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Contents

Federal Register

Vol. 70, No. 27

Thursday, February 10, 2005

Agricultural Marketing Service
RULES
Beef promotion and research, 7004–7007
Sweet cherries grown in—
Washington, 6999–7002
Walnuts grown in—
California, 7002–7004

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, foreign:
Mexican Hass avocados; correction, 6999

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Eastern Mushroom Marketing Cooperative, Inc., 7120–7127

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 7112–7113
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 7113–7114
Healthcare Infection Control Practices Advisory Committee, 7114
National Institute for Occupational Safety and Health—Safety and Occupational Health Study Section, 7114

Coast Guard
RULES
Drawbridge operations:
New York, 7024
PROPOSED RULES
Port access routes:
Portland, ME and Casco Bay, 7067–7069
Ports and waterways safety:
HOVENSA refinery, St. Croix, Virgin Islands; security zone, 7065–7067
NOTICES
Deepwater ports; license applications:
Gulf Landing LLC, 7115

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Credit Corporation
RULES
Tobacco Transition Assessments, 7007–7014

Disability Employment Policy Office
NOTICES
New Freedom Initiative Award; nomination solicitation, 7145–7147

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 7084–7085
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Tech-Prep Demonstration Program; requirements and proposed selection criteria, 7085–7088
Reports and guidance documents; availability, etc.:
Electronic submission of grant applications; policy statement, 7088–7089

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 7038–7041
Texas, 7041–7044
West Virginia, 7024–7038
Pesticides; emergency exemptions, etc.
Removal of expired time-limited tolerances for emergency exemptions, 7044–7047
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Kansas and Missouri, 7070–7071
Air quality implementation plans; approval and promulgation; various States:
Arizona, 7069
Texas, 7069–7070
NOTICES
Meetings:
Childrens Health Protection Advisory Committee, 7102–7103
Pesticide petition to establish tolerance for pesticide chemical in or on food:
Alkyl ether amine dicarboxyethyl sodium, 7103–7108
Superfund; response and remedial actions, proposed settlements, etc.:
Carolina Steel Drum Site, SC, 7108

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Bell Helicopter Textron Canada, 7016–7017
Raytheon Aircraft Co., 7017–7019
Rolls-Royce Deutschland Ltd. & Co. KG, 7014–7016
Class E airspace, 7020–7022
PROPOSED RULES
Airworthiness directives:
Agusta S.p.A., 7057–7059

Boeing, 7052–7056
Eurocopter France, 7056–7057,
MD Helicopters, Inc., 7063–7065
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 7139
Committees; establishment, renewal, termination, etc.:
National Parks Overflights Advisory Group, 7139–7140
Passenger facility charges; applications, etc.:
Mid Delta Regional Airport, MS, 7140

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 7108–7109

Federal Election Commission
NOTICES
Price increases for expenditure and contribution limits, 7109–7111

Federal Energy Regulatory Commission
NOTICES
Complaints filed:
Con Edison Energy, Inc., et al., 7095–7096
Connecticut Department of Public Utility Control, 7096
Dockets:
eLibrary new docket query service, 7096
Electric rate and corporate regulation filings, 7096–7100
Environmental statements; availability, etc.:
California Department of Water Resources, 7100
Hydroelectric applications, 7101–7102
Meetings:
Electronic service initiative eFiling system demonstration, 7102
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission, LLC, 7089
Brazos River Authority, 7090
Dominion Transmission, Inc., 7090–7091
East Tennessee Natural Gas, LLC, 7091
El Paso Natural Gas Co., 7091–7092
Gas Transmission Northwest Corp., 7092
Augusta, GA; city of, 7089–7090
Kern River Gas Transmission Co., 7093
LSP-Cottage Grove, L.P. et al., 7093–7094
National Fuel Gas Supply Corp., 7094
Northern Natural Gas Co., 7094–7095
TransColorado Gas Transmission Co., 7095

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Clark County, NV, 7140–7141

Federal Railroad Administration
RULES
Railroad workplace safety:
Working over or adjacent to water, 7047–7050

Forest Service
NOTICES
Environmental statements; notice of intent:
Plumas National Forest, CA, 7074–7077
Shasta-Trinity National Forest, CA, 7077–7078
Grants and cooperative agreements; availability, etc.:
Request for forest product projects that increase the woody biomass from national forest lands, 7078–7080
Meetings:
Resource Advisory Committees—
Madera County, CA, 7080–7081

Health and Human Services Department
See Centers for Disease Control and Prevention
NOTICES
Meetings:
Bioethics, President's Council, 7111–7112

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Interior Department
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests; correction, 7143

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Rules of Civil Procedure, 7119

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Armstrong World Industries, Inc., et al., 7119–7120
ConocoPhillips Co., 7120

Labor Department
See Disability Employment Policy Office

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Eastern Montana, 7116
Oil and gas leases:
Wyoming, 7116
Realty actions; sales, leases, etc.:
New Mexico, 7116–7117
Recreation management restrictions, etc.:
Butte Field Office-administered recreational lands, MT; final supplementary rules, 7117–7119

Maritime Administration
NOTICES
Approval of underwriters for marine hull insurance:
Axis Specialty Ltd., et al., 7141
Deepwater ports; license applications:
Gulf Landing LLC, 7115

