meters per minute (dscm/min) (0.53 dry standard cubic feet per minute (dscf/min).
	b. Compute PM emission rate (lbs/1,000 lbs) of coke burn-off.	Equations 1, 2, and 3 of § 63.1564 (if applicable).	
	c. Measure opacity of emissions.	Continuous opacity monitoring system.	You must collect opacity monitoring data every 10 seconds during the entire period of the Method 5B or 5F performance test and reduce the data to 6-minute averages.
3. Option 2: PM limit	a. Measure PM emissions.	See item 2. of this table.	See item 2. of this table.
	b. Compute coke burn-off rate and PM emission rate.	Equations 1 and 2 of § 63.1564.	
	c. Establish your site-specific opacity operating limit if you use a continuous opacity monitoring system.	Data from the continuous opacity monitoring system.	You must collect opacity monitoring data every 10 seconds during the entire period of the Method 5B or 5F performance test and reduce the data to 6-minute averages; determine and record the hourly average opacity from all the 6-minute averages; and compute the site-specific limit using Equation 4 of § 63.1564.
4. Option 3: Ni lb/hr	a. Measure concentration of Ni and total metal HAP.	Method 29 (40 CFR part 60, appendix A).	
	b. Compute Ni emission rate (lb/hr).	Equation 5 of § 63.1564.	
	c. Determine the equilibrium catalyst Ni concentration.	XRF procedure in appendix A to this subpart[1]; or EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–846[2]; or an alternative to the SW-846 method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 6 and 7 of § 63.1564 using data from continuous opacity monitoring system, gas flow rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the hourly average opacity from all the 6-minute averages. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate from all the readings.
5. Option 4: Ni lbs/1,000 lbs of coke burn-off.	a. Measure concentration of Ni and total HAP.	Method 29 (40 CFR part 60, appendix A).	

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS (NSPS) FOR PARTICULATE MATTER (PM)—Continued

* * * * * * *

For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You shall . . .	Using . . .	According to these requirements . . .
	b. Compute Ni emission rate (lb/1,000 lbs of coke burn-off).	Equations 1 and 8 of § 63.1564.	
	c. Determine the equilibrium catalyst Ni concentration.	See item 4.c. of this table.	You must obtain 1 sample for each of the 3 runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 9 and 10 of § 63.1564 with data from continuous opacity monitoring system, coke burn-off rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the hourly average opacity from all the 6-minute averages. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow rate as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate from all the readings.
	e. Record the catalyst addition rate for each test and schedule for the 10- day period prior to the test.		
* *	*	* *	* *

[1] Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure).

[2] EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, and EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration are included in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

■ 15. Table 5 to subpart UUU of part 63 is amended by revising entries 1, 2, and 3 to read as follows:

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL-COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

* * * * *

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Subject to the NSPS for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 grams per Gigajoule (g/GJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. If applicable, you have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM rate is less than or equal to 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel. As part of the Notification of Compliance Status, you must certify that your vent meets the PM emission limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance test to demonstrate initial compliance with the NSPS and the average hourly opacity is no more than 30 percent. Except: One 6-minute average in any 1-hour period can exceed 30 percent. As part of the Notification of Compliance Status, you must certify that your vent meets the opacity limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you certify that your continuous opacity monitoring system meets the requirements in §63.1572. You are not required to do a performance evaluation to demonstrate initial compliance.
2. Option 1: Elect NSPS not subject to the NSPS for PM.	PM emission must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	The average PM emission rate, measured using EPA Method 5B or 5F (for a unit without a wet scrubber) or 5B (for a unit with a wet scrubber), over the period of the initial performance test, is no higher than 1.0 kg/1,000 kg (1.0 lb/1,000 lb of coke burn-off in the catalyst regenerator. The PM emission rate is calculated using Equations 1 and 2 of §63.1564. If applicable, the average PM emission rate, measured using EPA Method 5B emission rate, measured using EPA Method 5B or 5F (for a unit without a wet scrubber) or Method 5B (for a unit with a wet scrubber) over the period of the initial performance test, is no higher than 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel. The PM emission rate is calculated using Equation 3 of §63.1564; no more than one 6-minute average measured by the continuous opacity monitoring system exceeds 30 percent opacity in any 1-hour period over the period of the performance test; and your performance evaluation shows the continuous opacity monitoring system meets the applicable requirements in §63.1572.
3. Option 2: Not subject to the NSPS for PM.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator.	The average PM emission rate, measured using EPA Method 5B or 5F (for a unit without a wet scrubber) or Method 5B (for a unit with a wet scrubber), over the period of the initial performance test, is less than or equal to 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. The PM emission rate is calculated using Equations 1 and 2 of §63.1564; and if you use a continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in §63.1572.

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL-COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

* * * * *

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
*	*	*

■ 16. Table 6 to subpart UUU of part 63 is amended by revising entries 1, 3, and 5 to read as follows:

TABLE 6 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

* * * * *

For each new and existing catalytic cracking unit . . .	Subject to this emission limit for your catalyst regenerator vent . . .	You shall demonstrate continuous compliance by . . .
1. Subject to the NSPS for PM in 40 CFR 60.102.	a. PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, the incremental rate of PM must not exceed 43.0 g/GJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	i. Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) using Equation 1 in § 63.1564 and the hours of operation for each catalyst regenerator; maintaining PM emission rate below 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off; if applicable, determining and recording each day the rate of combustion of liquid or solid fossil fuels (liters/hour or kilograms/hour) and the hours of operation during which liquid or solid fossil-fuels are combusted in the incinerator-waste heat boiler; if applicable, maintaining the PM rate incinerator below 43 g/GJ (0.10 lb/million Btu) of heat input attributable to the solid or liquid fossil fuel; collecting the continuous opacity monitoring data for each catalyst regenerator vent according to § 63.1572; and maintaining each 6-minute average at or below 30 percent except that one 6-minute average during a 1-hour period can exceed 30 percent.
*	*	*
3. Option 2: PM limit not subject to the NSPS for PM.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator.	Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) and the hours of operation for each catalyst regenerator by Equation 1 of § 63.1564 (you can use process data to determine the volumetric flow rate); and maintaining the PM emission rate below 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off.
*	*	*
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM.	Ni emissions must not exceed 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.	Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) and the hours of operation for each catalyst regenerator by Equation 1 of § 63.1564 (you can use process data to determine the volumetric flow rate); and maintaining Ni emission rate below 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.

■ 17. Table 7 to subpart UUU of part 63 is revised to read as follows:

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
1. Subject to NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable.	Complying with Table 6 of this subpart.
2. Option 1: Elect NSPS not subject to the NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable.	Complying with Table 6 of this subpart.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The opacity of emissions from your catalyst regenerator vent must not exceed the site-specific opacity operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; and maintaining the hourly average opacity at or below the site-specific limit.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate entering or exiting the control device must not exceed the operating limit established during the performance test.	Collecting the hourly and daily average gas flow rate monitoring data according to § 63.1572 [1]; and maintaining the daily average gas flow rate at or below the limit established during the performance test.
		ii. The daily average voltage and secondary current (or total power input) to the control device must not fall below the operating limit established during the performance test.	Collecting the hourly and daily average voltage and secondary current (or total power input) monitoring data according to § 63.1572; and maintaining the daily average voltage and secondary current (or total power input) at or above the limit established during the performance test.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The daily average pressure drop across the scrubber must not fall below the operating limit established during the performance test.	Collecting the hourly and daily average pressure drop monitoring data according to § 63.1572; and maintaining the daily average pressure drop above the limit established during the performance test.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	Collecting the hourly average gas flow rate and water (or scrubbing liquid) flow rate monitoring data according to § 63.1572 [1]; determining and recording the hourly average liquid-to-gas ratio; determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; determining and recording equilibrium catalyst Ni concentration at least once a week [2]; collecting the hourly average gas flow rate monitoring data according to § 63.1572 [1]; determining and recording the hourly average Ni operating value using Equation 11 of § 63.1564; determining and recording the daily average Ni operating value; and maintaining the daily average Ni operating value below the site-specific Ni operating limit established during the performance test.

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate entering or exiting the control device must not exceed the operating limit established during the performance test.	See item 3.b.i. of this table.
		ii. The daily average voltage and secondary current (or total power input) must not fall below the level established in the performance test.	See item 3.b.ii. of this table.
		iii. The monthly rolling average of the equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining and recording the equilibrium catalyst Ni concentration at least once a week [2]; determining and recording the monthly rolling average of the equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
	c. Continuous parameter monitoring systems—wetscrubber.	i. The daily average pressure drop must not fall below the operating limit established in the performance test.	See item 3.c.i. of this table.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	See item 3.c.ii. of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining and recording the equilibrium catalyst Ni concentration at least once a week [2]; determining and recording the monthly rolling average of equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
5. Option 4: Ni lb/ton of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; collecting the hourly average gas flow rate monitoring data according to § 63.1572 [1]; determining and recording equilibrium catalyst Ni concentration at least once a week [2]; determining and recording the hourly average Ni operating value using Equation 12 of § 63.1564; determining and recording the daily average Ni operating value; and maintaining the daily average Ni operating value below the site-specific Ni operating limit established during the performance test.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate to the control device must not exceed the level established in the performance test.	See item 3.b.i. of this table.

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new or existing catalytic cracking unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance by . . .
		ii. The daily average voltage and secondary current (or total power input) must not fall below the level established in the performance test.	See item 3.b.ii. of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 4.b.iii. of this table.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The daily average pressure drop must not fall below the operating limit established in the performance test.	See item 3.c.i. of this table.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	See item 3.c.ii. of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 4.c.iii. of this table.

[1] If applicable, you can use the alternative in § 63.1573(a)(1) for gas flow rate instead of a continuous parameter monitoring system if you used the alternative method in the initial performance test.

[2] The equilibrium catalyst Ni concentration must be measured by the procedure, Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure) in appendix A to this subpart; or by EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, or EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration; or by an alternative to EPA Method 6010B, 6020, 7520, or 7521 satisfactory to the Administrator. The EPA Methods 6010B, 6020, 7520, and 7521 are included in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These methods are also available at *http://www.epa.gov/epaoswer/hazwaste/test/main.htm.*

■ 18. Table 15 to subpart UUU of part 63 is amended by revising the heading in column 1 and 2 and by revising entry 2 as follows:

TABLE 15 TO SUBPART UUU OF PART 63.—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

* * * * *

For each applicable process vent for a new or existing catalytic reforming unit . . .	You shall meet this emission limit during initial catalyst depressuring and catalyst purging operations . . .
* * * *	* * *
2. Option 2	Reduce uncontrolled emissions of total organic compounds (TOC) or nonmethane TOC from your process vent by 98 percent by weight using a control device or to a concentration of 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent. If you vent emissions to a boiler or process heater to comply with the percent reduction or concentration emission limitation, the vent stream must be introduced into the flame zone, or any other location that will achieve the percent reduction or concentration standard.

■ 19. Table 16 to subpart UUU of part 63 is amended by revising the heading in column 3 and by revising entry 2 as follows:

TABLE 16 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

* * * * *

For each new or existing catalytic reforming unit . . .	For this type of control device . . .	You shall meet this operating limit during initial catalyst depressuring and purging operations . . .
*	*	*
2. Option 2: Percent reduction or concentration limit.	a. Thermal incinerator, boiler or process heater with a design heat input capacity under 44 MW, or boiler or process heater in which all vent streams are not introduced into the flame zone.	The daily average combustion zone temperature must not fall below the limit established during the performance test.
	b. No control device	Operate at all times according to your operation, maintenance, and monitoring plan regarding minimum catalyst purging conditions that must be met prior to allowing uncontrolled purge releases.

■ 20. Table 17 to subpart UUU of part 63 is amended by revising the heading in column 1 as follows:

TABLE 17 TO SUBPART UUU OF PART 63.–CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

* * * * * * *

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use this type of control device . . .	You shall install and operate this type of continuous monitoring system . . .
*	*	*

■ 21. Table 18 to subpart UUU of part 63 is amended by revising entry 1 and 2 as follows:

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

* * * * * * *

For each new or existing catalytic reforming unit . . .	You shall . . .	Using . . .	According to these requirements . . .
1. Option 1: Vent to a flare	a. Conduct visible emission observations.	Method 22 (40 CFR part 60, appendix A).	2-hour observation period. Record the presence of a flame at the pilot light over the full period of the test.
	b. Determine that the flare meets the requirements for net heating value of the gas being combusted and exit velocity.	Not applicable.	40 CFR 63.11(b)(6) through (8).
2. Option 2: Percent reduction or concentration limit.	a. Select sampling site	Method 1 or 1A (40 CFR part 60, appendix A). No traverse site selection method is needed for vents smaller than 0.10 meter in diameter.	Sampling sites must be located at the inlet (if you elect the emission reduction standard) and outlet of the control device and prior to any releases to the atmosphere.
	b. Measure gas volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A), as applicable.	

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

* * * * * * *

For each new or existing catalytic reforming unit . . .	You shall . . .	Using . . .	According to these requirements . . .
	c. Measure TOC concentration (for percent reduction standard).	Method 25 (40 part 60, appendix A) to measure nonmethane TOC concentration (in carbon equivalents) at inlet and outlet of the control device. If the nonmethane TOC outlet concentration is expected to be less than 50 ppm (as carbon), you can use Method 25A to measure TOC concentration (as hexane) at the inlet and the outlet of the control device. If you use Method 25A, you may use Method 18 (40 CFR part 60, appendix A) to measure the methane concentration to determine the nonmethane TOC concentration.	Take either an integrated sample or four grab samples during each run. If you use a grab sampling technique, take the samples at approximately equal intervals in time, such as 15-minute intervals during the run.
	d. Calculate TOC or nonmethane TOC emission rate and mass emission reduction.	.....	Calculate emission rate by Equation 1 of § 63.1566 (if you use Method 25) or Equation 2 of § 63.1566 (if you use Method 25A). Calculate mass emission reduction by Equation 3 of § 63.1566.
	e. For concentration standard, measure TOC concentration. (Optional: Measure methane concentration.)	Method 25A (40 CFR part 60, appendix A) to measure TOC concentration (as hexane) at the outlet of the control device. You may elect to use Method 18 (40 CFR part 60, appendix A) to measure the methane concentration.	
	f. Determine oxygen content in the gas stream at the outlet of the control device.	Method 3A or 3B (40 CFR part 60, appendix A), as applicable.	
	g. Calculate the TOC or nonmethane TOC concentration corrected for oxygen content (for concentration standard).	Equation 4 of § 63.1566.	
	h. Establish each operating limit in Table 16 of this subpart that applies to you for a thermal incinerator, or process heater or boiler with a design heat input capacity under 44 MW, or process heater or boiler in which all vent streams are not introduced into flame zone.	Data from the continuous parameter monitoring systems.	Collect the temperature monitoring data every 15 minutes during the entire period of the initial TOC performance test. Determine and record the minimum hourly average combustion zone temperature.
	i. If you do not use a control device, document the purging conditions used prior to testing following the minimum requirements in the operation, maintenance, and monitoring plan.	Data from monitoring systems as identified in the operation, maintenance, and monitoring plan.	Procedures in the operation, maintenance, and monitoring plan.

■ 22. Table 19 to subpart UUU of part 63 is revised as follows:

TABLE 19 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(b)(7), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
Option 1	Visible emissions from a flare must not exceed a total of 5 minutes during any 2 consecutive hours.	Visible emissions, measured using Method 22 over the 2-hour observation period of the performance test, do not exceed a total of 5 minutes.
Option 2	Reduce uncontrolled emissions of total organic compounds (TOC) or nonmethane TOC from your process vent by 98 percent by weight using a control device or to a concentration of 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent.	The mass emission reduction of nonmethane TOC measured by Method 25 over the period of the performance test is at least 98 percent by weight as calculated using Equations 1 and 3 of § 63.1566; or the mass emission reduction of TOC measured by Method 25A (or nonmethane TOC measured by Methods 25A and 18) over the period of the performance test is at least 98 percent by weight as calculated using Equations 2 and 3 of § 63.1566; or the TOC concentration measured by Method 25A (or the nonmethane TOC concentration measured by Methods 25A and 18) over the period of the performance test does not exceed 20 ppmv (dry basis as hexane) corrected to 3 percent oxygen as calculated using Equation 4 of § 63.1566.

■ 23. Table 20 to subpart UUU of part 63 is revised as follows:

TABLE 20 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(c)(1), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	For this emission limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and catalyst purging operations by . . .
1. Option 1	Vent emissions from your process vent to a flare that meets the requirements in § 63.11(b).	Maintaining visible emissions from a flare below a total of 5 minutes during any 2 consecutive hours.
2. Option 2	Reduce uncontrolled emissions of total organic compounds (TOC) or nonmethane TOC from your process vent by 98 percent by weight using a control device or to a concentration of 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent.	Maintaining a 98 percent by weight emission reduction of TOC or nonmethane TOC; or maintaining a TOC or nonmethane TOC concentration of not more than 20 ppmv (dry basis as hexane), corrected to 3 percent oxygen, whichever is less stringent.

■ 24. Table 21 to Subpart UUU of part 63 is revised as follows:

TABLE 21 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(c)(1), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and purging operations by . . .
1. Option 1	Flare that meets the requirements in § 63.11(b).	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.	Collecting flare monitoring data according to § 63.1572; and recording for each 1-hour period whether the monitor was continuously operating and the pilot light was continuously present during each 1-hour period.

TABLE 21 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1566(c)(1), you shall meet each requirement in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit . . .	If you use . . .	For this operating limit . . .	You shall demonstrate continuous compliance during initial catalyst depressuring and purging operations by . . .
2. Option 2	a. Thermal incinerator boiler or process heater with a design input capacity under 44 MW or boiler or process heater in which not all vent streams are not introduced into the flame zone.	Maintain the daily average combustion zone temperature above the limit established during the performance test.	Collecting, the hourly and daily temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test.
	b. No control device	Operate at all times according to your operation, maintenance, and monitoring plan regarding minimum purging conditions that must be met prior to allowing uncontrolled purge releases.	Recording information to document compliance with the procedures in your operation, maintenance, and monitoring plan.

■ 25. Table 22 to subpart UUU of part 63 is revised as follows:

TABLE 22 TO SUBPART UUU OF PART 63.—INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(1), you shall meet each emission limitation in the following table that applies to you.]

For . . .	You shall meet this emission limit for each applicable catalytic reforming unit process vent during coke burn-off and catalyst rejuvenation . . .
1. Each existing semi-regenerative catalytic reforming unit	Reduce uncontrolled emissions of hydrogen chloride (HCl) by 92 percent by weight or to a concentration of 30 ppmv (dry basis), corrected to 3 percent oxygen.
2. Each existing cyclic or continous catalytic reforming unit	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.

■ 26. Table 23 to subpart UUU of part 63 is revised as follows:

TABLE 23 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(2), you shall meet each operating limit in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit with this type of control device . . .	You shall meet this operating limit during coke burn-off and catalyst rejuvenation . . .
1. Wet scrubber	The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the scrubber must not fall below the limit established during the performance test; and the daily average liquid-to-gas ratio must not fall below the limit established during the performance test.
2. Internal scrubbing system or no control device (*e.g.*, hot regen system) meeting outlet HCl concentration limit.	The daily average HCl concentration in the catalyst regenerator exhaust gas must not exceed the limit established during the performance test.
3. Internal scrubbing system meeting HCl percent reduction standard.	The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system must not fall below the limit established during the performance test; and the daily average liquid-to-gas ratio must not fall below the limit established during the performance test.
4. Fixed-bed gas-solid adsorption system	The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test; and the HCl concentration in the adsorption system exhaust gas must not exceed the limit established during the performance test.

TABLE 23 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(a)(2), you shall meet each operating limit in the following table that applies to you.]

For each applicable process vent for a new or existing catalytic reforming unit with this type of control device . . .	You shall meet this operating limit during coke burn-off and catalyst rejuvenation . . .
5. Moving-bed gas-solid adsorption system (*e.g.*, Chlorsorb™ System).	The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test; and the weekly average chloride level on the sorbent entering the adsorption system must not exceed the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ System); and the weekly average chloride level on the sorbent leaving the adsorption system must not exceed the design or manufacturer's recommended limit (1.8 weight percent for the Chlorsorb™ System).

■ 27. Table 24 to subpart UUU of part 63 is revised as follows:

TABLE 24 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(1), you shall meet each requirement in the following table that applies to you.]

If you use this type of control device for your vent . . .	You shall install and operate this type of continuous monitoring system . . .
1. Wet scrubber	Continuous parameter monitoring system to measure and record the total water (or scrubbing liquid) flow rate entering the scrubber during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record gas flow rate entering or exiting the scrubber during coke burn-off and catalyst rejuvenation [1]; and continuous parameter monitoring system to measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation. [2]
2. Internal scrubbing system or no control device (e.g., hot regen system) to meet HC1 outlet concentration limit.	Colormetric tube sampling system to measure the HC1 concentration in the catalyst regenerator exhaust gas during coke burn-off and catalyst rejuvenation. The colormetric tube sampling system must meet the requirements in Table 41 of this subpart.
3. Internal scrubbing system to meet HC1 percent reduction standard	Continuous parameter monitoring system to measure and record the gas flow rate entering or exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record the total water (or scrubbing liquid) flow rate entering the internal scrubbing system during coke burn-off and catalyst rejuvenation; and continuous parameter monitoring system to measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation. [2]
4. Fixed-bed gas-solid adsorption system	Continuous parameter monitoring system to measure and record the temperature of the gas entering or exiting the adsorption system during coke burn-off and catalyst rejuvenation; and colormetric tube sampling system to measure the gaseous HC1 concentration in the adsorption system exhaust and at a point within the absorbent bed not to exceed 90 percent of the total length of the absorbent bed during coke burn-off and catalyst rejuvenation. The colormetric tube sampling system must meet the requirements in Table 41 of this subpart.
5. Moving-bed gas-solid adsorption system (e.g., Chlorsorb™ System).	Continuous parameter monitoring system to measure and record the temperature of the gas entering or exiting the adsorption system during coke burn-off and catalyst rejuvenation.

[1] If applicable, you can use the alternative in § 63.1573 (a)(1) instead of a continuous parameter monitoring system for gas flow rate or instead of a continuous parameter monitoring system for the cumulative volume of gas.

[2] If applicable, you can use the alternative in § 63.1573(b)(1) instead of a continuous parameter monitoring system for pH of the water (or scrubbing liquid) or the alternative in § 63.1573(b)(2) instead of a continuous parameter monitoring system for alkalinity of the water (or scrubbing liquid).

■ 28. Table 25 to subpart UUU of part 63 is revised as follows:

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(2) and (3), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
1. Any or no control system	a. Select sampling port location(s) and the number of traverse points.	Method 1 or 1A (40 CFR part 60, appendix A), as applicable.	(1) If you operate a control device and you elect to meet an applicable HCl percent reduction standard, sampling sites must be located at the inlet of the control device or internal scrubbing system and at the outlet of the control device or internal scrubber system prior to any release to the atmosphere. For a series of fixed-bed systems, the outlet sampling site should be located at the outlet of the first fixed-bed, prior to entering the second fixed-bed in the series. (2) If you elect to meet an applicable HCl outlet concentration limit, locate sampling sites at the outlet of the control device or internal scrubber system prior to any release to the atmosphere. For a series of fixed-bed systems, the outlet sampling site should be located at the outlet of the first fixed-bed, prior to entering the second fixed-bed in the series. If there is no control device, locate sampling sites at the outlet of the catalyst regenerator prior to any release to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A), as applicable..	
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B (40 CFR part 60, appendix A), as applicable.	
	d. Measure moisture content of the stack gas.	Method 4 (40 CFR part 60, appendix A).	
	e. Measure the HCl concentration at the selected sampling locations.	Method 26 or 26A (40 CFR part 60, appendix A). If your control device is a wet scrubber or internal scrubbing system, you must use Method 26A.	(1) For semi-regenerative and cyclic regeneration units, conduct the test during the coke burn-off and catalyst rejuvenation cycle, but collect no samples during the first hour or the last 6 hours of the cycle (for semi- regenerative units) or during the first hour or the last 2 hours of the cycle (for cyclic regeneration units). For continuous regeneration units, the test should be conducted no sooner than 3 days after process unit or control system start up. (2) Determine and record the HCl concentration corrected to 3 percent oxygen (using Equation 1 of § 63.1567) for each sampling location for each test run. (3) Determine and record the percent emission reduction, if applicable, using Equation 3 of § 63.1567 for each test run. (4) Determine and record the average HCl concentration (corrected to 3 percent oxygen) and the average percent emission reduction, if applicable, for the overall source test from the recorded test run values.
2. Wet scrubber	a. Establish operating limit for pH level or alkalinity.	i. Data from continuous parameter monitoring systems.	Measure and record the pH or alkalinity of the water (or scrubbing liquid) exiting scrubber every 15 minutes during the entire period of the performance test. Determine and record the minimum hourly average pH or alkalinity level from the recorded values.
		ii. Alternative pH procedure in § 63.1573 (b)(1).	Measure and record the pH of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation using pH strips at least three times during each test run. Determine and record the average pH level for each test run. Determine and record the minimum test run average pH level.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FOR CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(b)(2) and (3), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
		iii. Alternative alkalinity method in § 63.1573(b)(2).	Measure and record the alkalinity of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation using discrete titration at least three times during each test run. Determine and record the average alkalinity level for each test run. Determine and record the minimum test run average alkalinity level.
	b. Establish operating limit for liquid-to-gas ratio.	i. Data from continuous parameter monitoring systems.	Measure and record the gas flow rate entering or exiting the scrubber and the total water (or scrubbing liquid) flow rate entering the scrubber every 15 minutes during the entire period of the performance test. Determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate. Determine and record the minimum liquid-to-gas ratio from the recorded, paired values.
		ii. Alternative procedure for gas flow rate in § 63.1573(a)(1).	Collect air flow rate monitoring data or determine the air flow rate using control room instruments every 15 minutes during the entire period of the initial performance test. Determine and record the hourly average rate of all the readings. Determine and record the maximum gas flow rate using Equation 1 of § 63.1573.
3. Internal scrubbing system or no control device (e.g., hot regen system) meeting HCl outlet concentration limit.	Establish operating limit for HCl concentration.	Data from continuous parameter monitoring system.	Measure and record the HCl concentration in the catalyst regenerator exhaust gas using the colormetric tube sampling system at least three times during each test run. Determine and record the average HCl concentration for each test run. Determine and record the average HCl concentration for the overall source test from the recorded test run averages. Determine and record the operating limit for HCl concentration using Equation 4 of § 63.1567.
4. Internal scrubbing system meeting HCl percent reduction standard.	a. Establish operating limit for pH level or alkalinity.	i. Data from continuous parameter monitoring system.	Measure and record the pH alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system every 15 minutes during the entire period of the performance test. Determine and record the minimum hourly average pH or alkalinity level from the recorded values.
		ii. Alternative pH method in § 63.1573(b)(1).	Measure and in record pH of the water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation using pH strips at least three times during each test run. Determine and record the average pH level for each test run. Determine and record the minimum test run average pH level.
		iii. Alternative alkalinity method in § 63.1573(b)(2).	Measure and record the alkalinity water (or scrubbing liquid) exiting the internal scrubbing system during coke burn-off and catalyst rejuvenation using discrete titration at least three times during each test run. Determine and record the average alkalinity level for each test run. Determine and record the minimum test run average alkalinity level.
	b. Establish operating limit for liquid-to-gas ratio.	Data from continuous parameter monitoring systems.	Measure and record the gas entering or exiting the internal scrubbing system and the total water (or scrubbing liquid) flow rate entering the internal scrubbing system every 15 minutes during the entire period of the performance test. Determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate. Determine and record the minimum liquid-to-gas ratio from the recorded, paired values.
5. Fixed-bed gas-solid adsorption system. Gas-solid.	a. Establish operating limit for temperature.	Data from continuous parameter monitoring system.	Measure and record the temperature of gas entering or exiting the adsorption system every 15 minutes. Determine and record the maximum hourly average temperature.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FOR CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(b)(2) and (3), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using . . .	You shall . . .	Using . . .	According to these requirements . . .
	b. Establish operating limit for HCl concentration.	i. Data from continuous parameter monitoring systems.	(1) Measure and record the HCl concentration in the exhaust gas from the fixed-bed adsorption system using the colormetric tube sampling system at least three times during each test run. Determine and record the average HCl concentration for each test run. Determine and record the average HCl concentration for the overall source test from the recorded test run averages. (2) If you elect to comply with the HCl outlet concentration limit (Option 2), determine and record the operating limit for HCl concentration using Equation 4 of § 63.1567. If you elect to comply with the HCl percent reduction standard (Option 1), determine and record the operating limit for HCl concentration using Equation 5 of § 63.1567.
6. Moving-bed gas-solid adsorption system (e.g., Chlorsorb™ System).	a. Establish operating limit for temperature.	Data from continuous parameter monitoring systems.	Measure and record the temperature of gas entering or exiting the adsorption system every 15 minutes. Determine and record the maximum hourly average temperature.
	b. Measure the chloride level on the sorbent entering and exiting the adsorption system.	Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure) in appendix A to subpart UUU; or EPA Method 5050 combined either with EPA Method 9056, or with EPA Method 9253; or EPA Method 9212 with the soil extraction procedures listed within the method.[1]	Measure and record the chloride concentration of the sorbent material entering and exiting the adsorption system at least three times during each test run. Determine and record the average weight percent chloride concentration of the sorbent entering the adsorption system for each test run. Determine and record the average weight percent chloride concentration of the sorbent exiting the adsorption system for each test run.

[1] The EPA Methods 5050, 9056, 9212 and 9253 are included in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These methods are also available at *http://www.epa.gov/epaoswer/hazwaste/test/main.htm.*

■ 29. Table 26 to subpart UUU of part 63 is revised as follows:

TABLE 26 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(4), you shall meet each requirement in the following table that applies to you.]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 92 percent by weight or to a concentration of 30 ppmv, (dry basis), corrected to 3 percent oxygen.	Average emissions HCl measured using Method 26 or 26A, as applicable, over the period of the performance test, are reduced by 92 percent or to a concentration less than or equal to 30 ppmv (dry basis) corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit and each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Average emissions of HCl measured using Method 26 or 26A, as applicable, over the period of the performance test, are reduced by 97 percent or to a concentration less than or equal to 10 ppmv (dry basis) corrected to 3 percent oxygen.

■ 30. Table 27 to subpart UUU of part 63 is revised as follows:

TABLE 27 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(c)(1), you shall meet each requirement in the following table that applies to you.]

For . . .	For this emission limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 92 percent by weight or to a concentration of 30 ppmv (dry basis), corrected to 3 percent oxygen..	Maintaining a 92 percent HCl emission reduction or an HCl concentration no more than 30 ppmv (dry basis), corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Maintaining a 97 percent HCl control efficiency or an HCl concentration no more than 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Maintaining a 97 percent HCl control efficiency or an HCl concentration no more than 10 ppmv (dry basis), corrected to 3 percent oxygen.

■ 31. Table 28 to subpart UUU of part 63 is revised as follows:

TABLE 28 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using this type of control device or system . . .	For this operating limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
1. Wet scrubber	a. The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the scrubber must not fall below the level established during the performance test.	Collecting the hourly and daily average pH or alkalinity monitoring data according to § 63.1572 [1]; and maintaining the daily average pH or alkalinity above the operating limit established during the performance test.
	b. The daily average liquid-to-gas ratio must not fall below the level established during the performance test.	Collecting the hourly average gas flow rate [2] and total water (or scrubbing liquid) flow rate monitoring data according to § 63.1572; and determining and recording the hourly average liquid-to-gas ratio; and determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.
2. Internal scrubbing system or no control device (e.g., hot regen system) meeting HCl concentration limit.	The daily average HCl concentration in the catalyst regenerator exhaust gas must not exceed the limit established during the performance test.	Measuring and recording the HCl concentration at least 4 times during a regeneration cycle (equally spaced in time) or every 4 hours, whichever is more frequent, using a colormetric tube sampling system; calculating the daily average HCl concentration as an arithmetic average of all samples collected in each 24-hour period from the start of the coke burn-off cycle or for the entire duration of the coke burn-off cycle if the coke burn-off cycle is less than 24 hours; and maintaining the daily average HCl concentration below the applicable operating limit.
3. Internal scrubbing system meeting percent HCl reduction standard.	a. The daily average pH or alkalinity of the water (or scrubbing liquid) exiting the internal scrubbing system must not fall below the limit established during the performance test.	Collecting the hourly and daily average pH or alkalinity monitoring data according to § 63.1572 [1] and maintaining the daily average pH or alkalinity above the operating limit established during the performance test.
	b. The daily average liquid-to-gas ratio must not fall below the level established during the performance test.	Collecting the hourly average gas flow rate [2] and total water (or scrubbing liquid) flow rate monitoring data according to § 63.1572; and determining and recording the hourly average liquid-to-gas ratio; and determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.

TABLE 28 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(c)(1), you shall meet each requirement in the following table that applies to you.]

For each new and existing catalytic reforming unit using this type of control device or system . . .	For this operating limit . . .	You shall demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by . . .
4. Fixed-bed gas-solid adsorption systems.	a. The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average temperature below the operating limit established during the performance test.
	b. The HCl concentration in the exhaust gas from the fixed-bed gas-solid adsorption system must not exceed the limit established during the performance test.	Measuring and recording the concentration of HCl weekly or during each regeneration cycle, whichever is less frequent, using a colormetric tube sampling system at a point within the adsorbent bed not to exceed 90 percent of the total length of the adsorption bed during coke-burn-off and catalyst rejuvenation; implementing procedures in the operating and maintenance plan if the HCl concentration at the sampling location within the adsorption bed exceeds the operating limit; and maintaining the HCl concentration in the gas from the adsorption system below the applicable operating limit.
5. Moving-bed gas-solid adsorption system (e.g., Chlorsorb™ System.	a. The daily average temperature of the gas entering or exiting the adsorption system must not exceed the limit established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average temperature below the operating limit established during the performance test.
	b. The weekly average chloride level on the sorbent entering the adsorption system must not exceed the design or manufacturer's recommended limit (1.35 weight percent for the Clorsorb™.	Collecting samples of the sorbent exiting the adsorption system three times per week (on non-consecutive days); and analyzing the samples for total chloride [3]; and determining and recording the weekly average chloride concentration; and maintaining the chloride concentration below the design or manufacturer's recommended limit (1.35 weight percent for the Chlorsorb™ System).
	c. The weekly average chloride level on the sorbent exiting the adsorption system must not exceed the design or manufacturer's recommended limit (1.8 weight percent for the Clorsorb™ System).	Collecting samples of the sorbent exiting the adsorption system three times per week (on non-consecutive days); and analyzing the samples for total chloride concentration; and determining and recording the weekly average chloride concentration; and maintaining the chloride concentration below the design or manufacturer's recommended limit (1.8 weight percent Chlorsorb™ System).

[1] If applicable, you can use either alternative in § 63.1573(b) instead of a continuous parameter monitoring system for pH or alkalinity if you used the alternative method in the initial performance test.

[2] If applicable, you can use the alternative in § 63.1573(a)(1) instead of a continuous parameter monitoring system for the gas flow rate or cumulative volume of gas entering or exiting the system if you used the alternative method in the initial performance test.

[3] The total chloride concentration of the sorbent material must be measured by the procedure, "Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)" in appendix A to this subpart; or by using EPA Method 5050, Bomb Preparation Method for Solid Waste, combined either with EPA Method 9056, Determination of Inorganic Anions by Ion Chromatography, or with EPA Method 9253, Chloride (Titrimetric, Silver Nitrate); or by using EPA Method 9212, Potentiometric Determination of Chloride in Aqueous Samples with Ion-Selective Electrode, and using the soil extraction procedures listed within the method. The EPA Methods 5050, 9056, 9212 and 9253 are included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These methods are also available at *http://www.epa.gov/epaoswer/hazwaste/test/main.htm*.