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Yellowtail flounder, 7050–7051
West Coast States and Western Pacific fisheries—
Highly migratory species, 7022–7024
NOTICES
Meetings:
Pacific Fishery Management Council, 7081

Permits:
Endangered and threatened species, 7081–7082
Marine mammals, 7082–7083

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Hydro Resources, Inc., 7127

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 7083–7084

Presidential Documents
PROCLAMATIONS
Special observances:
National African American History Month (Proc. 7868), 6995
National Consumer Protection Week (Proc. 7869), 6997–6998

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Transportation—
External product piping on cargo tanks transporting flammable liquids; safety requirements; extension of comment period, 7072–7073

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 7127–7128
Investment Company Act of 1940:
New York Health Care, Inc., 7128–7129
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 7129–7132
New York Stock Exchange, Inc.; correction, 7143

State Department
NOTICES
Art objects; importation for exhibition:
The Power of Conversation: Jewish Women and Their Salons, 7132
Art objects; importation for exhibition:
Thomas Demand, 7132–7133
Grants and cooperative agreements; availability, etc.:
Exchanges between high school students from Muslim countries and people of the United States, 7133–7139

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 7141–7142

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See Research and Special Programs Administration
See Surface Transportation Board

Transportation Security Administration
RULES
Civil aviation security:
Enhanced security procedures for certain airports' operations in the Washington, DC metropolitan area flight restricted zone, 7149–7163
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 7115–7116

Utah Reclamation Mitigation and Conservation Commission
NOTICES
Environmental statements; availability, etc.:
Diamond Fork Canyon, UT, 7142
Environmental statements; record of decision:
Utah Lake Drainage Basin Water Delivery System, 7142

Separate Parts In This Issue

Part II
Labor Department, Disability Employment Policy Office, 7145–7147

Part III
Homeland Security Department, Transportation Security Administration, 7149–7163

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
7868 6995
7869 6997

7 CFR
319 6999
923 6999
984 7002
1260 7004
1463 7007

14 CFR
39 (3 documents) ... 7014, 7016, 7017
71 (2 documents) 7020, 7021
Proposed Rules:
39 (6 documents) ... 7052, 7056, 7057, 7059, 7061, 7063

15 CFR
902 7022

33 CFR
117 7024
Proposed Rules:
165 7065
167 7067

40 CFR
52 (3 documents) ... 7024, 7038, 7041
180 7044
Proposed Rules:
52 (2 documents) 7069
81 7081

49 CFR
214 7047
1562 7150
Proposed Rules:
173 7072

50 CFR
648 7050
660 7022

Federal Register
Vol. 70, No. 27
Thursday, February 10, 2005

Presidential Documents

Title 3—

The President

Proclamation 7868 of February 7, 2005

National African American History Month, 2005

By the President of the United States of America

A Proclamation

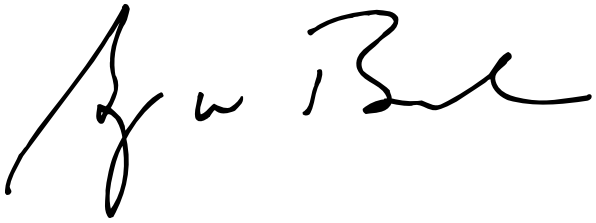
Throughout our Nation's history, the contributions of African Americans have stirred our Nation's conscience and helped shape our character. During National African American History Month, we honor the determination and commitment of generations of African Americans in pursuing the promises of America.

The theme of National African American History Month this year, ''The Niagara Movement: Black Protest Reborn, 1905–2005,'' honors the grassroots movement of 1905 to 1910 that was organized to fight racial discrimination in America. Led by W.E.B. DuBois, the movement called for voting rights for African Americans, opposed school segregation, and worked to elect officials committed to fighting racial prejudice. Americans today carry on this movement as our Nation strives to live up to our founding principle that all of God's children are created equal.

It is important to teach our children about the heroes of the civil rights movement who, with courage and dignity, forced America to confront the central defect of our founding. Every American should know about the men and women whose determination and persistent eloquence forced people of all races to examine their hearts and revise our Nation's Constitution and laws. As we celebrate African American History Month, we remember how great the struggle for racial justice has been. And we renew our efforts to fight for equal rights for all Americans. We have made great progress, but our work is not done.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 2005 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate programs and activities that honor the history, accomplishments, and contributions of African Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of February, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–2729
Filed 2–9–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7869 of February 7, 2005

National Consumer Protection Week, 2005

By the President of the United States of America

A Proclamation

This year's National Consumer Protection Week focuses on the impact and problems caused by identity theft and on the steps Government is taking to safeguard personal information. Today, many Americans reveal personal information when making purchases, borrowing money, or opening a bank or credit card account. This information makes it convenient to conduct routine transactions, but consumers must take precautions to protect their names, addresses, phone numbers, Social Security numbers, and account numbers against fraud and theft.

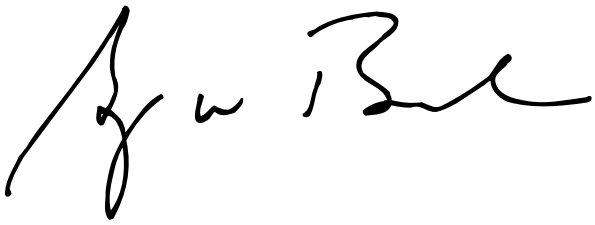
As one of the highest impact financial crimes in our Nation, identity theft can undermine the basic trust on which our economy depends. Millions of Americans have had their identity stolen, costing them and our country's businesses billions of dollars. Identity theft can shake consumers' confidence, destroy a person's financial reputation, and damage lifelong efforts to build and maintain a good credit rating.

We are acting to protect citizens from these crimes and the grief and problems they cause. During the last 2 years, I have signed the Fair and Accurate Credit Transactions Act of 2003, which makes it easier for consumers to detect and protect themselves from fraud, and the Identity Theft Penalty Enhancement Act, which strengthens the penalties for identity theft. The U.S. Postal Inspection Service, the Federal Bureau of Investigation, and the United States Secret Service are working with State and local officials to stop the criminal networks responsible for much of the identity theft in America. The Federal Trade Commission also trains local law enforcement in detecting and investigating identity theft, and they have set up the Identity Theft Data Clearinghouse, which tracks complaints across the country and provides these records to prosecutors seeking to shut down those who steal our citizens' good names.

Consumers can learn to prevent identity theft by visiting the National Consumer Protection Week website, www.consumer.gov/ncpw. Working together, we can reduce this growing problem and protect the financial security of our citizens and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 6 through February 12, 2005, as National Consumer Protection Week. I call upon government officials, industry leaders, and consumer advocates to provide citizens with information about identity theft and how they can be responsible consumers, and I encourage all citizens to take an active role in protecting their personal information.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of February, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Rules and Regulations

Federal Register
Vol. 70, No. 27
Thursday, February 10, 2005

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–022–6]

RIN 0579–AB81

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: We are correcting an error in the rule portion of our final rule amending the fruits and vegetables regulations to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed and to allow the distribution of the avocados during all months of the year. The final rule was published in the **Federal Register** on November 30, 2004 (69 FR 69747–69774, Docket No. 03–022–5), and became effective on January 31, 2005.

EFFECTIVE DATE: January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on November 30, 2004 (69 FR 69747–69774, Docket No. 03–022–5), and effective on January 31, 2005, we amended the fruits and vegetable regulations in 7 CFR part 319 to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed and to allow the distribution of the avocados during all months of the year.

In the rule portion of the final rule, it was our intention to amend paragraph (a) of § 319.56–2ff by revising paragraph (a)(2) and by removing paragraph (a)(3). These changes were discussed in the **SUPPLEMENTARY INFORMATION** section of the final rule, and the text of revised (a)(2) was presented in the rule portion of the final rule along with the other changes made to § 319.56–2ff. However, we inadvertently failed to include a specific amendatory instruction directing the revision of paragraph (a)(2) and the removal of paragraph (a)(3). This document corrects that error.

PART 319—[CORRECTED]

■ In FR Doc. 04–26336, published on November 30, 2004 (69 FR 69747–69774), make the following correction:

§ 319.56–2ff [Corrected]

■ 1. On page 69773, in the amendments to 7 CFR part 319, in instruction 3 for § 319.56–2ff, an instruction h. is added to read as follows:

■ h. By revising paragraph (a)(2) to read as set forth below and removing paragraph (a)(3).

Done in Washington, DC, this 7th day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–2668 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV04–923–1 FR]

Sweet Cherries Grown in Designated Counties in Washington; Establishment of Minimum Size and Maturity Requirements for Lightly Colored Sweet Cherry Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a minimum size requirement of 11-row size ($^{61}/_{64}$-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties shipped to fresh markets under the Washington sweet cherry marketing order. This rule was recommended by the Washington Cherry Marketing Committee (Committee), the agency responsible for local administration of the marketing order. Previously, only the Rainier variety of lightly colored sweet cherries met these requirements. This rule is intended to enhance the quality and image of all lightly colored sweet cherry varieties shipped to the fresh market, thereby increasing sales and improving returns to producers.

EFFECTIVE DATE: April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they

present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties shipped to fresh markets. Previously, Rainier variety cherries were the only lightly colored sweet cherries under these requirements. This rule establishes the same requirements for all other varieties of lightly colored sweet cherries as are established for Rainier variety cherries.

Section 923.52 of the order authorizes the establishment of grade, size, quality, maturity, pack, and container regulations for any variety or varieties of cherries grown in the production area. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under § 923.52. Section 923.55 provides that whenever cherries are regulated pursuant to § 923.52 or § 923.53, such cherries must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

On May 18, 2004, the Committee recommended, by a nine to four vote, the establishment of a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties shipped to fresh markets under the order. The Committee recommended the requirement become effective on April 1, 2005, which is the beginning of the 2005–2006 marketing season.

Supporters of the recommendation believe that this regulation is in the best interests of producers and consumers. Growing lightly colored sweet cherries for the fresh market is more labor intensive and costly than producing dark colored varieties. Trees that produce lightly colored sweet cherries need to be pruned more heavily than the trees that produce dark colored sweet cherries to ensure acceptable size fruit. The lightly colored sweet varieties are fragile and susceptible to damage during handling with most lightly colored sweet cherries being sorted and packed by hand. Producers need to offer a quality product in order to recoup the higher production costs. The sale of small, immature or poor quality cherries results in buyer dissatisfaction, which reduces repeat purchases and damages the market for all lightly colored sweet cherries.