■ 32. Table 31 to subpart UUU of part 63 is amended by revising entry 1 and 3 as follows:

TABLE 31 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

* * * * *

For . . .	For this limit . . .	You shall install and operate this continuous monitoring system . . .
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of SO_2 (dry basis) at zero percent excess air for each exhaust stack. This system must include an oxygen monitor for correcting the data for excess air.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of reduced sulfur and oxygen (O_2) emissions. Calculate the reduced sulfur emissions as SO_2 (dry basis) at zero percent excess air. *Exception:* You can use an instrument having an air or SO_2 dilution and oxidation system to convert the reduced sulfur to SO_2 for continuously monitoring and recording the concentration (dry basis) at zero percent excess air of the resultant SO_2 instead of the reduced sulfur monitor. The monitor must include an oxygen monitor for correcting the data for excess oxygen.
* *	* * *	* *
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of total reduced sulfur (TRS) compounds, expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.	i. Continuous emission monitoring system to measure and record the hourly average concentration of TRS for each exhaust stack; this monitor must include an oxygen monitor for correcting the data for excess oxygen; or ii. Continuous parameter monitoring systems to measure and record the combustion zone temperature of each thermal incinerator and the oxygen content (percent, dry basis) in the vent stream of the incinerator.

■ 33. Table 33 to subpart UUU of part 63 is revised as follows:

TABLE 33 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(b)(5), you shall meet each requirement in the following table that applies to you.]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and each 12-hour rolling average concentration of SO_2 emissions measured by the continuous emission monitoring system is less than or equal to 250 ppmv (dry basis) at zero percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the SO_2 limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance.

TABLE 33 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(b)(5), you shall meet each requirement in the following table that applies to you.]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and each 12-hour rolling average concentration of reduced sulfur compounds measured by your continuous emission monitoring system is less than or equal to 300 ppmv, calculated as ppmv SO_2 (dry basis) at zero percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the SO_2 limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Each 12-hour rolling average concentration of SO_2 emissions measured by the continuous emission monitoring system during the initial performance test is less than or equal to 250 ppmv (dry basis) at zero percent excess air; and your performance evaluation shows the monitoring system meets the applicable requirements in § 63.1572.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Each 12-hour rolling average concentration of reduced sulfur compounds measured by the continuous emission monitoring system during the initial performance test is less than or equal to 300 ppmv, calculated as ppmv SO_2 (dry basis) at zero percent excess air; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of TRS compounds expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.	If you use continuous parameter monitoring systems, the average concentration of TRS emissions measured using Method 15 during the initial performance test is less than or equal to 300 ppmv expressed as equivalent SO_2 concentration (dry basis) at zero percent oxygen. If you use a continuous emission monitoring system, each 12-hour rolling average concentration of TRS emissions measured by the continuous emission monitoring system during the initial performance test is less than or equal to 300 ppmv expressed as an equivalent SO_2 (dry basis) at zero percent oxygen; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.

■ 34. Table 34 to subpart UUU of part 63 is revised as follows:

TABLE 34 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(c)(1), you shall meet each requirement in the following table that applies to you.]

For . . .	For this emission limit . . .	You shall demonstrate continuous compliance by . . .
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Collecting the hourly average SO_2 monitoring data (dry basis, percent excess air) according to § 63.1572; determining and recording each 12-hour rolling average concentration of SO_2; maintaining each 12-hour rolling average concentration of SO_2 at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of SO_2 greater than the applicable emission limitation in the compliance report required by § 63.1575.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Collecting the hourly average reduced sulfur (and air or O_2 dilution and oxidation) monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of reduced sulfur; maintaining each 12-hour rolling average concentration of reduced sulfur at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of reduced sulfur greater than the applicable emission limitation in the compliance report required by § 63.1575.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Collecting the hourly average SO_2 data (dry basis, percent excess air) according to § 63.1572; determining and recording each 12-hour rolling average concentration of SO_2; maintaining each 12-hour rolling average concentration of SO_2 at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of SO_2 greater than the applicable emission limitation in the compliance report required by § 63.1575.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Collecting the hourly average reduced sulfur (and air or O_2 dilution and oxidation) monitoring data according to § 63.1572; determining and recording each 12-hour rolling average concentration of reduced sulfur; maintaining each 12-hour rolling average concentration of reduced sulfur at or below the applicable emission limitation; and reporting any 12-hour rolling average concentration of reduced sulfur greater than the applicable emission limitation in the compliance report required by § 63.1575.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of TRS compounds, expressed as an SO_2 concentration (dry basis) at zero percent oxygen or reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air.	i. If you use continuous parameter monitoring systems, collecting the hourly average TRS monitoring data according to § 63.1572 and maintaining each 12-hour average concentration of TRS at or below the applicable emission limitation; or
		ii. If you use a continuous emission monitoring system, collecting the hourly average TRS monitoring data according to § 63.1572, determining and recording each 12-hour rolling average concentration of TRS; maintaining each 12-hour rolling average concentration of TRS at or below the applicable emission limitation; and reporting any 12-hour rolling average TRS concentration greater than the applicable emission limitation in the compliance report required by § 63.1575.

■ 35. Table 36 to subpart UUU is amended to revise entry 1 as follows:

TABLE 36 TO SUBPART UUU OF PART 63.—WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

Option	You shall meet one of these equipment standards . . .
1. Option 1	Install and operate a device (including a flow indicator, level recorder, or electronic valve position monitor) to demonstrate, either continuously or at least every hour, whether flow is present in the by bypass line. Install the device at or as near as practical to the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere.
* * * * * * *	

■ 36. Table 38 to subpart UUU is revised as follows:

TABLE 38 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

[As stated in § 63.1569(b)(2), you shall meet each requirement in the following table that applies to you.]

Option . . .	For this work practice standard . . .	You have demonstrated initial compliance if . . .
1. Each new or existing bypass line associated with a catalytic cracking unit, catalytic reforming unit, or sulfur recovery unit.	a. Option 1: Install and operate a device (including a flow indicator, level recorder, or electronic valve position monitor) to demonstrate, either continuously or at least every hour, whether flow is present in bypass line. Install the device at or as near as practical to the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere.	The installed equipment operates properly during each run of the performance test and no flow is present in the line during the test.
	b. Option 2: Install a car-seal or lock-and-key device placed on the mechanism by which the bypass device flow position is controlled (e.g., valve handle, damper level) when the bypass device is in the closed position such that the bypass line valve cannot be opened without breaking the seal or removing the device.	As part of the notification of compliance status, you certify that you installed the equipment, the equipment was operational by your compliance date, and you identify what equipment was installed.
	c. Option 3: Seal the bypass line by installing a solid blind between piping flanges.	See item 1.b of this table.
	d. Option 4: Vent the bypass line to a control device that meets the appropriate requirements in this subpart.	See item 1.b of this table.

■ 37. Table 39 to subpart UUU is amended by revising entry 1 as follows:

TABLE 39 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

* * * * *

If you elect this standard . . .	You shall demonstrate continuous compliance by . . .
1. Option 1: Flow indicator, level recorder, or electronic valve position monitor.	Monitoring and recording on a continuous basis or at least every hour whether flow is present in the bypass line; visually inspecting the device at least once every hour if the device is not equipped with a recording system that provides a continuous record; and recording whether the device is operating properly and whether flow is present in the bypass line.
* * * * * * *	

■ 38. Table 40 to subpart UUU is amended to revise entry 4, 5, 6, and 8 as follows:

TABLE 40 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS OPACITY MONITORING SYSTEMS AND CONTINUOUS EMISSION MONITORING SYSTEMS

* * * * *

This type of continuous opacity or emission monitoring system . . .	Must meet these requirements . . .
* * * * * * *	
4. SO_2 continuous emission monitoring system for sulfur recovery unit with oxidation control system or reduction control system; this monitor must include an O_2 monitor for correcting the data for excess air.	Performance specification 2 (40 CFR part 60, appendix B); span value of 500 ppm SO_2; use Methods 6 or 6C and 3A or 3B (40 CFR part 60, appendix A) for certifying O_2 monitor; and procedure 1 (40 CFR part 60, appendix F) except relative accuracy test audits are required annually instead of quarterly.
5. Reduced sulfur and O_2 continuous emission monitoring system for sulfur recovery unit with reduction control system not followed by incineration; this monitor must include an O_2 monitor for correcting the data for excess air unless exempted.	Performance specification 5 (40 CFR part 60, appendix B), except calibration drift specification is 2.5 percent of the span value instead of 5 percent; 450 ppm reduced sulfur; use Methods 15 or 15A and 3A or 3B (40 CFR part 60, appendix A) for certifying O_2monitor; if Method 3A or 3B yields O_2 concentrations below 0.25 percent during the performance evaluation, the O_2 concentration can be assumed to be zero and the O_2 monitor is not required; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
6. Instrument with an air or O_2 dilution and oxidation system to convert reduced sulfur to SO_2 for continuously monitoring the concentration of SO_2 instead of reduced sulfur monitor and O_2 monitor.	Performance specification 5 (40 CFR part 60, appendix B); span value of 375 ppm SO_2; use Methods 15 or 15A and 3A or 3B for certifying O_2 monitor; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
* * * * * * *	
8. O_2 monitor for oxygen concentration.	If necessary due to interferences, locate the oxygen sensor prior to the introduction of any outside gas stream; performance specification 3 (40 CFR part 60, appendix B; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.

■ 39. Table 41 to Subpart UUU is revised as follows:

TABLE 41 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS PARAMETER MONITORING SYSTEMS

[As stated in § 63.1572(c)(1), you shall meet each requirement in the following table that applies to you.]

If you use . . .	You shall . . .
1. pH strips	Use pH strips with an accuracy of ± 10 percent.
2. Colormetric tube sampling system.	Use a colormetric tube sampling system with a printed numerical scale in ppmv, a standard measurement range of 1 to 10 ppmv (or 1 to 30 ppmv if applicable), and a standard deviation for measured values of no more than ± 15 percent. System must include a gas detection pump and hot air probe if needed for the measurement range.

■ 40. Table 44 to subpart UUU of part 63 is revised as follows:

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.1	Applicability	Yes	Except that subpart UUU specifies calendar or operating day.
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5(A)–(C)	Construction and Reconstruction.	Yes	In § 63.5(b)(4), replace the reference to § 63.9 with § 63.9(b)(4) and (5).

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.5(d)(1)(i)	Application for Approval of Construction or Reconstruction—General Application Requirements.	Yes	Except, subpart UUU specifies the application is submitted as soon as practicable before startup but not later than 90 days (rather then 60) after the promulgation date where construction or reconstruction had commenced and initial startup had not occurred before promulgation.
§ 63.5(d)(1)(ii)		Yes	Except that emission estimates specified in § 63.5(d)(1)(ii)(H) are not required.
§ 63.5(d)(1)(iii)		No	Subpart UUU specifies submission of notification of compliance status.
§ 63.5(d)(2)		No.	
§ 63.5(d)(3)		Yes	Except that § 63.5(d)(3)(ii) does not apply.
§ 63.5(d0(4)		Yes.	
§ 63.5(e)	Approval of Construction or Reconstruction.	Yes.	
§ 63.5(f)(1)	Approval of Construction or Reconstruction Based on State Review.		
§ 63.5(f)(2)		Yes	Except that 60 days is changed to 90 days and cross-reference to 53.9(B)(2) does not apply.
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Yes.	
§ 63.6(b)(5)		Yes	Except that subpart UUU specifies different compliance dates for sources.
§ 63.6(b)(6)	[Reserved]	Not applicable.	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Yes.	
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Yes	Except that subpart UUU specifies different compliance dates for sources subject to Tier II gasoline sulfur control requirements.
§ 63.6(c)(3)–(4)	[Reserved]	Not applicable.	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Yes.	
§ 63.6(d)	[Reserved]	Not applicable.	
§ 63.6(e)(1)–(2)	Operation and Maintenance Requirements.	Yes.	
§ 63.6(e)(3)(i)–(iii)	Startup, Shutdown, and Malfunction Plan.	Yes.	
§ 63.6(e)(3)(iv)		Yes	Except that reports of actions not consistent with plan are not required within 2 and 7 days of action but rather must be included in next periodic report.
§ 63.6(e)(3)(v)–(viii)		Yes	The owner or operator is only required to keep the latest version of the plan.
§ 63.6(f)(1)–(2)(iii)(C)	Compliance with Emission Standards.	Yes.	
§ 63.6(f)(2)(iii)(D)		No.	
§ 63.6(f)(2)(iv)–(v)		Yes.	
§ 63.6(f)(3)		Yes.	
§ 63.6(g)	Alternative Standard	Yes.	
§ 63.6(h)	Opacity/VE Standards	Yes.	
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	No	Subpart UUU specifies methods.
§ 63.6(h)(2)(ii)	[Reserved]	Not applicable.	
§ 63.6(h)(2)(iii)		Yes.	
§ 63.6(h)(3)	[Reserved]	Not applicable.	
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Yes	Applies to Method 22 tests.
§ 63.6(h)(5)	Conducting Opacity/VE Observations.	No.	

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Yes	Applies to Method 22 observations.
§ 63.6(h)(7)(i)	Report COM Monitoring Data from Performance Test.	Yes.	
§ 63.6(h)(7)(ii)	Using COM Instead of Method 9.	No.	
§ 63.6(h)(7)(iii)	Averaging Time for COM during Performance Test.	Yes.	
§ 63.6(h)(7)(iv)	COM Requirements	Yes.	
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Yes.	
§ 63.6(h)(9)	Adjusted Opacity Standard	Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	Extension of compliance under § 63.6(i)(4) not applicable to a facility that installs catalytic cracking feed hydrotreating and receives an extended compliance date under § 63.1563(c).
§ 63.6(i)(15)	[Reserved]	Not applicable.	
§ 63.6(i)(16)		Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements Applicability.	Yes	Except that subpart UUU specifies the applicable test and demonstration procedures.
§ 63.7(a)(2)	Performance Test Dates	No	Test results must be submitted in the Notification of Compliance Status report due 150 days after the compliance date.
§ 63.7(a)(3)	Section 114 Authority	Yes.	
§ 63.7(b)	Notifications	Yes	Except that subpart UUU specifies notification at least 30 days prior to the scheduled test date rather than 60 days.
§ 63.7(c)	Quality Assurance Program/Site-Specific Test Plan.	Yes.	
§ 63.7(d)	Performance Test Facilities	Yes.	
§ 63.7(e)	Conduct of Tests	Yes.	
§ 63.7(f)	Alternative Test Method	Yes.	
§ 63.7(g)	Data Analysis, Recordkeeping, Reporting.	Yes	Except performance test reports must be submitted with notification of compliance status due 150 days after the compliance date.
§ 63.7(h)	Waiver of Tests	Yes.	
§ 63.8(a)(1)	Monitoring Requirements-Applicability.	Yes.	
§ 63.8(a)(2)	Performance Specifications	Yes.	
§ 63.8(a)(3)	[Reserved]	Not applicable.	
§ 63.8(a)(4)	Monitoring with Flares	Yes.	
§ 63.8(b)(1)	Conduct of Monitoring	Yes.	
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Yes	Subpart UUU specifies the required monitoring locations.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Yes.	
§ 63.8(c)(1)(i)–(ii)	Startup, Shutdown, and Malfunctions.	Yes	Except that subpart UUU specifies that reports are not required if actions are consistent with the SSM plan, unless requested by the permitting authority. If actions are not consistent, actions must be described in next compliance report.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	Yes.	
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Yes	Except that subpart UUU specifies that for continuous parameter monitoring systems, operational status verification includes completion of manufacturer written specifications or installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment will monitor accurately.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart UUU specifies operational requirements.

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.8(c)(4)(i)–(ii)	Continuous Monitoring System Requirements.	Yes	Except that these requirements apply only to a continuous opacity monitoring system or a continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.8(c)(5)	COM Minimum Procedures	Yes.	
§ 63.8(c)(6)	CMS Requirements	No	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.	
§ 63.8(d)	Quality Control Program	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.8(e)	CMS Performance Evaluation.	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits. Results are to be submitted as part of the Notification Compliance Status due 150 days after the compliance date.
§ 63.8(f)(1)–(5)	Alternative Monitoring Methods.	Yes	Except that subpart UUU specifies procedures for requesting alternative monitoring systems and alternative parameters.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Yes	Applicable to continuous emission monitoring systems if performance specification requires a relative accuracy test audit.
§ 63.8(g)(1)–(4)	Reduction of Monitoring Data.	Yes	Applies to continuous opacity monitoring system or continuous emission monitoring system.
§ 63.8(g)(5)	Data Reduction	No	Subpart UUU specifies requirements.
§ 63.9(a)	Notification Requirements—Applicability.	Yes	Duplicate Notification of Compliance Status report to the Regional Administrator may be required.
§ 63.9(b)(1)–(2), (4)–(5)	Initial Notifications	Yes	Except that notification of construction or reconstruction is to be submitted as soon as practicable before startup but no later than 30 days (rather than 60 days) after the effective date if construction or reconstruction had commenced but startup had not occurred before the effective date.
§ 63.9(b)(3)	[Reserved].		
§ 63.9(c)	Request for Extension of Compliance.	Yes.	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
§ 63.9(e)	Notification of Performance Test.	Yes	Except that notification is required at least 30 days before test.
§ 63.9(f)	Notification of VE/Opacity Test.	Yes.	
§ 63.9(g)	Additional Notification Requirements for Sources with Continuous Monitoring Systems.	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits.
§ 63.9(h)	Notification of Compliance Status.	Yes	Except that subpart UUU specifies the notification is due no later than 150 days after compliance date.
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information.	Yes.	
63. 10(a)	Recordkeeping and Reporting Applicability.	Yes.	
§ 63.10(b)	Records	Yes	Except that § 63.10(b)(2)(xiii) applies if you use a continuous emission monitoring system to meet the NSPS or you select to meet the NSPS, CO, or SO_2 reduced sulfur limit and the performance evaluation requires a relative accuracy test audit.

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you shall meet each requirement in the following table that applies to you.]