Supporters of the recommendation believe that the requirements currently in place for Rainier variety cherries (59 FR 31917, June 21, 1994) have benefited producers. Concern was also expressed that the non-regulation of new varieties of lightly colored sweet cherries would have an adverse effect in the future on the marketing of Rainier variety cherries if the newer varieties are not regulated in the same manner. It is difficult to distinguish between the different varieties of lightly colored cherries and this can result in confusion in the marketplace.

Those opposed to the recommendation believe that the tonnage of the newer lightly colored sweet cherry varieties is not enough to impact the Rainier market at this time. They believe that the regulation of all lightly colored sweet cherries will reduce the volume of such cherries on the market and reduce overall returns on the crop. Some believe that the additional cost of inspection will increase costs with little added return to the producer.

The Committee estimates that there were less than 500 tons of lightly colored sweet cherry varieties other than the Rainier variety marketed during the 2004 marketing season. By comparison, there were 8,080 tons (Committee records) of Rainier cherries marketed from the production area in 2004.

This rule adds a new provision to § 923.322 to establish a minimum size requirement of 61/64-inch in diameter for all lightly colored sweet cherries which corresponds to the 11-row size. To provide for variances in packing, a tolerance of 10 percent is provided for undersized lightly colored sweet cherries. Further, the regulation provides that not more than 5 percent of lightly colored sweet cherries in any lot can be less than 57/64-inch in diameter, or 11½-row size. These tolerances are identical to those in effect for Rainier cherries and comparable to those in effect for dark colored sweet cherry varieties.

Section 923.322 is also revised to include a requirement that any lot of lightly colored sweet cherries must contain a minimum of 17 percent soluble solids. The percentage of soluble solids will be determined by using a refractometer to measure the sugar level in a composite sample of cherries. This maturity test can be taken prior to packing, at the time of packing, or at time of shipment, provided that individual lots shall not be combined with other lots to meet soluble solids requirements.

This rule also changes the heading of § 923.322 from ''Washington Cherry Regulation 22'' to ''Washington Cherry Handling Regulation'' to more accurately describe the requirements contained therein.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,800 producers of sweet cherries grown in designated counties in Washington. In addition, there are approximately 69 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year (2001–2003) average fresh cherry production of 79,763 tons (Committee records), a three-year average producer price of $1,390 per ton as reported by the National Agricultural Statistics Service, USDA, and 1,800 Washington cherry producers, the average annual producer revenue is approximately $61,595. In addition, based on Committee records and an average 2003 f.o.b. price of $28.00 per 20-pound container as

reported by AMS Market News, approximately 75 percent of the Washington sweet cherry handlers ship under $5,000,000 worth of cherries. Based on this information, the majority of Washington sweet cherry producers and handlers may be classified as small entities.

This final rule establishes a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties shipped to fresh markets. Previously, Rainier variety cherries were the only lightly colored sweet cherries under these requirements.

Rainier and other lightly colored sweet cherry varieties are typically marketed from mid-June through July. AMS Market News data shows that prices are the highest for the earliest offerings of these cherries, and that such prices decline as the season progresses. In 2003, for example, the opening f.o.b. price on June 23 ranged from $45.00 to $45.50 per carton. This declined to $35.00 to $36.50 a week later, and f.o.b. prices were $38.00 to $40.50 per carton at season's end for similar quality and sizes. This price trend serves as an incentive for producers to harvest early, which has resulted in immature and poor quality lightly colored sweet cherries being marketed.

The Committee reports that cherry size and quality are important to buyers. Consistency and dependability are equally important. Shipments of immature, low quality, under-sized lightly colored sweet cherries in recent seasons have disappointed buyers and consumers. This reduces repeat purchases and results in declines in prices and overall sales volumes.

Cherry size is related to maturity and other quality factors. That is, larger sized cherries tend to be sweeter and of higher overall quality. This is supported by prices received for different sizes of Bing (dark colored) cherries. AMS Market News data show that f.o.b. prices for 12 row sized Bing cherries (54/64-inch diameter) averaged about $18.00 per carton in mid-June 2003. At the same time, 10½ row sized (1-inch diameter) Bing cherries were selling for $24.50 to $26.50 per carton. This price relationship held steady throughout the season. Further, the Committee has conducted research showing that larger sizes correlate with higher maturity levels, and that larger sizes are preferred by cherry consumers. While research results and prices by size specifically for Rainier or other lightly colored sweet cherry varieties are currently unavailable, industry consensus is that the same relationships are true for Rainier and other lightly colored sweet cherries, and Bings.

The Committee discussed alternatives to this rule, including not establishing a minimum size and maturity requirement. The general consensus of the industry is that mandatory size and quality requirements are needed to ensure product quality and to encourage repeat purchases. Previous voluntary standards for lightly colored sweet cherries such as Rainier variety cherries have not been successful.

This final rule will establish a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for lightly colored sweet cherry varieties shipped to fresh markets. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large sweet cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplications by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

In addition, the Committee's meeting was widely publicized throughout the Washington sweet cherry industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 18, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on November 3, 2004 (69 FR 63958). Copies of the rule were mailed or sent via facsimile to all Committee members. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending January 3, 2005, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One commenter opposed the proposed requirements indicating that regulation was overly restrictive. The second commenter was of the view that cherries should not be regulated by size at all.

We disagree with the commenters. Implementation of a minimum size of 61/64-inch diameter and a 17 percent soluble solids requirement for all varieties of lightly colored cherries should help enhance their quality and image. With such a minimum size and maturity, the Committee believes that consumers will purchase more cherries, thereby increasing sales and improving returns to producers.

Accordingly, based on the comments received, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ama.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 923.322, the section heading, paragraphs (b) introductory text, (b)(1), and (c) are revised to read as follows:

§ 923.322 Washington cherry handling regulation.

* * * * *

(b) *Size.* No handler shall handle, except as otherwise provided in this section, any lot of cherries unless such cherries meet the following minimum size requirements:

(1) For the Rainier variety and similar varieties commonly referred to as ''lightly colored sweet cherries,'' at least 90 percent, by count, of the cherries in any lot shall measure not less than 61/64-inch in diameter and not more than 5 percent, by count, may be less than 57/64-inch in diameter.

* * * * *

(c) *Maturity.* No handler shall handle, except as otherwise provided in this

section, any lot of Rainier cherries or other varieties of ''lightly colored sweet cherries'' unless such cherries meet a minimum of 17 percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment: *Provided,* That individual lots shall not be combined with other lots to meet soluble solids requirements.

* * * * *

Dated: February 4, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2545 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV04–984–2 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, an interim final rule which decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2004–05 and subsequent marketing years from $0.0101 to $0.0094 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: March 14, 2005.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Board for the 2004–05 and subsequent marketing years from $0.0101 to $0.0094 per kernelweight pound of assessable walnuts.

The order provides authority for the Board, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0101 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 10, 2004, and unanimously recommended 2004–05 expenditures of $2,749,500 and an assessment rate of $0.0094 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,863,350. The assessment rate of $0.0094 is $0.0007 lower than the $0.0101 rate previously in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 325,000 tons (292,500,000 kernelweight pounds merchantable), and the budget is about 4 percent less than last year's budget. Sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for 2004–05 include $2,037,500 for research and marketing programs ($1,393,500 for market research and development, $550,000 for production research, and $94,000 to the California Agricultural Statistics Service for a crop estimate), $332,000 for employee expenses (administrative and office salaries, payroll taxes, workers compensation, and other employee benefits), $97,000 for office expenses (rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture), $96,000 for other operating expenses (management travel, field travel, insurance, and financial audits), $5,000

for controlled (compliance check) purchases, $75,000 for a production research director, and $107,000 as a reserve for contingency. Budgeted expenses for these items in 2003–04 were $2,438,000, $334,625, $83,000, $82,000, $5,000, $73,000, and $15,725, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 292,500,000 kernelweight pounds which should provide $2,749,500 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2004–05 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over $5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under $5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual incomes over $750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Board and collected from handlers for the 2004–05 and subsequent marketing years from $0.0101 to $0.0094 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2004–05 expenditures of $2,749,500. The decreased assessment rate should generate sufficient income to meet the Board's 2004–05 anticipated expenses. The lower assessment rate is primarily due to a lower budget and based on an estimated crop of 325,000 tons for the year (292,500,000 kernelweight pounds estimated merchantable).

Major categories in the budget recommended by the Board for 2004–05 include $2,037,500 for research and marketing programs ($1,393,500 for market research and development, $550,000 for production research, and $94,000 to the California Agricultural Statistics Service for a crop estimate), $332,000 for employee expenses (administrative and office salaries, payroll taxes, workers compensation, and other employees benefits), $97,000 for office expenses (rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture), $96,000 for other operating expenses (management travel, field travel, Board expenses, insurance, and financial audits), $5,000 for controlled (compliance check) purchases, $75,000 for a production research director, and $107,000 as a reserve for contingency. Budgeted expenses for these items in 2003–04 were $2,438,000, $334,625, $83,000, $82,000, $5,000, $73,000, and $15,725, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups based upon the relative value of various research projects to the walnut industry. The recommended $0.0094 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 292,500,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2004–05 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2004–05 marketing year as a percentage of total grower revenue could range between 1.3 and 1.9 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 10, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on October 29, 2004 (69 FR 63043). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on December 28, 2004, and one comment was received.

The commenter believes that the Board and this marketing order program should be terminated in favor of a free market system. However, the Act authorizes this marketing order program. Further, this comment does not relate to the Board's assessment rate decrease. Thus, no changes are being made based on the comment submitted.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 984 which was published at 69 FR 63043 on October 29, 2004, is adopted as a final rule without change.

Dated: February 7, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2603 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[Docket No. LS–04–09]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 2002. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 108 to 104, effective with the Department of Agriculture's (USDA) appointments for terms beginning early in the year 2006.

EFFECTIVE DATE: February 10, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Room 2638–S, Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; telephone number 202/720–1115; facsimile 202/720–1125, or by e-mail at: *Kenenth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

The Regulatory Flexibility Act and the Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*).

The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 30, 2004, issue of ''Cattle,'' USDA's National Agricultural Statistics Service (NASS) estimates that in 2004 the number of cattle operations in the United States totaled about 1.1 million. The majority of these operations subject to the Order, 7 CFR 1260.101 *et seq.,* are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry. It only adjusts representation on the Board, established under the Act, to reflect changes in domestic cattle inventory and cattle and beef imports. The adjustments are required by the Order and will result in a decrease in Board membership from 108 to 104.