Citation	Subject	Applies to supbart UUU	Explanation
§ 63.10(c)(1)–(6), (9)–(15) ...	Additional Records for Continuous Monitoring Systems.	Yes	Except that these requirements apply if you use a continuous opacity monitoring system or a continuous emission monitoring system to meet the NSPS or elect to meet the NSPS opacity, CO, or SO_2 limits.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Exceedances.	No	Subpart UUU specifies requirements.
§ 63.10(d)(1)	General Reporting Requirements.	Yes.	
§ 63.10(d)(2)	Performance Test Results	No	Subpart UUU requires performance test results to be reported as part of the Notification of Compliance Status due 150 days after the compliance date.
§ 63.10(d)(3)	Opacity or VE Observations.	Yes.	
§ 63.10(d)(4)	Progress Reports	Yes.	
§ 63.10(d)(5)(i)	Startup, Shutdown, and Malfunction Reports.	Yes	Except that reports are not required if actions are consistent with the SSM plan, unless requested by permitting authority.
§ 63.10(d)(5)(ii)	.....	Yes	Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes	Except that these requirements apply only to a continuous opacity monitoring system or continuous emission monitoring system if you are subject to the NSPS or elect to comply with the NSPS opacity, CO, or SO_2 limits. Reports of performance evaluations must be submitted in Notification of Compliance Status.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Subpart UUU specifies the applicable requirements.
§ 63.10(e)(4)	COMS Data Reports	Yes.	
§ 63.10(f)	Recordkeeping/Reporting Waiver.	Yes.	
§ 63.11	Control Device Requirements.	Yes	Applicable to flares.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Available of Information	Yes.	

■ 41. Subpart UUU of part 63 is amended by adding appendix A to read as follows:

Appendix A To Subpart UUU of Part 63—Determination of Metal Concentration on Catalyst Particles (Instrumental Analyzer Procedure)

1.0 Scope and Application.

1.1 Analytes. The analytes for which this method is applicable include any elements with an atomic number between 11 (sodium) and 92 (uranium), inclusive. Specific analytes for which this method was developed include:

Analyte	CAS No.	Minimum detectable limit
Nickel compounds	7440–02–0	<2 % of span.
Total chlorides	16887–00–6	<2 % of span.

1.2 Applicability. This method is applicable to the determination of analyte concentrations on catalyst particles. This method is applicable for catalyst particles obtained from the fluid catalytic cracking unit (FCCU) regenerator (*i.e.*, equilibrium catalyst), from air pollution control systems operated for the FCCU catalyst regenerator vent (FCCU fines), from catalytic reforming units (CRU), and other processes as specified within an applicable regulation. This method is applicable only when specified within the regulation.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from the analytical method.

2.0 Summary of Method.

2.1 A representative sample of catalyst particles is collected, prepared, and analyzed for analyte concentration using either energy or wavelength dispersive X-ray flourescent (XRF) spectrometry instrumental analyzers. In both types of XRF spectrometers, the instrument irradiates the sample with high energy (primary) x-rays and the elements in

the sample absorb the x-rays and then re-emit secondary (fluorescent) x-rays of characteristic wavelengths for each element present. In energy dispersive XRF spectrometers, all secondary x-rays (of all wavelengths) enter the detector at once. The detector registers an electric current having a height proportional to the photon energy, and these pulses are then separated electronically, using a pulse analyzer. In wavelength dispersive XRF spectrometers, the secondary x-rays are dispersed spatially by crystal diffraction on the basis of wavelength. The crystal and detector are made to synchronously rotate and the detector then receives only one wavelength at a time. The intensity of the x-rays emitted by each element is proportional to its concentration, after correcting for matrix effects. For nickel compounds and total chlorides, the XRF instrument response is expected to be linear to analyte concentration. Performance specifications and test procedures are provided to ensure reliable data.

3.0 Definitions.

3.1 Measurement System. The total equipment required for the determination of analyte concentration. The measurement system consists of the following major subsystems:

3.1.1 Sample Preparation. That portion of a system used for one or more of the following: sample acquisition, sample transport, sample conditioning, or sample preparation prior to introducing the sample into the analyzer.

3.1.2 Analyzer. That portion of the system that senses the analyte to be measured and generates an output proportional to its concentration.

3.1.3 Data Recorder. A digital recorder or personal computer used for recording measurement data from the analyzer output.

3.2 Span. The upper limit of the gas concentration measurement range displayed on the data recorder.

3.3 Calibration Standards. Prepared catalyst samples or other samples of known analyte concentrations used to calibrate the analyzer and to assess calibration drift.

3.4 Energy Calibration Standard. Calibration standard, generally provided by the XRF instrument manufacturer, used for assuring accuracy of the energy scale.

3.5 Accuracy Assessment Standard. Prepared catalyst sample or other sample of known analyte concentrations used to assess analyzer accuracy error.

3.6 Zero Drift. The difference in the measurement system output reading from the initial value for zero concentration level calibration standard after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.7 Calibration Drift. The difference in the measurement system output reading from the initial value for the mid-range calibration standard after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.8 Spectral Interferences. Analytical interferences and excessive biases caused by elemental peak overlap, escape peak, and sum peak interferences between elements in the samples.

3.9 Calibration Curve. A graph or other systematic method of establishing the relationship between the analyzer response and the actual analyte concentration introduced to the analyzer.

3.10 Analyzer Accuracy Error. The difference in the measurement system output reading and the ideal value for the accuracy assessment standard.

4.0 Interferences.

4.1 Spectral interferences with analyte line intensity determination are accounted for within the method program. No action is required by the XRF operator once these interferences have been addressed within the method.

4.2 The X-ray production efficiency is affected by particle size for the very lightest elements. However, particulate matter (PM) 2.5 particle size effects are substantially < 1 percent for most elements. The calibration standards should be prepared with material of similar particle size or be processed (ground) to produce material of similar particle size as the catalyst samples to be analyzed. No additional correction for particle size is performed. Alternatively, the sample can be fused in order to eliminate any potential particle size effects.

5.0 Safety.

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 X-ray Exposure. The XRF uses X-rays; XRF operators should follow instrument manufacturer's guidelines to protect from accidental exposure to X-rays when the instrument is in operation.

5.3 Beryllium Window. In most XRF units, a beryllium (Be) window is present to separate the sample chamber from the X-ray tube and detector. The window is very fragile and brittle. Do not allow sample or debris to fall onto the window, and avoid using compressed air to clean the window because it will cause the window to rupture. If the window should rupture, note that Be metal is poisonous. Use extreme caution when collecting pieces of Be and consult the instrument manufacturer for advice on cleanup of the broken window and replacement.

6.0 Equipment and Supplies.

6.1 Measurement System. Use any measurement system that meets the specifications of this method listed in section 13. The typical components of the measurement system are described below.

6.1.1 Sample Mixer/Mill. Stainless steel, or equivalent to grind/mix catalyst and binders, if used, to produce uniform particle samples.

6.1.2 Sample Press/Fluxer. Stainless steel, or equivalent to produce pellets of sufficient size to fill analyzer sample window, or alternatively, a fusion device capable of preparing a fused disk of sufficient size to fill analyzer sample window.

6.1.3 Analytical Balance. ±0.0001 gram accuracy for weighing prepared samples (pellets).

6.1.4 Analyzer. An XRF spectrometer to determine the analyte concentration in the prepared sample. The analyzer must meet the applicable performance specifications in section 13.

6.1.5 Data Recorder. A digital recorder or personal computer for recording measurement data. The data recorder resolution (*i.e.*, readability) must be 0.5 percent of span. Alternatively, a digital or analog meter having a resolution of 0.5 percent of span may be used to obtain the analyzer responses and the readings may be recorded manually.

7.0 Reagents and Standards.

7.1 Calibration Standards. The calibration standards for the analyzer must be prepared catalyst samples or other material of similar particle size and matrix as the catalyst samples to be tested that have known concentrations of the analytes of interest. Preparation (grinding/milling/fusion) of the calibration standards should follow the same processes used to prepare the catalyst samples to be tested. The calibration standards values must be established as the average of a minimum of three analyses using an approved EPA or ASTM method with instrument analyzer calibrations traceable to the U.S. National Institute of Standards and Technology (NIST), if available. The maximum percent deviation of the triplicate calibration standard analyses should agree within 10 percent of the average value for the triplicate analysis (see Figure 1). If the calibration analyses do not meet this criteria, the calibration standards must be re-analyzed. If unacceptable variability persists, new calibration standards must be prepared. Approved methods for the calibration standard analyses include, but are not limited to, EPA Methods 6010B, 6020, 7520, or 7521 of SW–846.[1] Use a minimum of four calibration standards as specified below (see Figure 1):

7.1.1 High-Range Calibration Standard. Concentration equivalent to 80 to 100 percent of the span. The concentration of the high-range calibration standard should exceed the maximum concentration anticipated in the catalyst samples.

7.1.2 Mid-Range Calibration Standard. Concentration equivalent to 40 to 60 percent of the span.

7.1.3 Low-Range Calibration Standard. Concentration equivalent to 1 to 20 percent of the span. The concentration of the low-range calibration standard should be selected so that it is less than either one-forth of the applicable concentration limit or of the lowest concentration anticipated in the catalyst samples.

7.1.4 Zero Calibration Standard. Concentration of less than 0.25 percent of the span.

7.2 Accuracy Assessment Standard. Prepare an accuracy assessment standard and determine the ideal value for the accuracy assessment standard following the same procedures used to prepare and analyze the

calibration standards as described in section 7.1. The maximum percent deviation of the triplicate accuracy assessment standard analyses should agree within 10 percent of the average value for the triplicate analysis (see Figure 1). The concentration equivalent of the accuracy assessment standard must be between 20 and 80 percent of the span.

7.3 Energy Calibration Standard. Generally, the energy calibration standard will be provided by the XRF instrument manufacturer for energy dispersive spectrometers. Energy calibration is performed using the manufacturer's recommended calibration standard and involves measurement of a specific energy line (based on the metal in the energy calibration standard). This is generally an automated procedure used to assure the accuracy of the energy scale. This calibration standard may not be applicable to all models of XRF spectrometers (particularly wavelength dispersive XRF spectrometers).

8.0 Sample Collection, Preservation, Transport, and Storage. [Reserved]

9.0 Quality Control.

9.1 Energy Calibration. For energy dispersive spectrometers, conduct the energy calibration by analyzing the energy calibration standard provided by the manufacturer. The energy calibration involves measurement of a specific energy line (based on the metal in the energy calibration standard) and then determination of the difference between the measured peak energy value and the ideal value. This analysis, if applicable, should be performed daily prior to any sample analyses to check the instrument's energy scale. This is generally an automated procedure and assures the accuracy of the energy scale. If the energy scale calibration process is not automated, follow the manufacturer's procedures to manually adjust the instrument, as necessary.

9.2 Zero Drift Test. Conduct the zero drift test by analyzing the analyte concentration output by the measurement system with the initial calibration value for the zero calibration standard (see Figure 2). This analysis should be performed with each set of samples analyzed.

9.3 Calibration Drift Test. Conduct the calibration drift test by analyzing the analyte concentration output by the measurement system with the initial calibration value for the mid-range calibration standard (see Figure 2). This analysis should be performed with each set of samples analyzed.

9.4 Analyzer Accuracy Test. Conduct the analyzer accuracy test by analyzing the accuracy assessment standard and comparing the value output by the measurement system with the ideal value for the accuracy assessment standard (see Figure 2). This analysis should be performed with each set of samples analyzed.

10.0 Calibration and Standardization.

10.1 Perform the initial calibration and set-up following the instrument manufacturer's instructions. These procedures should include, at a minimum, the major steps listed in sections 10.2 and 10.3. Subsequent calibrations are to be performed when either a quality assurance/quality control (QA/QC) limit listed in section 13 is exceeded or when there is a change in the excitation conditions, such as a change in the tube, detector, X-ray filters, or signal processor. Calibrations are typically valid for 6 months to 1 year.

10.2 Instrument Calibration. Calibration is performed initially with calibration standards of similar matrix and binders, if used, as the samples to be analyzed (see Figure 1).

10.3 Reference Peak Spectra. Acquisition of reference spectra is required only during the initial calibration. As long as no processing methods have changed, these peak shape references remain valid. This procedure consists of placing the standards in the instrument and acquiring individual elemental spectra that are stored in the method file with each of the analytical conditions. These reference spectra are used in the standard deconvolution of the unknown spectra.

11.0 Analytical Procedure.

11.1 Sample Preparation. Prepare catalyst samples using the same procedure used to prepare the calibration standards. Measure and record the weight of sample used. Measure and record the amount of binder, if any, used. Pellets or films must be of sufficient size to cover the analyzer sample window.

11.2 Sample Analyses. Place the prepared catalyst samples into the analyzer. Follow the manufacturer's instructions for analyzing the samples.

11.3 Record and Store Data. Use a digital recorder or personal computer to record and store results for each sample. Record any mechanical or software problems encountered during the analysis.

12.0 Data Analysis and Calculations.

Carry out the following calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Drift. Calculate the zero and calibration drift for the tests described in sections 9.2 and 9.3 (see also Figure 2) as follows:

$$\text{QC Value} = \frac{\text{CurrentAnalyzerCal.Response} - \text{InitialCal.Response}}{\text{Span}} \times 100 \qquad \text{(Eq. A-1)}$$

Where:

CurrentAnalyzerCal.Response = Instrument response for current QC sample analyses;
InitialCal.Response = Initial instrument response for calibration standard;
QC Value = QC metric (zero drift or calibration drift), percent of span;
Span = Span of the monitoring system.

12.2 Analyzer Accuracy. Calculate the analyzer accuracy error for the tests described in section 9.4 (see also Figure 2) as follows:

$$\text{Accuracy Value} = \frac{\text{CurrentAnalyzerCal.Response} - \text{IdealCal.Response}}{\text{IdealCal.Response}} \times 100 \qquad \text{(Eq. A-2)}$$

Where:

Accuracy Value = Percent difference of instrument response to the ideal response for the accuracy assessment standard;
CurrentAnalyzerCal.Response = Instrument response for current QC sample analyses;
IdealCal.Response = Ideal instrument response for the accuracy assessment standard.

13.0 Method Performance.

13.1 Analytical Range. The analytical range is determined by the instrument design. For this method, a portion of the analytical range is selected by choosing the span of the monitoring system. The span of the monitoring system must be selected such that it encompasses the range of concentrations anticipated to occur in the catalyst sample. If applicable, the span must be selected such that the analyte concentration equivalent to the emission standard is not less than 30 percent of the span. If the measured analyte concentration exceeds the concentration of the high-range calibration standard, the sample analysis is considered invalid. Additionally, if the measured analyte concentration is less than the concentration of the low-range calibration standard but above the detectable limit, the sample analysis results must be flagged with a footnote stating, in effect, that the analyte was detected but that the reported concentration is below the lower quantitation limit.

13.2 Minimum Detectable Limit. The minimum detectable limit depends on the signal-to-noise ratio of the measurement system. For a well-designed system, the minimum detectable limit should be less than 2 percent of the span.

13.3 Zero Drift. Less than ±2 percent of the span.

13.4 Calibration Drift. Less than ±5 percent of the span.

13.5 Analyzer Accuracy Error. Less than ±10 percent.

14.0 Pollution Prevention. [Reserved]

15.0 Waste Management. [Reserved]

16.0 Alternative Procedures. [Reserved]

17.0 References.

1. U.S. Environmental Protection Agency. 1998. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. EPA Publication No. SW–846, Revision 5 (April 1998). Office of Solid Waste, Washington, DC.

18.0 Tables, Diagrams, Flowcharts, and Validation Data.

Date:

Analytic Method Used:

	Zero [a]	Low-Range [b]	Mid-Range [c]	High-Range [d]	Accuracy Std [e]
Sample Run:.					
1.					
2.					
3.					
Average.					
Maximum Percent Deviation.					

[a] Average must be less than 0.25 percent of span.
[b] Average must be 1 to 20 percent of span.
[c] Average must be 40 to 60 percent of span.
[d] Average must be 80 to 100 percent of span.
[e] Average must be 20 to 80 percent of span.

Figure 1. Data Recording Sheet for Analysis of Calibration Samples.

Source Identification:
Run Number:
Test Personnel:
Span:
Date:

	Initial calibration response	Current analyzer calibration response	Drift (percent of span)
Zero Standard.			
Mid-range Standard.			
	Ideal calibration response	**Current analyzer calibration response**	**Accuracy error (percent of ideal)**
Accuracy Standard.			

Figure 2. Data Recording Sheet for System Calibration Drift Data.

[FR Doc. 05–2308 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0033; FRL–7869–8]

RIN 2060–AF28

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On April 11, 2002, pursuant to section 112 of the Clean Air Act (CAA), the EPA issued national emission standards to control hazardous air pollutants emitted from catalytic cracking units, catalytic reforming units, and sulfur recovery units at petroleum refineries. This proposal would amend several sections of the existing standards. The proposed amendments would revise the affected source designations and add new compliance options for catalytic reforming units that use different types of emission control systems, new monitoring alternatives for catalytic cracking units and catalytic reforming units, and a new procedure for determining the metal or total chloride concentration on catalyst particles. The proposed amendments would also defer technical requirements for most continuous parameter monitoring systems, clarify testing and monitoring requirements, and make editorial corrections to improve implementation of the standards and to promote better understanding of their requirements.

DATES: *Comments.* Comments must be received on or before March 11, 2005, unless a hearing is held. If a hearing is held, comments must be received on or before March 28, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0033, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web Site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2002–0033. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Docket ID No. OAR–2002–0033 (or A–97–36), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0884, fax number (919) 541–3470, e-mail address: *lucas.bob@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, we are issuing these amendments as a direct final rule. We are making these amendments as a direct final rule without prior proposal because we view the revisions as noncontroversial and anticipate no adverse comments. We have explained our reasons for these revisions in the direct final rule.

If we receive any significant adverse comment on one or more distinct amendments in the direct final rule, we will publish a timely notice of withdrawal in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule. If no significant adverse comments are received, no further action will be taken on this proposal and the direct final rule will become effective as provided in that notice.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

I. General Information

A. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Category	NAICS code[1]	Examples of regulated entities
Industry	32411	Petroleum refineries that operate catalytic cracking units, catalytic reforming units, or sulfur recovery units.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1561 of the NESHAP for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

Do not submit information containing CBI to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0033. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's proposed amendments is also available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*s. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

D. Will There Be a Public Hearing?

If anyone contacts the EPA requesting to speak at a public hearing by February 22, 2005, a public hearing will be held on February 23, 2005. If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby.