Background

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary of Agriculture from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to

USDA modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986, was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990, and 107 members in 1993, before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999, 108 members in 2001, and will be decreased to 104 members with appointments for terms effective early in 2006.

The current Board representation by States or units has been based on an average of the January 1, 1999, 2000, and 2001, inventory of cattle in the various States as reported by NASS of USDA. Current importer representation has been based on a combined total average of the 1998, 1999, and 2000, live cattle imports as published by the Foreign Agricultural Service of USDA and the average of the 1998, 1999, and 2000, live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its June 24, 2004, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 2002, to January 1, 2004. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 2002, 2003, and 2004, USDA cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the 2001 reapportionment rule.

The Board reviewed the February 24, 2004, USDA's Economic Research Service circular, ''Livestock, Dairy, and Poultry Outlook,'' to determine proper importer representation. The Board recommended the use of a combined total of the average of the 2001, 2002, and 2003, cattle import data and the average of the 2001, 2002, and 2003, live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its June 24, 2004, meeting to be consistent with the procedures used for domestic representation.

Comments

On November 12, 2004, AMS published in the **Federal Register** (69 FR 65386) for public comment a proposed rule providing for the adjustment in Board membership. That comment period ended December 13, 2004. USDA received one comment from an interested party in a timely manner. The comment has been posted on AMS' Web site at: *http://www.ams.usda.gov/lsg/mpb/bfcomments.htm.*

Discussion of Comment

The commenter supported a readjustment of Board membership, but suggested that alternating representation including consumers and others be included on the Board. However, the Act and Order provide that the Board shall be composed of cattle producers and importers appointed by the Secretary of Agriculture from nominations submitted by certified producer organizations. Consequently, this comment is not adopted.

Therefore, the reapportionment of the Board in this final rule is unchanged from the proposed rule. This final rule decreases the number of representatives on the Board from 108 to 104. Four States—Minnesota, Montana, Nebraska, and Wyoming—lose one member each. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

States	Current representation	Revised representation
1. Minnesota	3	2
2. Montana	3	2
3. Nebraska	7	6
4. Wyoming	2	1

Board representation for the entire 40 units is shown in the revised § 1260.141(a) contained herein.

The 2004, nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as provided for under the rulemaking will be effective with 2005, nominations and appointments that will be effective early in the year 2006.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register.** This action adjusts representation on the Board. By establishing this final rule, as provided herein, USDA will be able to make appointments effective early in the year 2006 based upon this reapportionment.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

■ 2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2005, Board nominations and the associated appointments effective early in the year 2006, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,390	1
2. Arizona	843	1
3. Arkansas	1,857	2
4. California	5,217	5
5. Colorado	2,700	3
6. Florida	1,757	2
7. Idaho	2,000	2
8. Illinois	1,367	1
9. Indiana	857	1
10. Iowa	3,517	4
11. Kansas	6,533	7
12. Kentucky	2,350	2
13. Louisiana	853	1
14. Michigan	1,003	1
15. Minnesota	2,467	2
16. Mississippi	1,063	1
17. Missouri	4,400	4
18. Montana	2,433	2
19. Nebraska	6,283	6
20. Nevada	507	1
21. New Mexico	1,547	2
22. New York	1,420	1
23. North Carolina	910	1
24. North Dakota	1,867	2
25. Ohio	1,233	1
26. Oklahoma	5,233	5
27. Oregon	1,400	1
28. Pennsylvania	1,637	2
29. South Dakota	3,767	4
30. Tennessee	2,227	2
31. Texas	13,833	14
32. Utah	887	1
33. Virginia	1,607	2
34. Wisconsin	3,333	3
35. Wyoming	1,387	1
36. Northwest		1
Alaska	12	
Hawaii	153	
Washington	1,117	
Total	1,408	
37. Northeast		1
Connecticut	57	
Delaware	24	
Maine	94	
Massachusetts	50	
New Hampshire	40	
New Jersey	45	
Rhode Island	6	
Vermont	285	
Total	600	
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	240	
West Virginia	400	
Total	640	
39. Southeast		2
Georgia	1,260	
South Carolina	430	
Total	1,690	
40. Importer [2]	8,378	8

[1] 2002, 2003, and 2004, average of January 1 cattle inventory data.
[2] 2001, 2002, and 2003, average of annual import data.

* * * * *

Dated: February 4, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–2544 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1463

RIN 0560–AH31

Tobacco Transition Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides regulations for the manner in which assessments are to be made on various domestic manufacturers or importers of tobacco products to fund the tobacco transition payment program as required by Title VI of the America Jobs Creation Act of 2004 (the 2004 Act).

EFFECTIVE DATE: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: Misty Jones, Tobacco Division (TD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 4080–S, 1400 Independence Avenue, SW., Washington, DC 20250–0514. Phone: (202) 720–7413; e-mail: *Misty.Jones@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 642(b) of the 2004 Act (Pub. L. 108–357) requires that the regulations to implement Title VI of the 2004 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notice and comment rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Background

General Overview

Sections 611 through 613 of the 2004 Act repeal the marketing quota and acreage allotment (marketing quota) and price support loan programs for tobacco that are authorized by Title III of the Agricultural Adjustment Act of 1938 (the 1938 Act), and the Agricultural Act of 1949 (the 1949 Act), effective at the end of the 2004 marketing year established for the respective kinds of tobacco that are subject to such quotas. The regulations used to administer the marketing quota program are codified at 7 CFR part 723 and the price support loan program regulations are codified at 7 CFR part 1464.