II. Statutory and Executive Order Reviews

For information regarding other administrative requirements for this action, please see the direct final rule that is located in the Rules and Regulations section of this **Federal Register**.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business that has no more than 1,500 employees and no more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks; [1] for NAIC code 32411; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives which minimize any significant economic impact of the proposed rule on small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The proposed amendments make improvements to the existing standards by adding new compliance options, allowing more time for certain new or reconstructed affected sources to comply, and clarifying monitoring and testing requirements. We have, therefore, concluded that today's proposed amendments will have no adverse impacts on any small entities and may relieve burden in some cases. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 1, 2005.

Stephen L. Johnson,

Acting Administrator.

[FR Doc. 05–2309 Filed 2–8–05; 8:45 am]

BILLING CODE 6560–50–P

[1] Capacity includes owned or leased facilities as well as facilities under a processing agreement or an agreement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

Federal Register

Wednesday,

February 9, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 21 and 22

Migratory Bird Permits; Changes in the Regulations Governing Falconry; Notice of Intent To Prepare an Environmental Assessment for Falconry and Raptor Propagation Activities; Proposed Rule and Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 21 and 22

RIN 1018–AG11

Migratory Bird Permits; Changes in the Regulations Governing Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (we or us) proposes changes in the regulations governing the practice of falconry in the United States. We propose reorganization of the current regulations. We have added or changed some provisions in the current regulations. The changes are intended to make it easier to understand the requirements for the practice of falconry, including take of birds from the wild, and the procedures for obtaining a falconry permit. We also propose changes to simplify or clarify those regulations, or to change them as necessary to accompany the changes in the falconry regulations. This rule also adds a provision to approve falconry regulations adopted or established by Indian Tribes.

DATES: Send comments on this proposal by May 10, 2005.

ADDRESSES: You may submit comments, identified by RIN 1018–AG11, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://migratorybirds.fws.gov.* Follow the links to submit a comment.
- E-mail address for comments: *FalconryRegulations@fws.gov.* Include RIN number 1018–AG11 in the subject line of the message.
- Fax: 703–358–2217.
- Mail: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610.
- Hand Delivery: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

Instructions: All submissions received must include Regulatory Information Number (RIN) 1018–AG11 at the beginning. All comments received, including any personal information provided, will be available for public inspection at the address given above for hand delivery of comments. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1714, or Dr. George T. Allen, Wildlife Biologist, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States—Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976.

The taking and possession of raptors are strictly prohibited except as permitted under regulations implementing the MBTA. Activities with migratory birds are prohibited unless specifically authorized by regulation. Regulations governing the issuance of permits for migratory birds are authorized by the MBTA and subsequent regulations. They are in title 50, Code of Federal Regulations, parts 10, 13, 21, and 22. Raptors also may be protected by State and tribal regulations.

Regulations for falconry schools are not covered under this rule. We have concluded that falconry schools are most appropriately dealt with under regulations governing education with migratory birds.

Changes in the Regulations Governing Falconry

We have rewritten the regulations in plain language and have changed or added some provisions. We seek comment on these proposed regulations, particularly the following substantive changes.

1. A State or tribal falconry permit will suffice for the practice of falconry. No Federal falconry permit will be required after a State or Tribe is in compliance with these regulations. A State/Federal double permitting system has been in place since implementation of Federal regulations governing falconry. Every State government, except those of Connecticut and Hawaii, has now implemented regulations governing falconry. The government of the District of Columbia has not implemented regulations governing falconry. States and the District of Columbia must operate within the bounds of the Federal regulations to allow falconry. We have concluded that with State and tribal permitting in place (if Tribes choose to do so), we can reduce the paperwork burden on permittees and the Service, and can eliminate the cost of a Federal permit for falconry permittees. All State and tribal falconry permitting must operate under these Federal requirements for the governance of falconry. These regulations also contain provision for ''decertification'' of State or tribal programs that do not sufficiently regulate falconry permitting or the practice of falconry. States or Tribes that fail to meet the standards herein will not be approved to allow the practice of falconry. No Tribe has sought to establish falconry regulations, but with this rule we intend to make it clear that they can do so.

2. Electronic reporting of acquisition, transfer, or loss of raptors held for falconry will be implemented. Electronic reporting will eliminate the need for permittees to submit paper reports for these actions. Under the Government Paperwork Elimination Act of 1998, Federal agencies are required to provide for the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper. Implementation of electronic reporting for transactions under the falconry regulations will reduce permittee expenses and the time involved in reporting.

Note: The electronic reporting page, *http://permits.fws.gov/186A,* is not functional at this time.

3. Apprentice falconers will be allowed to possess Harris's hawks.

4. Apprentice falconers may possess non-imprinted captive-bred birds of the species they are allowed to possess.

5. Master falconers will be allowed to keep five raptors for use in falconry, though only three of the raptors may be taken from the wild. Under the current regulations, master falconers are allowed to keep three birds for falconry. Many individuals have sufficient time available to care for and train five

raptors for use in falconry. Allowing the possession of five raptors does not change the allowed take from the wild or the current limit on possession of birds taken from the wild.

6. The required examination for apprentice falconers and new residents may be developed and administered by each State or Tribe. After we approve a State's or Tribe's certification under these regulations, we will no longer have to approve revisions of the examination.

7. A new resident of the United States can qualify for a falconry permit appropriate for his or her experience. The applicant must correctly answer at least 80 percent of the questions on the supervised examination for apprentice falconers administered by the State or Tribe under which the applicant wishes to obtain a falconry permit. If the applicant passes the test, the State or Tribe may decide what level of falconry permit he or she is qualified to hold.

8. Facilities and equipment requirements are simplified and rewritten to make them easier to understand.

9. Possession of facilities for housing raptors will not be a prerequisite for obtaining a permit. However, a permittee must have facilities that pass inspection by the State or Tribe before he or she may obtain a raptor for use in falconry. This change will, for example, allow falconers who no longer can keep falconry birds to assist apprentice falconers in learning about the practice of falconry.

10. The 180-day-per-year limit on take of raptors from the wild is removed. Raptors may be taken for falconry during periods specified by the States or Tribes.

11. Hybrid raptors must be imprinted on humans or be surgically sterilized if they are to be used in falconry. When flown, a hybrid must have an attached radio transmitter that will allow the permittee to locate it if he or she needs to do so. Release of hybrids to the wild is illegal.

12. All falconers will be responsible for treatment and rehabilitation costs of falconry raptors injured in trapping efforts.

13. Banding of all goshawks taken from the wild will be required.

14. Temporary release of falconry raptors to the wild (''hacking'') will be allowed. Some falconry raptors are better adapted to hunting after being hacked. Hacking has been allowed by the Fish and Wildlife Service for many years, but has not been considered in the falconry regulations.

15. General and master falconers may use suitable raptors in raptor propagation if the propagator has a raptor propagation permit. The raptors do not need to be transferred from the falconer's falconry permit if they are used temporarily for propagation.

16. A falconer may transfer a wild raptor captured under a falconry permit to a propagation permit after the raptor has been used in falconry for at least 2 years. Previously, raptors taken for falconry could be transferred to another permit type immediately after capture.

17. General and master falconers may use suitable raptors they hold (except golden eagles) in conservation education programs without an additional permit. However, the raptors must be used in hunting; they may not be held under a falconry permit to be used primarily for conservation education purposes. Falconers can serve a role in educating the public about the roles raptors play in the environment and their legal protections.

18. The age for apprentice falconers is lowered from 14 to 12. We believe individuals age 12 and older may be able to learn falconry and handle falconry raptors capably.

19. General and master falconers may assist Federal- and State-permitted wildlife rehabilitators in conditioning of raptors for release to the wild. To do so, the falconer must be a subpermittee of the rehabilitator.

20. A visitor to the United States with a falconry permit from his or her country may practice falconry in the United States if the State in which he or she wishes to do so allows it. Federal regulations will allow qualified falconers to participate in falconry meets and other activities in the United States. Exchange of information about falconry should benefit the U.S. falconry community.

21. Requirements for capture and possession of golden eagles for use in falconry by master falconers with sufficient experience are added to these regulations. Previously, they were covered in 50 CFR 22.24. Also, in this proposed rule, the regulations in 50 CFR 22.24 are simplified to account for this change, which will facilitate permitting by the States and Tribes. Federal permitting of falconers for possession of golden eagles will no longer be required.

Because it will take time for States to change their falconry regulations to comply with these regulations, the final compliance date for these regulations is yet to be determined. We propose that it will be 5 years from January 1st of the year following the publication of the final rule implementing revised falconry regulations. We seek comments on this time frame and a final date for the changeover to the new regulations. Is the 5 year period sufficient for all States to comply with the new regulations?

Each State or Tribe that wishes to allow the practice of falconry must certify to the Director of the Fish and Wildlife Service that it is in compliance with the new regulations. Any State certified to allow falconry under the Federal falconry regulations in §§ 21.28 and 21.29 in effect prior to the effective date of the final rule for this action (*see* 50 CFR part 21, revised October 1, 2004) may continue to allow falconry under those provisions until we publish notice of our approval of that specific State's certification in the **Federal Register**, or until 5 years from January 1st of the year following the publication of the final rule implementing revised falconry regulations.

We also seek careful consideration of our proposal to initiate proceedings to revoke falconry permitting in any State or by any Tribe if, after reviewing the State's or Tribe's falconry permitting, we determine that the State or Tribe has not issued permits or maintained records in accordance with the proposed regulations. We propose to allow the State or Tribe one year to correct the permitting problems. We further propose to revoke the State or Tribe's certification if, at the end of the year, the State or Tribe has not corrected its permitting problems. The Service is not able to inspect falconry facilities or administer the falconry test to permit applicants, and will not have sufficient personnel to be able to do so in the future. Therefore, we see no alternative to revoking falconry permitting for State or tribal permittees if a State or Tribe does not maintain a permitting program in accordance with these regulations. Our decision to decertify a State or Tribe may be appealed to the Director.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol '' § '' and a numbered heading; for example: ''*§ 21.29 Falconry standards and falconry permitting.*'') (5) Does the description of the rule in the

SUPPLEMENTARY INFORMATION section of the preamble help you to understand the proposed rule? What else could we do the make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov.*

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. According to OMB, this proposed rule raises novel legal or policy issues. The proposed falconry provisions are in compliance with other laws, policies, and regulations.

b. This rule will not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are approximately 4,000 falconers in the United States, few of whom will have to modify their raptor housing facilities because of this rule.

c. This rule will not create inconsistencies with other agencies' actions. The rule deals solely with governance of falconry in the United States. No other Federal agency has any role in regulating falconry.

d. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of falconry.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities because the changes we are proposing are intended primarily to clarify the requirements for falconry and the procedures for obtaining a falconry permit.

This determination is based on the fact that we are proposing limited changes to the current requirements for falconry facilities (housing). To legally practice falconry in the United States, an applicant will be required to obtain a State or tribal falconry permit. To do so, he or she must demonstrate knowledge of falconry and must have facilities for keeping falconry raptors that will protect them from weather extremes. The changes we propose will require minimal changes to the facilities of some falconers, but affect neither the information collected nor the fees required to obtain a permit. Consequently, we certify that because this proposed rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. If all falconry permittees had to rebuild their falconry facilities to comply with the proposed regulations, at an estimated $2,000 each, the total cost to permittees would be $8,000,000. This highest-cost estimate for compliance with this rule by permittees would be a one-time expenditure.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry affects small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Though States may have to revise their falconry regulations to comply with the proposed revisions, nearly every State already has falconry regulations in place. Therefore, revisions of the State regulations should not be significant.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It will not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from the regulation of falconry. However, this rule provides the opportunity for States to cooperate in management of falconry permits and to ease the permitting process for permit applicants.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned clearance number 1018–0022, which expires 7/31/2007. This proposed regulation does not change or add to the approved information collection.

Information from the collection is used to document take of wild raptors for use in falconry and to document transfers of birds held for falconry between permittees. A Federal 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.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f) and part 516 of the U.S. Department of the Interior Manual (516 DM). We prepared an environmental assessment (EA) in July 1988 to support establishment of regulations governing the use of most raptors in falconry. You can obtain a copy of the EA by contacting us at the address in the **ADDRESSES** section. This rule does not change the allowed take of raptors from the wild. The changes we propose are to delegate administration of falconry permitting and the practice of falconry to the States or Tribes, and are otherwise largely to reorganize the regulations, put them into easier-to-understand language, and combine related sections. We will prepare an updated environmental assessment on the take of raptors for use in falconry and the delegation of the permitting authority to the States and Tribes during the rulemaking process to determine whether these proposals are major Federal actions significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds or to regulate falconry on tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under Executive Order 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

The changes we propose are primarily in the combining, reorganizing, and rewriting of the regulations. The environmental impacts of this action are limited.

Socioeconomic. We do not expect the proposed action to have discernible socioeconomic impacts.

Raptor populations. This rule does not significantly alter the take or raptors for falconry in the United States. This rule will have little change on the effects of falconry on raptor populations.

Endangered and Threatened Species. The regulations have new provisions governing falconry in habitats important to those threatened or endangered species likely to be impacted by falconry.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat (16 U.S.C. 1536 (a)(2)). The Division of Threatened and Endangered Species concurred with our finding that the revised regulations will not affect listed species.

Author

The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203–1610.

Public Participation

You may submit written comments on this proposal to the location identified in the **ADDRESSES** section, or you may submit electronic comments to the internet address or the e-mail address listed in the **ADDRESSES** section. We must receive your comments before the date listed in the **DATES** section. Following review and consideration of comments, we will issue a final rule on the proposed regulation changes.

When submitting electronic comments, please include your name and return address in your message, identify it as comments on the falconry regulations change, and submit your comments as an ASCII file. Include RIN 1018–AG11 in the subject line of your message. Do not use special characters or any encryption.

When submitting written comments, please include your name and return address in your letter and identify it as comments on the falconry regulations change, RIN 1018–AG11. To facilitate compiling the Administrative Record for this action, you must submit written comments on 8½ inch by 11 inch paper.

All comments on the proposed rule will be available for public inspection during normal business hours at Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia 22203–1610. The complete file for this proposed rule is available, by appointment, during normal business hours at the same address. You may call 703–358–1825 to make an appointment to view the file.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. An individual respondent may request that we withhold his or her home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We will not consider anonymous comments.

List of Subjects

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend parts 21 and 22 of subpart C, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows.

PART 21—MIGRATORY BIRD PERMITS

1. Revise the authority citation for part 21 to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 704, 712(2)); Pub. L. 107–314, 116 Stat. 2458 (16 U.S.C. 703 note).

2. Amend § 21.2 by revising paragraph (b) to read as follows:

§ 21.2 Scope of regulations.

* * * * *

(b) This part, except for § 21.22 (banding or marking), § 21.29 (falconry), and § 21.31 (rehabilitation), does not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*), for which regulations are provided in part 22 of this subchapter.

* * * * *

3. Amend § 21.3 by revising the definition of ''falconry'' and adding a definition of ''hybrid'' in alphabetical order, to read as follows:

§ 21.3 Definitions.

* * * * *

Falconry is caring for and training raptors for pursuit of game, and the sport of hunting wild game with raptors.

Hybrid means offspring of birds listed in § 10.13 of subchapter B of this chapter as two or more distinct species, or offspring of birds recognized by ornithological authorities as two or more distinct species.

* * * * *

4. Amend § 21.21 by revising paragraph (a) to read as follows.

§ 21.21 Import and export permits.

(a) *Do I need a permit to import or export migratory birds?* In most cases, you will need a permit.

(1) Unless you import migratory game birds in accordance with the provisions of subparts G and J of 50 CFR part 20, you must have an import permit to import migratory birds or their parts, nests, or eggs.

(2) With the following exceptions, you must have an export permit before you export migratory birds or their parts, nests, or eggs. You also must meet the requirements in 50 CFR parts 17, 22, and 23, where applicable, to export migratory birds or their parts, nests, or eggs.

(i) You may export captive-reared migratory game birds to Canada or Mexico without a permit if the birds are marked in compliance with the provisions of § 21.13(b).

(ii) You may export lawfully taken migratory game birds in accordance with the provisions of subpart J of 50 CFR part 20.

(iii) You may transport a bird or birds you legally hold for falconry under § 21.29 without a permit to and from another country for use in falconry. Unless you have the necessary permit(s) to export a bird from the United States, you must bring any bird or birds you take out of the country for falconry back to the United States when you return. You may need one or more additional permits to take a bird from the United States or to return home with it (see 50 CFR part 14 (importation, exportation, and transportation of wildlife), 50 CFR part 15 (Wild Bird Conservation Act), 50 CFR part 17 (endangered and threatened species), 50 CFR part 21 (migratory bird permits), and 50 CFR part 23 (endangered species convention)).

* * * * *

§ 21.28 [Removed and Reserved]

5. Remove and reserve § 21.28.

6. Revise § 21.29 to read as follows:

§ 21.29 Falconry standards and falconry permitting.

(a) *Background.*

(1) *What is the legal basis for regulating falconry?* The Migratory Bird Treaty Act prohibits any person from taking (capturing from the wild), purchasing, bartering, selling, or offering to purchase, barter, or sell, or undertaking any other uses of raptors (birds of prey) listed in § 10.13 of this subchapter unless the uses are allowed by Federal regulation and the person has a permit to conduct the activity. This section covers all Falconiformes (kites, eagles, hawks, caracaras, and falcons) and all Strigiformes (owls) listed in § 10.13 of this subchapter (''native'' raptors), and apply to any person who holds one or more native raptors for use in falconry.

(2) *What does ''possession'' of a falconry bird mean?* ''Possession'' means that you, as a licensed falconer, have control over all aspects of a raptor that you are permitted to keep for falconry. You must keep the bird in falconry facilities that you control or use, feed and otherwise maintain the bird in good health, and know where the bird is at all times. We do not consider very short-term possession by a permitted individual, such as letting an apprentice falconer hold or practice flying a bird you hold under your permit, to be possession for the purposes of this section, as long as you are present and the apprentice is under your supervision, and provided that the possession lasts no more than 4 hours.

(3) *What is the regulatory year for governing falconry?* For determining possession and take of raptors for falconry, a year runs from January 1 through December 31.

(4) *What must a State or Tribe do to allow its citizens to practice falconry?* A State or Tribe that wishes to allow falconry must certify to the Director that the State's or Tribe's laws or regulations governing falconry meet the requirements of this section, and must provide us with a copy of the State's or Tribe's apprentice falconer examination. To allow the practice of falconry on tribal lands, a Tribe may either adopt the State's regulations or issue its own and notify us of its action. If we concur that the regulations and the examination are in compliance with this section, we will approve the practice of falconry in that State or on the lands of the Tribe, publish notice of our approval in the **Federal Register**, and add the State or Tribe to the list of those with approved falconry standards.

(i) A State or a Tribe may make and enforce laws or regulations consistent with the standards in any convention between the United States and any foreign country for the protection of raptors or with the Migratory Bird Treaty Act, which also protects raptors. State or tribal standards may be more restrictive than these Federal standards.

(ii) A State or Tribe may choose not to allow possession of some species of raptors for falconry that we allow in this section.

(iii) A State or Tribe must provide us with a copy of its falconry examination any time the examination is revised.

(5) *Can we review a State's or Tribe's permitting process?* Yes, at our discretion, we may review the falconry permitting, facilities inspections, and records of any State or Tribe that allows falconry. We may choose to review a State's falconry permitting for reasons such as, but not limited to, complaints from the public or law enforcement actions that suggest the need for a review.

(6) *Can we suspend a State's or Tribe's certification?* Yes, if, after reviewing a State's or Tribe's falconry permitting, we determine that the State or Tribe has not issued permits or maintained records in accordance with this section, we will notify the State or Tribe and allow one year for correction of permitting problems.

(i) If a State or Tribe's permitting activities are not in compliance with this section, the State or Tribe must demonstrate the following to our satisfaction.

(A) That its inspections ensure that falconers' facilities meet the standards in this section.

(B) That permits are issued within 60 days of receipt of their receipt and that they are complete and accurate.

(C) That each permit issued is appropriate for the experience of the applicant.

(D) That the State's or Tribe's recordkeeping is satisfactory for the needs of State and Federal law enforcement.

(ii) If the permitting problems are not corrected in one year, we will suspend certification of the State's or Tribe's falconry permitting, and will disallow the practice of falconry in the State or by the Tribe. The Director will send a letter to the State or Tribe confirming this action.

(7) *What will happen if we suspend a State's or Tribe's certification?* If we suspend a State's or Tribe's certification, we will require that all raptors (including captive-bred birds) held for falconry in that State or by tribal permittees be transferred to other falconry permittees or to captive propagation programs, released to the wild (if it is allowed by the State or Tribe and by this section), or euthanized. However, hybrid raptors may not be released to the wild.

(8) *Can a State or Tribe appeal our decision to suspend its certification?* Yes, the decision may be appealed by the State or Tribe to the Director within 60 days of the date of the Director's decision to suspend certification. The Director will then respond to the State or Tribe within 60 days of receipt of the appeal. The State or Tribe's certification will remain in place until the Director makes a final decision on the appeal.

(9) *Can a State or Tribe recertify compliance with this section if its falconry permitting authority has been suspended?* Yes, if we conclude that the State or Tribe's permitting have been restored to compliance with this section. The State or Tribe must submit a request for approval of its permitting activities, and we will then concur with the State or Tribe's determination or report why we do not believe that the State or Tribe has rectified its earlier permitting problems.

(10) *What is the compliance date for the regulations in this section?* A State with existing approved falconry regulations that wishes to continue to allow falconry after [5 years from January 1st of the year following the publication of the final rule implementing revised falconry regulations] must certify to the Director of the Fish and Wildlife Service that it is in compliance with this section. This section will be applicable for a State upon publication in the **Federal Register** of our notice of approval of the State's certification. Any State certified to allow falconry under the Federal falconry regulations contained in §§ 21.28 and 21.29 in effect on February 9, 2005 (*see* 50 CFR part 21, revised October 1, 2004), may continue to allow falconry under those provisions until:

(i) We publish notice of our approval of the State's certification in the **Federal Register**; or

(ii) [Five years from January 1st of the year following the year of publication of the final rule implementing revised falconry regulations.]

(11) *What will happen if a State with falconry regulations certified under earlier regulations does not come into compliance with this section by the compliance date?* If a State does not come into compliance with this section by the compliance date, we will require that all raptors held for falconry in that State or (including captive-bred raptors) be transferred to falconers in other States, transferred to captive propagation programs, released to the wild (if that is allowed by the State and by this section), or euthanized. However, hybrid raptors may not be released to the wild.

(12) *What standards are in effect in my State?*

If your legal residence is in	you may
(i) [—States in compliance with these revised regulations—],	practice falconry as permitted in this section.
(ii) Alaska, Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, or Wyoming,	practice falconry under the Federal regulations in effect on October 1, 2004 (50 CFR part 21, revised October 1, 2004), if it was allowed in your State at that time, until your State has certified that it meets the requirements in this section or until [approximately January 1, 2011].

(b) *Practicing falconry.* (1) *Can I practice falconry where I reside?*

If your legal residence is in	you may	because your place of residence
(i) Connecticut, the District of Columbia, or Hawaii,	not practice falconry,	has not met the Federal falconry standards or does not allow the practice of falconry.
(ii) any State other than Connecticut or Hawaii,	practice falconry after you receive your State falconry permit,	has met the Federal standards and allows the practice of falconry.

(2) *What permit and inspections do I need to practice falconry?* You must have a valid falconry permit from the State in which you reside or the Tribe on whose land you wish to practice falconry, to take, possess, or transport raptors for falconry, or to hunt with them. Your raptor care facilities (see paragraph (c) of this section) must pass inspection by your State or Tribe before you may possess a raptor under a falconry permit. You must have a Federal raptor propagation permit to purchase, barter, or sell, or offer to purchase, barter, or sell, captive-bred raptors for falconry. Depending on the game you hunt as a falconer and where you hunt, you also may need a Federal Migratory Bird Hunting and Conservation Stamp (a ''Duck Stamp''), and State or tribal hunting permits or stamps.

(i) With your falconry permit, you may practice falconry in any other State

and on any tribal lands where you are allowed to do so. Some State, tribal, or local governments may require you to have additional permits or licenses to practice falconry or to take a raptor from the wild.

(ii) You must comply with all regulations governing migratory bird permitting in parts 10, 13, and 21, and (for eagle falconry) 22 of this subchapter.

(iii) If you live for more than 45 consecutive days in a State or on tribal lands other than the State or tribal lands in which you maintain your primary residence, your falconry facilities in the second location must be inspected by the State or Tribe. The facilities in the second location must meet the standards in paragraph (c) of this section, and must be listed on your falconry permit.

(3) *For what class of permit do I qualify?* We recognize apprentice, general, and master falconer levels. Each State or Tribe may have any number of permit levels, but the standards for them must be at least as restrictive as these Federal standards. Your State or Tribe may have more restrictive laws or regulations governing falconry.

(i) *What are the requirements and possession options for an apprentice falconer?* (A) You must be at least 12 years of age.

(B) If you are under 18 years of age, a parent or legal guardian must sign your application and is legally responsible for your activities.

(C) You must have a letter from a general falconer with a valid State or tribal falconry permit and at least 5 years experience at the general falconer level, or from a master falconer, stating that he or she will assist you, as necessary, in learning about the husbandry and training of raptors held for falconry and about relevant wildlife laws and regulations, and in deciding what species of raptor is appropriate for you to hold while an apprentice.

(D) Regardless of the number of State or tribal permits you have, you may possess no more than one raptor for use in falconry.

(E) You may possess a wild-caught Harris's hawk (*Parabuteo unicinctus*), red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), or American kestrel (*Falco sparverius*). If you are a resident of Alaska, you may possess a wild-caught northern goshawk (*Accipiter gentilis*).

(F) You do not need to capture the raptor from the wild yourself.

(G) You may not possess a raptor taken from the wild as a nestling.

(H) You may possess a captive-bred raptor of any species of Falconiform that your State or Tribe allows you to take and possess for falconry. Any such captive-bred bird must have been raised by its parents until it was fully capable of flight. You may not possess any bird for falconry that is imprinted on humans.

(ii) *What are the requirements and possession options for a general falconer?* (A) You must be at least 18 years of age.

(B) You must have practiced falconry with your own raptor(s) at the apprentice falconer level for at least 2 years, including maintaining, flying, and hunting the raptor(s) for a total of at least 6 months each year. That practice may include capture and release of falconry birds.

(C) You may take and possess any species of Falconiform or Strigiform that the State in which you reside or a Tribe on whose land you practice falconry allows you to take and possess for falconry, except a golden eagle.

(D) Regardless of the number of State or tribal permits you have, you may possess no more than two raptors, whether they are wild-caught or captive-bred.

(iii) *What are the requirements and possession options for a master falconer?* (A) You must have practiced falconry with your own raptor(s) at the general falconer level for at least 5 years.

(B) You may take and possess any species of Falconiform or Strigiform that the State in which you reside or the Tribe on whose land you practice falconry allows you to take and possess for falconry, except a golden eagle. You may take and possess a golden eagle for falconry if you meet the additional requirements listed in paragraph (b)(3)(iv) of this section.

(C) Regardless of the number of State or tribal permits you have, you may possess no more than five raptors. No more than three of them may have come from the wild.

(iv) *What are the additional requirements for obtaining permission to keep a golden eagle for falconry?*

(A) You must be a master falconer.

(B) Your State or tribal agency that regulates falconry must document the following before approving your request to possess a golden eagle for use in falconry:

(*1*) Your experience in handling large raptors, including information about the species you have handled and the type and duration of the activity in which you gained the experience.

(*2*) At least two letters of reference from people with experience handling and/or flying eagles. Each must contain a concise history of the author's experience with eagles. Eagle handling experience can include, but is not limited to, the handling of zoological specimens, rehabilitating eagles, or scientific studies involving eagles. Each letter must also assess your ability to care for the eagles and fly them in falconry.

(*3*) A description of the facilities in which you will house your golden eagle(s).

(C) Golden eagles you hold will count against your possession limit of five birds.

(D) You must band any golden eagle you acquire from the wild for falconry with a permanent, nonreusable, numbered Fish and Wildlife Service band that your State or tribal agency that regulates falconry will provide. You must report the band number when you report your acquisition of the bird to the State or the Tribe.

(E) Only a golden eagle captured in a depredation area certified by USDA Wildlife Services or a State animal damage control agency may be used in falconry. You may not use a golden eagle captured under any other circumstance or a captive-bred golden eagle in falconry.

(F) If you are authorized to possess a golden eagle for use in falconry, you are solely authorized to trap a subadult golden eagle in any depredation area certified by USDA Wildlife Services or a State animal damage control agency during the time the depredation area is in effect. You must immediately release any adult you capture.

(*1*) You must determine the locations of the depredation areas delineated by Wildlife Services or the State. We will not notify you about them.

(*2*) Before you begin any trapping activities, you must inform our regional Law Enforcement office of your trapping plans, your proposed trapping equipment and methods, and your proposed handling and disposition of the birds. You must extend the same notification to the Wildlife Services manager for the depredation area. You must notify both offices directly or in writing or via facsimile at least 3 business days before you start trapping, and you must receive confirmation of receipt of the message from our regional Law Enforcement office. Fish and Wildlife Service or USDA personnel then can be present during trapping activities if they wish. You also must meet all requirements of the State in which you plan to trap or the Tribe on whose lands you plan to trap.

If you plan to trap a golden eagle in	you must notify
(i) California, Idaho, Nevada, Oregon, or Washington	U.S. Fish and Wildlife Service Special Agent in Charge—Law Enforcement, 911 NE 11th Avenue, Portland, Oregon 97232–4181, 503–231–6125, facsimile 503–231–6197.
(ii) Arizona, New Mexico, Oklahoma, or Texas	U.S. Fish and Wildlife Service Special Agent in Charge—Law Enforcement, P.O. Box 329, Albuquerque, New Mexico 87103, 505–248–7889, facsimile 505–248–7899.
(iii) Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, or Wisconsin.	U.S. Fish and Wildlife Service Special Agent in Charge—Law Enforcement, P.O. Box 45, Federal Building, Fort Snelling, Minnesota 55111–0045, 612–713–5320, facsimile 612–713–5283.
(iv) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, or Tennessee.	U.S. Fish and Wildlife Service Special Agent in Charge—Law Enforcement, P.O. Box 49226, Atlanta, Georgia 30359, 404–679–7057, facsimile 404–679–7065.
(v) Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, or West Virginia.	U.S. Fish and Wildlife Service Special Agent in Charge—Law Enforcement, P.O. Box 659, Hadley, Massachusetts 01035–0659, 413–253–8274, facsimile 413–253–8459.
(vi) Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, or Wyoming.	U.S. Fish and Wildlife Service Special Agent in Charge—Law Enforcement, P.O. Box 25486, Denver Federal Center (60130), Denver, Colorado 80225–0486, 303–236–7540, facsimile 303–236–7901.
(vii) Alaska	U.S. Fish and Wildlife Service Special Agent in Charge—Law Enforcement, 1011 East Tudor Road, Suite 155, Anchorage, Alaska 99503–6199, 907–786–3311, facsimile 907–786–3313.

(*3*) You must have permission from the landowner to trap an eagle.

(*4*) At the end of each trapping session, you must report in writing to your State or tribal agency that regulates falconry the time and date of the beginning and ending of each session, the number of golden eagles trapped, approximate age, sex, and state of health of each eagle, whether any bird was injured during trapping, and the disposition of each eagle. You must file your reports within 5 days of the end of each trapping session. Facsimile or electronic mail reports are acceptable.

(*5*) You must send any captured eagle that is injured or in poor health to a permitted wildlife rehabilitator or veterinarian with experience handling raptors.

(4) *When must I take a test to qualify for a falconry permit?* Before you are issued an apprentice permit you must correctly answer at least 80 percent of the questions on an examination administered by the State or the Tribe under which you wish to obtain a falconry permit. The examination must cover care and handling of falconry raptors, Federal, State, and tribal (if applicable) laws and regulations relevant to falconry, and other appropriate subject matter. Contact your State or tribal agency that regulates falconry for information about permits and taking the test.

(5) *If my falconry permit has lapsed, can it be reinstated?* Yes, if your State or Tribe allows it.

(i) If your permit has lapsed less than 5 years, it may be reinstated at the level you held previously if you have proof of your certification at that level.

(ii) If your permit has lapsed 5 years or longer, you must correctly answer at least 80 percent of the questions on an examination administered by the State or the Tribe under which you wish to obtain a falconry permit. If you pass the exam, your permit may be reinstated at the level you previously held.

(iii) If your permit has lapsed less than 2 years, you must provide a statement to your State or tribal agency that regulates falconry that your falconry facilities meet the standards in paragraph (c)(1) of this section before you may keep birds for use in falconry.

(iv) If your permit has lapsed 2 years or more, your facilities must pass State or tribal inspection before you may keep birds for use in falconry.

(6) *May I obtain a falconry permit at an appropriate level if I have experience in falconry but I am a new resident in the United States?* If your State or Tribe allows it, you may qualify for the falconry permit appropriate for your experience. To demonstrate your knowledge of United States falconry laws and regulations, you must correctly answer at least 80 percent of the questions on the supervised examination for falconers administered by the State or Tribe under which you wish to obtain a falconry permit. If you pass the test, the State or Tribe will decide for which level of falconry permit you are qualified. To do so, the State or Tribe should base its decision on your documentation of your experience. Your falconry facilities must meet the standards in paragraph (c)(1) of this section before you may keep birds for use in falconry.

(7) *Do I need to band a raptor used in falconry?* Some birds used in falconry must be banded.

(i) You must band a Harris's hawk, goshawk, peregrine falcon, gyrfalcon, or golden eagle that you take from the wild with a permanent, nonreusable, numbered Fish and Wildlife Service leg band that your State or tribal agency will supply. You must report the band number when you report your acquisition of the bird. Contact your State or tribal agency for information on obtaining and disposing of bands. Within 5 days from the day on which you take the bird from the wild, you must report take of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A.* You should request an appropriate band from your State or tribal agency in advance of any effort to capture a bird.

(ii) A raptor bred in captivity must be banded with a seamless metal band (*see* § 21.30). If you must remove the band or if it is lost, within 5 days from the day you remove the band you must report the loss of the band and request a replacement U.S. Fish and Wildlife Service nonreusable band from your State or Tribe. You can submit the required information electronically immediately upon rebanding the bird at *http://permits.fws.gov/186A.* You must replace a band that is removed or lost.

(iii) If the band must be removed or is lost from a bird in your possession, you must promptly report the loss of the band and request a U.S. Fish and Wildlife Service nonreusable band from your State or tribal agency that regulates falconry. You must submit the required information immediately upon rebanding the bird at *http://permits.fws.gov/186A.* You must replace a band that is removed or lost.

(iv) You must not alter, deface, or counterfeit a band. You may remove the rear tab on a band on a bird you take

from the wild, and you may smooth any imperfect surface if you do not affect the integrity of the band or the numbering on it.

(v) If you can document health or injury problems for a bird you hold that are caused by the band, the State may provide an exemption to the banding requirement for that bird. In such a case, you must keep the band with you when flying the raptor.

(8) *Must I carry my permits when conducting falconry activities?* You must have your permit(s) or legible copies of them in your immediate possession when you are trapping, transporting, working with, or flying your falconry bird(s).

(c) *Facilities and care requirements.* (1) *What facilities must I have and maintain?* The primary consideration for raptor ing facilities, whether indoors or outdoors, is protection from the environment, predators, domestic animals, and undue disturbance. You must have raptor housing facilities approved by your State or Tribe before you may obtain a bird for use in falconry. Your State or Tribe may require that you have both indoor and outdoor facilities. A representative of your State or tribal agency that regulates falconry, or its designee, must certify that your facilities and equipment meet the following standards. For keeping birds in either type facility, you must keep your facilities clean and must ensure the following.

(i) The facility must protect birds in it from predators and domestic animals.

(ii) The facility must have a suitable perch with a rough or uneven surface for each bird, at least one opening for sunlight, and an easy-to-clean and well-drained floor.