Sections 622 and 623 of the 2004 Act provide that eligible quota holders and tobacco producers will receive payments under the Tobacco Transition Payment Program (TTPP) in 10 equal installments in each of the 2005 through 2014 fiscal years. The regulations used to administer payments made under this program will be set forth in a separate rule.

Assessment and Trust Fund

Sections 625 through 627 of the 2004 Act provide for the establishment of assessments on certain domestic manufacturers and importers of tobacco products in order to fund the 10-year TTPP. The funds to be expended under this program are to be derived from a trust fund established by the 2004 Act. The trust fund is also to be used to pay for losses the Commodity Credit Corporation (CCC) incurs in disposing of tobacco it had acquired under the price support loan program and for costs that CCC may incur by using private financial institutions in carrying out portions of the program. To fund the trust, section 625(b)(1) of the 2004 Act requires that ''each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States'' be subject to this assessment. The manner in which the assessments are to be levied is specified by the 2004 Act. Notably, assessments are levied on ''each tobacco product manufacturer and tobacco product importer;'' accordingly, no assessment is levied on an entity that imports, or sells domestically only un-manufactured tobacco.

Assessments are imposed during each of the fiscal years (FY) 2005 through 2014. The amount of such annual assessment is to be sufficient to cover the payments made to tobacco quota holders and tobacco producers and to cover other approved expenses made in that calendar year. For 2005, the percentage of these assessments to be collected from each such sector is as follows:

1. Cigarette manufacturers and importers—96.331 percent.
2. Cigar manufacturers and importers—2.783 percent.
3. Snuff manufacturers and importers—0.539 percent.
4. Roll-your-own tobacco manufacturers and importers—0.171 percent.
5. Chewing tobacco manufacturers and importers—0.111 percent.
6. Pipe tobacco manufacturers and importers—0.066 percent.

These percentages were established under section 625 of the 2004 Act by using calendar year 2003 data. The allocations by class for fiscal year 2005 were calculated by multiplying net tobacco products removed (both domestic and imported) by the maximum excise tax rate for each class of tobacco (see table 1 below).

TABLE 1.—CALCULATION OF INITIAL ASSESSMENTS FOR EACH CLASS OF TOBACCO UNDER SECTION 625(C)

2003 Calendar year	Domestic (# or lbs) [1]	Imports (# or lbs) [1]	Total quantity (# or lbs) [1]	Maximum tax rate [2]	Estimated taxes (total quantity times tax rate)	Allocation by class (percent)
Cigarettes: small (#)	377,241,580,953	23,085,086,000	400,326,666,953	$19.50/thou	$7,806,370,006	96.331
Cigarettes: large (#)	0	0	0	$40.95/thou	0	0.000
Cigars: small (#)	2,301,972,488	172,369,000	2,474,341,488	$1.828/thou	4,523,096	0.056
Cigars: large (#)	4,018,523,214	514,566,000	4,533,089,214	$48.75/thou	220,988,099	2.727
Snuff (lbs)	74,700,715	8,369	74,709,084	$0.585/lb	43,704,814	0.539
Chewing tobacco (lbs)	45,906,067	174,399	46,080,466	$.195/lb	8,985,691	0.111
Pipe tobacco (lbs)	4,155,205	698,086	4,853,291	$1.0969/lb	5,323,575	0.066
Roll your own (lbs)	11,353,137	1,254,008	12,607,145	$1.0969/lb	13,828,777	0.171
Total					8,103,724,058	100.000

[1] Source: Alcohol and Tobacco Tax and Trade Bureau; National Revenue Center; December 2003 Monthly Statistical Release Re-issued August 19, 2004; Report Symbol TTB S 5200–12–2003 *www.ttb.gov/tobacco/stats/index.htm*.
[2] Source: Alcohol and Tobacco Tax and Trade Bureau; Tax and Fee Rate *www.ttb.gov/alcohol/info/atftaxes.htm*.

Section 625(c)(2) of the 2004 Act requires the Secretary to periodically adjust these percentages as changes occur in the marketplace. Beginning in FY 2006, it is CCC's intention to adjust the class percentages annually by using this same methodology to ascertain changes in the volume of sales of each class.

Market Shares and Base Period

Section 625(b)(1) of the 2004 Act provides that in each of the FY's 2005 through 2014, CCC will impose assessments ''on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year.'' The 2004 Act provides that for each such entity, within each of the six specified sectors, the Secretary must establish individual assessments by determining a statutorily prescribed ''market share'' for each manufacturer and importer. This market share is defined by section 625(a)(3) of the 2004 Act as the entity's share of the ''class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for a fiscal year* * *.'' The ''base period'' is defined in section 625(a)(1) as the ''one-year period ending the June 30 before the beginning of a fiscal year.'' For FY 2005 that would be July 1, 2003 through June 30, 2004 and an entity's FY 2005 market share would be its share of the sale of a class of tobacco products from July 1, 2003 through June 30, 2004.