(iii) You may house untethered raptors together if they are compatible. If they are not, each bird must be tethered or separated from others by solid partitions.

(iv) Each bird must have an area large enough to allow it to fly if it is untethered or, if it is tethered, to fully extend its wings or bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.

(v) An indoor facility must be large enough to allow easy access for the care and feeding of raptors kept there. If birds you keep in this indoor facility are not tethered, all areas not covered by solid walls must be protected on the inside by vertical bars spaced narrower than the width of the body of the smallest bird(s) you keep in the enclosure.

(vi) An outdoor facility must be totally enclosed, and may be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material.

(A) The facility must have a roof or a covering to protect birds held in it from predators and weather.

(B) If a bird you hold suffers feather damage or injury in your outdoor facility, you must modify the facility to preclude further feather damage or injury to the bird.

(2) *Do my falconry facilities have to be on property I own?* No, they may be on property owned by another person where you reside, or at a different location. But, they must meet the facilities standards in paragarph (c)(1) of this section and those of the State or Tribe from which you have a falconry permit.

(i) You are responsible for the maintenance and security of birds you hold under your permit.

(ii) You must report the address of your facilities to your State or tribal agency that regulates falconry.

(iii) You must submit to your State or tribal agency that regulates falconry a signed and dated statement showing that the property owner understands that the falconry facilities, equipment, and birds may be inspected without advance notice by tribal (if applicable), State, or Federal authorities at any reasonable time of day.

(iv) You must inform your State or tribal agency within 5 days if you change the location of your facilities.

(3) *What equipment must I have and maintain?* You must have suitable equipment, including jesses or the materials and equipment to make them, leash and swivel, bath container, and scales or balances that are graduated to appropriate levels for weighing the raptor(s) you hold.

(4) *What facilities must I have for a raptor when I am transporting it, using it for hunting, or I am away from my home with it?* You must be sure that the bird has a perch with a rough or uneven surface and is protected from extreme temperatures, wind, and excessive disturbance. If a bird you hold suffers feather damage or injury while you are transporting it, you must modify or change your transport methods immediately to preclude further feather damage or injury to the bird.

(5) *May I temporarily house a raptor outside of my permanent facilities when I am not transporting it or using it for hunting?* You may keep a bird in temporary facilities for no more than 45 consecutive calendar days if the bird has a perch with a rough or uneven surface and is protected from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(6) *May another person care for my falconry birds for me?* Yes, another person who can legally possess raptors can care for a raptor or raptors for you for up to 45 consecutive calendar days. The other person must have a signed and dated statement from you authorizing the temporary possession, plus a copy of FWS form 3–186A that shows that you are the possessor of the bird. The statement must include information about the time period for which he or she will keep the bird(s), and about what he or she is allowed to do with the bird or birds (including exercising them for falconry, which may be done if the other person has a falconry permit at the appropriate level). The bird(s) will remain on your falconry permit. If the person who temporarily holds a bird or birds for you is a falconer, the bird(s) that he or she holds for you will not be counted against his or her possession limit on birds held for falconry.

(7) *If I live part of the year in another State and have my falconry bird(s) with me, do I need an additional State permit?* The State or Tribe in which you live part-time may require that you obtain its falconry permit. You must contact the State or tribal agency that regulates falconry to determine whether you need a permit.

(8) *If I live part of the year in another State and have my falconry bird(s) with me, do my falconry facilities have to meet the standards listed in this paragraph (c)?* Yes, if you live for more than 45 consecutive days in a State other than the one in which you maintain your primary residence, your falconry facilities in the second State must meet the standards in this section. They must be inspected by the State or Tribe and must be listed on your falconry permit.

(9) *Are falconry facilities, birds, equipment, and records subject to inspection?* (i) Yes, falconry bird(s), facilities, equipment, and records may be inspected at any reasonable hour by tribal (if applicable), State, or Federal officials.

(ii) You must submit to your State or tribal agency that regulates falconry a signed and dated statement showing that the owner of the property on which your falconry facilities are located (which could be you or another person) understands that the falconry facilities, equipment, and birds may be inspected without advance notice by State or Federal authorities at any reasonable time of day.

(iii) You must have your falconry facilities inspected and approved any time you change their location.

(d) *Taking, possessing, and transporting raptors for falconry.* (1) *What species of birds may I take from the wild to use for falconry?* You may take any species of Falconiform or Strigiform that you are allowed to possess and that the State or Tribe regulating the land on which you wish to take a bird allows you to take.

(i) You may not capture a species that your classification as a falconer does not allow you to possess for falconry.

(ii) On some tribal lands and in some States there may be tribal, State, or Federal restrictions on the take or use of these species, and you may need a tribal or State permit or permits to capture a bird.

(iii) Tribal or State regulations on take may be more restrictive than those in this section.

(iv) Total take of nestling American peregrine falcons (*Falco peregrinus anatum*) is limited to 5 percent of the production of nestlings in each state in Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming. Take must be based on the most recent data from States in which take is allowed, and must be in accordance with the provisions in the Service's Implementation Plan for Management of Take of Nestling American peregrine falcons. Allowing take up to the 5 percent limit is at the discretion of each State in which take is allowed.

(v) If you are a master falconer with sufficient experience and your State allows you to possess a golden eagle, you may take a subadult golden eagle from the wild only in a depredation area certified by USDA Wildlife Services or a State animal damage control agency during the time the depredation area is in effect. You must immediately release any adult you capture.

(2) *How and when may I take raptors from the wild for use in falconry?* You may take no more than two birds from the wild each year (1 January–31 December) for use in falconry. Birds taken from the wild for use in falconry are to be kept specifically for that purpose. A falconry bird is considered to be taken from the wild only by the person who originally captures it; the bird is not considered to be taken from the wild by any subsequent permittee to whom it is legally transferred.

(i) If you transfer a bird you take from the wild to another permittee in the same year in which you capture it, the bird will still count as one of the birds you are allowed to take from the wild that year; it will not count as a capture by the recipient.

(ii) We do not restrict the number of wild-caught or captive-bred birds transferred to you, but you may not exceed your possession limit.

(iii) If you are a general or master falconer, you may remove nestlings from a nest or aerie in accordance with tribal (if applicable), State, and Federal restrictions.

(iv) For flighted birds, you must use a capture method that will not harm the bird.

(v) You may not take birds at any time or in any manner that violates any law in the State in which you are trapping or of the Tribe on whose land you are trapping.

(vi) If you are present at the capture site, but another person actually captures the bird for you, you are considered the person who removed the bird from the wild, and you are responsible for filing a 3–186A form reporting take of the bird from the wild. This would occur, for example, if another person climbed a tree or rappelled down a cliff and took a nestling for you and gave it to you at the tree or cliff.

(vii) If you are not present at the immediate location where the bird is taken from the wild, the person who removes the bird from the wild must have a permit to do so, and must report take of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A* within 5 days of the capture of the bird. If that person then transfers the bird to you, you must both file 3–186A forms reporting the transaction within 5 days of the transfer. The bird will count as one of the two birds the person who took it from the wild is allowed to capture in any calendar year. The bird will not count as a bird you took from the wild. The person who takes the bird from the wild must report the take even if he or she promptly transfers the bird to another falconry permittee.

(viii) On any day in which you capture a falconry bird, you may temporarily keep a bird you capture while attempting to capture another. At the end of the day, you may keep no more than you are authorized to take or possess (one bird for an apprentice falconer; two birds for a general or master falconer, unless you have already captured one during the year).

(ix) You must band any Harris's hawk, goshawk, peregrine falcon, gyrfalcon, or golden eagle that you keep with a permanent, nonreusable, numbered Fish and Wildlife Service leg band that your State or tribal agency will supply.

(x) You must report take of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A* within 5 days of the capture of the bird.

(xi) You must release any bird you do not keep at the site at which you captured it.

(3) *What are the restrictions on taking raptors from the wild for falconry?*

(i) You may take no more than two birds from the wild per year.

(ii) If you are an apprentice falconer, you may take only a first-year red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), or American kestrel (*Falco sparverius*) from the wild. If you reside in Alaska, you may take a first-year northern goshawk (*Accipiter gentilis*).

(iii) If you are a general or master falconer, you may take birds less than 1 year of age from the wild during any period or periods specified by the State or Tribe.

(iv) At any time, you may retrap a banded falconry bird you have lost within 1 year of its escape. If you have not replaced the bird, it will not count as one taken from the wild.

(v) You may recapture a bird wearing falconry equipment at any time. You must report your capture of the bird to your State or tribal agency that regulates falconry no more than 5 working days after the capture. Disposition of the bird will be at the discretion of the State or Tribe.

(vi) You may take any raptor that you are authorized to possess from the wild if the bird is banded with a Federal Bird Banding Laboratory aluminum band—except that you may not take a banded peregrine falcon from the wild.

(A) If a raptor you capture (including a peregrine falcon) is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird, you must report your capture of the bird to your State or tribal agency that regulates falconry no more than 5 working days after the capture. You must return the bird to the person who lost it, if possible, but if no one claims the bird within 45 days of the date on which you capture the bird, you may keep it to use in falconry. While you are holding a bird for return to the person who lost it, the bird will not count against your possession limit or your limit on take of birds from the wild if you have reported holding the bird to your State or tribal falconry permit office.

(B) Unless it is a falconry bird (identified by a band, bells, jesses, or falconry telemetry gear), you must immediately release a peregrine falcon you capture that has a band of any kind, a research marking, or a transmitter attached to it.

(C) If a raptor you capture has any other band, research marking, or transmitter attached to it, you must

promptly report the band numbers and all other relevant information to the Federal Bird Banding Laboratory at 1–800–327–2263.

(*1*) You may contact the researcher and determine if he or she wishes to replace a transmitter attached to a bird you capture. If so, you are authorized to hold the bird up to 30 days until the researcher or his or her designee does so, or until you can replace it yourself. Disposition of the bird will be at the discretion of the researcher and your State or tribal agency that regulates falconry.

(*2*) If you hold such a bird temporarily, it will not count against your possession limit for falconry birds.

(vii) You must leave at least one young in any nest or aerie from which you take a nestling.

(viii) If you are an apprentice falconer, you may not take a nestling from the wild.

(ix) If you are a master falconer with a permit to do so, you may take, transport, or possess a golden eagle, subject to the requirements listed at paragraphs (b)(3)(i)(E) and (F) of this section and 50 CFR 22.24. Any golden eagle you possess counts as a bird to be included under your possession limit.

(x) If you are a general or master falconer, you may take no more than one bird of a threatened species from the wild each year if the regulations in part 17 of this subchapter allow it and if you obtain an endangered species permit to do so before you take the bird.

(4) *May I take a species that was recently removed from the List of Endangered and Threatened Wildlife (50 CFR 17.11) to use in falconry?* We must first publish a management plan for the species. If take is allowed in the management plan, you may do so in accordance with the provisions for take in the plan.

(5) *What must I do with a bird that is injured in my trapping efforts?* You have two options for dealing with a bird injured in trapping. In either case, you are responsible for the costs of care and rehabilitation of the bird.

(i) You may put the bird on your falconry permit. You must report take of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A* within 5 days of the capture of the bird. You must then have the bird treated by a veterinarian or a permitted wildlife rehabilitator. The bird will count against your possession limit.

(ii) You may give the bird directly to a veterinarian, or a permitted wildlife rehabilitator, or an appropriate wildlife agency employee. If you do so, it will not count against your allowed take or the number of birds you may possess. However, you must report the capture of the bird to your State or tribal agency that regulates falconry.

(6) *May I acquire a bird for falconry from a permitted rehabilitator?* Yes, you may acquire a bird suitable for falconry of a species that you are permitted to possess directly from a rehabilitator. Transfer to a falconer is at the discretion of the rehabilitator. If you acquire such a bird from a rehabilitator, within 5 days of the transaction you must report it by entering the required information in the electronic database at *http://permits.fws.gov/186A.* If you acquire such a bird, it will count as one of the birds you are allowed to take from the wild that year.

(7) *What must I do if I acquire, transfer, release, lose, or reband a raptor?* (i) If you acquire a raptor, within 5 days of the transaction you must report it by entering the required information in the electronic database at *http://permits.fws.gov/186A.*

(ii) If you transfer a raptor you hold, reband one, or if one that you hold dies, within 5 days from the transfer, rebanding, or loss, you must report the action by entering the required information in the electronic database at *http://permits.fws.gov/186A.*

(A) If a raptor you hold is stolen, you must report the loss or theft to your State or tribal agency that regulates falconry and to your Fish and Wildlife Service Regional Law Enforcement office (*see* paragraph (b)(3)(iv)(F)(*2*) of this section) within 5 days of the loss. You must report the loss or theft in the manner required by your State or Tribe.

(B) If you lose a raptor to the wild or have one stolen, and if the bird is not recovered within 30 days of its loss, you must report the loss at *http://permits.fws.gov/186A.*

(C) If a bird you hold for falconry dies, you must report the loss at *http://permits.fws.gov/186A* within 5 days of the death of the bird.

(iii) You must keep copies of all electronic database submissions documenting take, transfer, loss, or rebanding of falconry birds until 5 years after your permit expires.

(8) *May I possess captive-bred or hybrid raptors for falconry?*

(i) Yes, if your Tribe or State allows it, you may use captive-bred individuals of the species you are allowed to possess, captive-bred individuals of other species listed in part 10 of this subchapter, and hybrids of the species listed in § 10.13 of subchapter B of this chapter.

(ii) Hybrid birds must be imprinted by humans or be surgically sterilized if they are to be used in falconry. When flown free, a hybrid bird must have at least one attached radio transmitter that will allow you to locate the bird.

(9) *May I retain birds I possessed before the enactment of the Federal falconry regulations in 1976?* Yes, but you must identify them with approved bands. However, if you possess more than the number of birds allowed under your permit type, you may not replace a bird that you lose or release, or that dies, until you possess fewer than the maximum number of birds allowed under your class of falconry permit. Thereafter you may possess no more than the maximum allowed by your permit.

(10) *May I retain birds of species that may no longer be taken from the wild for use in falconry?* Yes, if you hold such a bird on the applicability date of this section in your State.

(i) Any such bird that dies, is lost, escapes, or that you release may be replaced only with a bird allowed for use in falconry.

(ii) You may not possess more birds than your permit allows.

(11) *May I transport a bird that I possess for falconry to another State?* Yes, you may need permission from the State to which you wish to take the bird or from the State under which you hold your falconry permit to transport the bird(s) to the other State.

(12) *What must I do if I wish to release a bird in my possession to the wild?* You must follow State and Federal regulations before releasing a falconry bird to the wild.

If the species you wish to release is	and the bird is	you may
(i) not native to the State or is a hybrid of any kind,	wild-caught or captive-bred,	not release the bird to the wild. You may transfer it to another falconry permittee.

If the species you wish to release is	and the bird is	you may
(ii) native to the State, ...	captive-bred, ...	not release the bird to the wild except under special circumstances. If the Tribe or State requires it, you must have permission from the Tribe or State to release the bird. If you are permitted to do so, it must be properly ''hacked back'' (allowed to adjust) to the wild at an appropriate time of year and an appropriate location. You must remove its falconry band (if it has one) and report release of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A.*
(iii) native to the State, ...	wild-caught, ...	release the bird only at an appropriate time of year and an appropriate location. You must remove its falconry band and report release of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A.*

(e) *Additional information.* (1) *Are birds removed from the wild for falconry always considered ''wild'' birds?* Yes, no matter how long such a bird is held in captivity or whether it is transferred to another permittee or permit type, it is always considered a ''wild'' bird. However, it is considered to be taken from the wild only by the person who actually captured it.

(2) *Is ''hacking'' of falconry birds permitted?* Yes, general or master falconers may hack (temporarily release to the wild) a falconry bird or birds for 60 calendar days or fewer.

(i) You may need permission from your State or tribal wildlife agency to hack a bird you hold for falconry. Check with your State or tribal agency that regulates falconry to determine if hacking is allowed.

(ii) Any bird you are hacking counts against your possession limit and must be a species you are authorized to possess.

(iii) Any hybrids you are hacking must be surgically sterilized or imprinted, or both, and must have an attached functioning radio transmitter during hacking.

(iv) If you lose a bird you are hacking, you must report the loss to your State or tribal agency that regulates falconry within 5 days. If you do not recover the bird within 30 days after it is lost, you must report the loss of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A.*

(v) You may not hack a falconry bird in the vicinity of a nesting area of a threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered species. You must contact your tribal or State wildlife agency before hacking a falconry bird to ensure that this does not occur.

(3) *May I use other falconry training or conditioning techniques?* Yes, you may use other acceptable falconry practices, such as the use of creance (tethered) flying, lures, balloons, or kites in training or conditioning falconry birds.

(4) *May I sell or trade raptors if I have a falconry permit?* If allowed by your Tribe or State, you may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands that indicate that the birds were captive-bred. You may not do so with wild raptors. You may transfer banded captive-bred birds to other permittees who are authorized to hold them. You may possess only the raptor species and number allowed under your class of permit.

(5) *May I transfer wild-caught raptors captured for falconry to another type of permit?* Yes, you may transfer raptors that cannot be released to the wild because of age or injury to another permit type if the recipient of the bird (which could be you) holds the necessary permits for the other activity.

(i) You may transfer a wild-caught falconry bird to a raptor propagation permit after the bird has been used in falconry for at least 2 years. When you transfer the bird, you must provide a copy of the 3–186A form documenting acquisition of the bird to the Federal migratory bird permits office that administers the propagation permit.

(ii) You may transfer a wild-caught bird to a propagation permit in less than 2 years only if the bird has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the bird can no longer be flown for falconry.

(A) When you transfer the bird, you must provide a copy of the 3–186A form documenting acquisition of the bird to the Federal migratory bird permits office that administers the propagation permit.

(B) When you transfer the bird, you must provide a copy of the certification from the veterinarian or rehabilitator that the bird is not useable in falconry to the Federal migratory bird permits office that administers the propagation permit.

(iii) If you transfer the bird to another falconry permittee, you must report the transfer within 5 days by entering the required information in the electronic database at *http://permits.fws.gov/186A.*

(6) *May I transfer captive-bred falconry raptors to another type of permit?* Yes, if the holder of the other permit type is authorized to possess the bird(s). Within 5 days you must report the transfer by entering the required information in the electronic database at *http://permits.fws.gov/186A.*

(7) *May I use birds that I hold under my falconry permit in captive propagation?* Yes, if birds you hold for falconry are suitable for the purpose, you also may use them for captive propagation if you or the person overseeing the propagation has the necessary permit(s) (see § 21.30), except that you may not use a golden eagle in captive propagation. You do not need to transfer a bird from your falconry permit if you use it for fewer than 6 months in captive propagation, but you must do so if the bird is permanently transferred for propagation. The bird must then be banded as required in § 21.30.

(8) *May I use my falconry bird(s) for conservation education programs?* Yes, if you are a general or master falconer, have not been convicted of a violation of tribal, State, or Federal falconry regulations in the last 5 years, and if a bird you hold for falconry, other than a golden eagle, is suitable for the purpose, you may use it in conservation education programs.

(i) You must use the bird primarily for falconry.

(ii) You may not use a golden eagle for conservation education.

(iii) You may charge a fee for presentation of a conservation education program.

(iv) In conservation education programs, you must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds. Presentations that are not specific to falconry and conservation education are not permitted.

(A) You may not use falconry birds for entertainment; advertisements; promotion or endorsement of any

products, merchandise, goods, services, meeting, or fair; or as a representation of any business, company, corporation, or other organization.

(B) You may not use falconry birds to make movies, commercials, or in other such commercial ventures.

(v) You do not need a Federal permit to conduct conservation education activities using a falconry bird held under a tribal or State falconry permit.

(vi) You are responsible for all liability associated with conservation education activities you undertake.

(9) *May I assist in rehabilitation of raptors to prepare them for release?* Yes, if you are a general or master falconer, you may assist a Federal- and State-permitted wildlife rehabilitator in conditioning of raptors in preparation for their release to the wild.

(i) You must be at least 18 years old, and you must be a subpermittee of the wildlife rehabilitator (*see* § 21.31).

(ii) You must abide by all conditions on the rehabilitator's permit.

(iii) You do not have to add any raptor you hold for this purpose to your falconry permit; it will remain under the permit of the rehabilitator.

(iv) You must return any such bird that cannot be released to the rehabilitator for placement.

(v) You may use any acceptable falconry practice, including the use of creance (tethered) flying, lures, balloons, or kites in training or conditioning birds for release.

(10) *What should I do with feathers that my bird or birds molt?* (i) For imping (replacing a damaged feather with a molted feather), you may possess flight feathers for each species of bird you hold or previously held for as long as you have a valid falconry permit. However, if you previously held a golden eagle but no longer have one, you may not keep the feathers. You may receive feathers for imping from other permitted falconers, wildlife rehabilitators, or propagators in the United States. However, you may not buy, sell, or barter such feathers.

(ii) You must burn, bury, or otherwise destroy feathers that are not suitable for imping unless they are from a golden eagle.

(iii) You must send all feathers (including body feathers) from any falconry golden eagle that are in good condition, and that you do not need for imping, to the National Eagle Repository at the following address. To ensure that the Repository knows you have a permit for the bird, send a copy of your State or tribal permit authorizing you to possess a golden eagle with any shipment of feathers to the following address: U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022. The telephone number at the Repository is 303–287–2110.

(iv) If your permit expires or is revoked, you may donate the feathers of any species of falconry raptor except a golden eagle to any institution exempt under § 21.12(b) or authorized to receive feathers under authority of a permit to possess them, or to an authorized propagator for use in propagation activities. If you do not donate the feathers, you must burn, bury, or otherwise destroy them.

(11) *What should I do with the carcass of a falconry bird that dies?* (i) You must send the entire body of a golden eagle you held for falconry, including all feathers, talons, and other parts, to the Repository at the address listed in paragraph (e)(10) of this section.

(ii) You may donate the body or feathers of any other species of falconry raptor to any institution exempt under § 21.12(b) or authorized to receive feathers under authority of a permit to possess a body or feathers, or to an authorized propagator for use in propagation activities. If you do not wish to donate the bird body or feathers to an institution or propagator, you must burn, bury, or otherwise destroy it or them within 5 days of the death of the bird. Carcasses of euthanized birds could pose a risk of secondary poisoning of eagles and other scavengers, and you must take appropriate precautions to avoid such poisonings.

(iii) You must report the loss of the bird by entering the required information in the electronic database at *http://permits.fws.gov/186A.*

(12) *May a visitor to the United States practice falconry here?*

(i) Yes, if the Tribe or State allows it, a visitor to the United States may qualify for a temporary falconry permit appropriate for his or her experience.

(A) The permit may be valid for up to 1 year.

(B) To demonstrate knowledge of United States falconry laws and regulations, the visitor must correctly answer at least 80 percent of the questions on the supervised examination for falconers administered by the Tribe or State from which he or she wishes to obtain a temporary falconry permit. If the visitor passes the test, the Tribe or State will decide for what level of temporary permit the person is qualified. To do so, the Tribe or State should base its decision on the individual's documentation of his or her experience.

(C) A holder of a temporary falconry permit may hold birds for falconry if he or she has approved facilities and if the Tribe or State allows him or her to do so.

(D) A holder of a temporary falconry permit may fly birds held for falconry by a resident permitted falconer.

(E) A holder of a temporary falconry permit may not take a bird from the wild for use in falconry.

(ii) For 45 days or fewer, a visitor may use any bird for falconry that he or she holds legally for that purpose in his or her country of residence, provided that import of that species to the United States is not prohibited, and provided that he or she has met all permitting requirements of his or her country of residence. A visitor must comply with the provisions in this section, those of the Tribe or State where he or she wishes to conduct falconry, and all States through which he or she will travel with the bird. The visitor will need one or more additional permits to bring a bird into the United States or to return home with it (see 50 CFR part 14 (importation, exportation, and transportation of wildlife), part 15 (Wild Bird Conservation Act), part 17 (endangered and threatened species), part 21 (migratory bird import and export permits) and part 23 (endangered species convention)). Unless the visitor to the United States has the necessary permit(s) to bring a bird into the United States and leave it here, he or she must take a bird or birds brought into the country for falconry out of the country when he or she leaves. When flown free, any bird brought to this country temporarily must have an attached radio transmitter that will allow the falconer to locate it. A hybrid raptor brought into this country temporarily for falconry must be imprinted on humans or be surgically sterilized. There also may be tribal or State restrictions on nonresidents practicing falconry or importing a bird or birds held for falconry.

(13) *May I take birds that I hold for falconry to another country for use in falconry activities?* Yes, this section does not restrict your transport of a bird or birds you legally hold for falconry to another country for use in falconry. Therefore, you may take any falconry bird you hold, except a golden eagle, to another country temporarily for use in falconry. However, you may need one or more additional permits to take a bird from the United States or to return home with it (see 50 CFR part 14 (importation, exportation, and transportation of wildlife), part 15 (Wild Bird Conservation Act), part 17 (endangered and threatened species), part 21

(migratory bird permits), and part 23 (endangered species convention)). Unless you have the necessary permit(s) to permanently export a bird from the United States, you must bring any bird or birds you take out of the country for falconry back to the United States when you return. If you travel abroad with a falconry bird, you must comply with all domestic and foreign laws.

(14) *Does a falconry permit authorize me to capture, fly, or release a falconry bird at any location?* You do not need special or written permission for these activities on public lands if they are otherwise authorized there. However, you must comply with all applicable State or tribal laws regarding falconry activities, including hunting. Your falconry permit does not authorize you to capture or release birds or practice falconry on public lands if it is not allowed, or on private property, without permission from the custodian or landowner.

(15) *May I practice falconry in the vicinity of a federally listed threatened or endangered animal species?* Yes, however, in practicing falconry you must ensure that your activities do not cause the take of federally listed threatened or endangered wildlife. Take means ''to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct'' (ESA section 3(19)). Within this definition, ''harass'' means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering, and ''harm'' means an act that actually kills or injures wildlife (50 CFR 17.3). To obtain information about threatened or endangered species that may occur in your State or on tribal lands where you wish to practice falconry, contact your State or tribal agency that regulates falconry.

(16) *Can I trap a bird for use in falconry in areas used by the northern aplomado falcon?* Yes, however, capture of a northern aplomado falcon (*Falco femoralis septentrionalis*) is a violation of the Endangered Species Act, and is not authorized. To avoid trapping northern aplomado falcons, you must comply with the following conditions when trapping a bird for use in falconry in the following counties.

If you trap in	You may trap a bird for falconry in the following counties if you comply with the conditions below.
Arizona	Cochise, Graham, Pima, Pinal, or Santa Cruz.
New Mexico	Doña Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, Sierra, or Socorro.
Texas	Aransas, Brewster, Brooks, Calhoun, Cameron, Culberson, Duval, Ector, El Paso, Hidalgo, Hudspeth, Jackson, Jeff Davis, Kenedy, Kinney, Kleberg, Matagorda, Maverick, Midland, Nueces, Pecos, Presidio, Reeves, Refugio, San Patricio, Starr, Terrell, Val Verde, Victoria, Webb, Willacy, or Zapata.

(i) If you are an apprentice falconer, you must be accompanied by a general or master falconer when trapping.

(ii) You may not begin trapping if you observe a northern aplomado falcon in the vicinity of your intended trapping effort.

(iii) You must suspend trapping if a northern aplomado falcon arrives in the vicinity of your trapping effort.

(f) *Applying for a falconry permit.* (1) *How do I apply for a permit to possess raptors and practice falconry?* If you live in a State or belong to a Tribe that allows the practice of falconry, your application for a falconry permit must include the following:

(i) The completed application form from your State or tribal agency that regulates falconry permits.

(ii) Proof that you have passed the falconry test administered by the Tribe or State where you maintain your legal residence.

(iii) For an apprentice permit, a letter from a general or master falconer stating that he or she has agreed to assist you in learning about the husbandry and training of birds held for falconry and about relevant wildlife laws and regulations, and in deciding what species of raptor is appropriate for you to hold while an apprentice.

(iv) For an apprentice falconry or general falconry permit, a parent or legal guardian must co-sign your application if you are under 18.

(v) For a general falconer permit, information documenting your experience maintaining falconry birds, including a summary of what species you held as an apprentice falconer and how long you possessed each bird.

(vi) For a general falconer permit, a letter certifying that you have used your falconry bird(s) for hunting and that you are qualified for general falconer status.

(vii) For a general falconer permit, the number of raptors you possess (if any) and the species, age (if known), sex (if known), date of acquisition, and source (captured from wild, from whom purchased, from whom transferred) of each bird.

(viii) An original, signed certification stating the following (this certification can be incorporated into tribal and State application forms):

I certify that I have read and am familiar with the regulations in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, and that the information I have submitted is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

(2) *Are there additional requirements I must meet before I may possess a bird for use in falconry?* Yes, before you may possess a bird to use in falconry, you must provide proof that your facilities have been inspected and meet the standards in this section.

(3) *Do I follow the same procedures to renew my falconry permit if I have not moved?* If you have not moved since you received your falconry permit, you must follow the procedures in paragraphs (f)(1) and (2) of this section, except that you will not need to take the test again, certify that you are familiar with 50 CFR part 13, or have your facilities inspected. However, your Tribe or State may require one or more of these actions.

(4) *What procedures do I follow to update my falconry permit if I move?* If you move, you must notify your tribal or State permitting office within 5 days (see § 13.23(c) of this subchapter). If you move to a new State, within 5 days you must inform both your former State or Tribe and your new State of residence (if not on lands of the same Tribe under which you hold your falconry permit) of your address change. If you have new falconry facilities, you must provide information, pictures, and diagrams of them, and they may have to be inspected in accordance with tribal or State requirements.

(g) *Are these regulations in compliance with information collection requirements?* Yes, the information collection required for falconry applications and for falconry bird disposition on FWS Form 3–186A is approved by the Office of Management

and Budget under control number 1018–0022. The information is necessary to determine take of raptors from the wild for falconry.

(h) *What information on falconry permitting are the Tribes and States required to maintain?* Each State or Tribe that permits falconry must maintain the following information in a database that will enable enforcement of this section. The State or tribal database must be compatible with the database that we maintain for our purposes, and new additions to the State or tribal database must be forwarded to us monthly.

(1) The current address of each person with a falconry permit.

(2) The classification of each person with a falconry permit—apprentice falconer, general falconer, or master falconer.

(3) The address of the falconry facilities of each person with a falconry permit.

(4) The Federal falconry identifier number assigned to each person with a falconry permit.

(5) Whether each permittee is authorized to possess a golden eagle.

(6) Information on the status of each person's permit: whether it is active, suspended, or revoked.

(i) *Is there a time requirement for a Tribe or State to enter information on falconry permits into the State or tribal database on falconers?* Yes, information on each permit granted, including changes in status from apprentice falconer to general falconer or general falconer to master falconer, and moves of falconers or their facilities must be entered into the tribal or State database within 5 days of the granting of the permit.

7. Amend § 21.31 by revising paragraph (e)(4)(ii) to read as follows:

§ 21.31 Rehabilitation permits.

* * * * *

(e) * * *

(4) * * *

(ii) Following recovery of the bird you must release each recuperated bird to suitable habitat as soon as seasonal conditions allow, except that you may, at your discretion, transfer a rehabilitated wild raptor to a holder of a State falconry permit if the permit holder is authorized to hold the species for use in falconry. The falconer must complete a Form 3–186A reporting the transfer.

(A) You may not retain migratory birds longer than 180 days without additional authorization from your Regional Migratory Bird Permit Office. If the appropriate season for release is outside the 180-day timeframe, you must seek authorization from your Fish and Wildlife Service Regional Migratory Bird Permit Office to hold the bird until the appropriate season.

(B) Before releasing a threatened or endangered migratory bird, you must coordinate with your Fish and Wildlife Service Regional Migratory Bird Permit Office.

* * * * *

PART 22—EAGLE PERMITS

8. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

9. Revise § 22.24 to read as follows.

§ 22.24 Permits for falconry purposes.

(a) *May golden eagles be used in falconry?* Yes, if your State or Tribe allows it, you may possess a golden eagle (*Aquila chrysaetos*) for use in falconry if you are a master falconer with documentation of the required experience, and if you meet the requirements and provide the materials documenting your ability to handle golden eagles as outlined in 50 CFR 21.29(b)(3)(ii).

(b) *Is a separate Federal permit for use of a golden eagle in falconry required?* No, if you meet the conditions outlined in 50 CFR 21.29(b)(3)(iii)(D), and your State or Tribe allows you to possess a golden eagle for use in falconry, then we consider a permit from your State or Tribe authorizing you to possess a golden eagle or golden eagles for use in falconry sufficient for the purposes of the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

(c) *May golden eagles trapped by a government employee be transferred to a falconer?* Yes, if you (the falconer) have the necessary permit(s) from your State or Tribe, a government employee who has trapped a subadult golden eagle under Federal, State, or tribal permit authority may transfer the bird to you if he or she cannot release the eagle in an appropriate location. A subadult golden eagle may only be taken from a certified depredation area. We will not notify you about depredation areas or personnel conducting eagle trapping. You must contact USDA Wildlife Services or the State agency that declares such areas to determine if a depredation area has been declared.

Dated: December 9, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–2378 Filed 2–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Notice of Intent To Prepare an Environmental Assessment for Falconry and Raptor Propagation Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental assessment.

SUMMARY: The U.S. Fish and Wildlife Service (we or us) will pepare an updated draft environmental assessment of the activities of falconry and raptor propagation in the United States. We seek suggestions for issues and alternatives to consider when doing so.

DATES: Send suggestions on topics for the environmental assessment by March 11, 2005.

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

- Agency Web Site: *http://migratorybirds.fws.gov.* Follow the links to submit a comment.
- E-mail address for comments: *Falconry and Propagation EA@fws.gov.*
- Fax: 703–358–2217.
- Mail: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610.
- Hand Delivery: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

Instructions: All submissions received must note that they are for consideration in development of the environmental assessment on falconry and raptor propagation activities. All comments received, including any personal information provided, will be available for public inspection at the address given above for hand delivery of comments. For detailed instructions on submitting comments and additional information on the process, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1714, or Dr. George T. Allen, Wildlife Biologist, 703–358–1825.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States—Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976.

The taking and possession of raptors are strictly prohibited except as permitted under regulations implementing the MBTA. Activities with migratory birds are prohibited unless specifically authorized by regulation. Regulations governing the issuance of permits for migratory birds are authorized by the MBTA and subsequent regulations. They are in title 50, Code of Federal Regulations, parts 10, 13, 21, and 22. Raptors also may be protected by State and tribal regulations.

We plan to prepare an updated environmental assessment (EA) of the activities of falconry (covered in 50 CFR 21.28 and 21.29) and raptor propagation (50 CFR 21.30). We seek suggestions for issues and alternatives to be considered in the EA.

Public Participation

You may submit written comments on topics to be considered to the location identified in the **ADDRESSES** section, or you may submit electronic comments to the internet address or the e-mail address listed in the **ADDRESSES** section. We must receive your comments before the date listed in the **DATES** section. Following review and consideration of comments, we will prepare a draft environmental assessment.

When submitting electronic comments, please include your name and return address in your message, identify it as comments on the falconry and raptor propagation EA, and submit your comments as an ASCII file. Do not use special characters or any encryption.

When submitting written comments, please include your name and return address in your letter and identify it as comments on the falconry and raptor propagation EA. To facilitate compiling the administrative record for this action, you must submit written comments on 8½ inch by 11 inch paper.

All comments will be available for public inspection during normal business hours at Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia. The complete administrative record for this EA is available, by appointment, during normal business hours at the same address. You may call 703–358–1825 to make an appointment to view the record.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. An individual respondent may request that we withhold his or her home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We will not consider anonymous comments.

Dated: February 2, 2005.

Matt Hogan,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–2379 Filed 2–8–05; 8:45 am]

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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.

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National Oceanic and Atmospheric Administration

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ENERGY DEPARTMENT

Federal Energy Regulatory Commission

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LIST OF PUBLIC LAWS

This is the first in 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*.

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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. 241/P.L. 109-1

To accelerate the income tax benefits for charitable cash

contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

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