Section 625(f) provides that the determination of the amount of a quarterly assessment owed by an entity will be based upon its prior quarterly period sales. Thus, as payments made by an entity cover a calendar year period, the first quarterly payment that is due on March 31, 2005 will be determined by using the October 1, 2004 through December 31, 2004 market share of the entity within each of the six product sectors. Accordingly, the use of the 2004 Act's ''market share'' and ''base period,'' are effectively limited to being used to determine the division of the national assessment among the six previously listed sectors.

In order to establish these market shares, section 625(h)(1) provides that each manufacturer and importer of tobacco products must submit ''a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal agency on the same date that those returns or forms are filed, or required to be filed, with the agency.'' Section 625(h)(2) provides that these returns and forms ''are those that relate to, ''(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and (B) the payment of the taxes imposed under charter [sic] 52 of the Internal Revenue Code of 1986, including AFT [sic] Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.'' With respect to the information provided to the Department of the Treasury, data to develop a market share would be obtained from sources such as TTB Form 5000.24, which is required to be filed monthly. To the extent amended forms are filed, CCC would incorporate those changes to the extent it deemed practicable, taking into consideration when the amended form was submitted. With respect to imports of tobacco products, CCC intends to use information provided to the Department of the Treasury and the Department of Homeland Security when the product enters the United States.

At the current time, this information would be of the type submitted monthly on TTB Form 5220.6, ATF Form 5210.5, TTB Form 5000.24, TTB Form 5620.8 and Customs and Border Protection Form 7501. Because the name and identification of these and other forms may change over time, CCC will provide actual notice to domestic manufacturers and importers of tobacco products of those forms from which information could be obtained for purposes of compliance with this subpart. Due to the need to obtain this information as soon as possible for use in FY 2005, CCC will provide actual notice to those entities who have received a permit, as identified below, from the Department of the Treasury since October 1, 2004 in order to obtain information regarding their October 1 through December 31, 2004 marketings. To the extent that future submissions to the Department of the Treasury and the Department of Homeland Security may be combined with that needed for the administration of the 2004 Act, CCC will attempt to obtain the information from the two agencies without the need to obtain the same information from tobacco manufacturers and tobacco product importers.

Quarterly Assessments

Section 625(b)(1) of the 2004 Act requires that CCC ''* * * impose quarterly assessments during each of fiscal years 2005 through 2014, * * * on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year.''

Section 625(b)(2) further provides that: ''Beginning with the calendar quarter ending on December 31 of each of fiscal years 2005 through 2014, the assessment payments over each four-calendar quarter period shall be sufficient to cover—

(A) The contract payments made under sections 622 and 623 during that period; and

(B) Other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period.''

Section 625(d)(1) of the 2004 Act further provides that ''The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under paragraph (3).''

Section 625(d)(3) provides:

''(A) Collection Date.—Assessments shall be collected at the end of each calendar year quarter, except that the Secretary shall ensure that the final assessment due under this section is collected not later than September 30, 2014.

(B) Base Period Quarter.—The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.''

The 2004 Act contains several provisions that give contradictory direction to CCC. For example, while section 625(b)(1) provides that CCC ''* * * shall impose quarterly assessments during each of the fiscal years 2005 through 2014,'' section 625(b)(2) directs that assessments be collected ''* * * over each four calendar quarter period,'' which CCC interprets as being each quarter beginning on January 1, 2005 through December 31, 2014, except that the final payment is accelerated to September 30, 2014 by section 625(d)(3)(B). Similarly, section 625(d)(1) states that notification of payments owed by an entity is to be made ''not later than 30 days before the date payment is due under paragraph (3).'' Section 625(d)(3)(A) contains the special rule for moving December 31, 2014 assessments to September 30, 2014, but subparagraph (B) provides ''The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.'' Thus, this provision of 625(d)(3)(B) to use a method of collection where a quarterly payment is to ''correspond'' to the prior quarter runs counter to the use of the ''market share'' and ''base period'' provisions of the 2004 Act. Accordingly, with respect to section 625(d)(3)(B), CCC interprets this provision to mean that an entity's required payment is to be adjusted quarterly by determining an entity's share of a tobacco product sector based upon the prior 3 month marketings of the entity. Such an interpretation also means that an entity entering the tobacco market for the first time at any time during a quarterly payment period will be treated in the same manner as all other entities.

After reviewing this provision of the 2004 Act in the context of all of Title VI of the 2004 Act, CCC has determined the intent of the statutory scheme established by section 625 of the 2004 Act is that CCC is to levy assessments in amounts needed to fund the Tobacco Trust Fund (TTF) with sufficient amounts to cover expenses incurred in each of the 2005 through 2014 calendar years, with payment due to CCC at the end of each calendar year quarter.

Thus, the first quarterly payment is due to CCC on March 31, 2005 and the 40th, and final payment otherwise due to CCC on December 31, 2014, is accelerated to September 30, 2014. While section 625(b)(2) refers to the collection of assessments at the end of a calendar year quarter for expenditures occurred in that quarter, section 625(c)(3) allows CCC to adjust any assessment to be collected in a fiscal year to cover expenditures ''* * * as the Secretary determines to be necessary to carry out this subtitle during that fiscal year.''

Accordingly, in order to allow for a more uniform and predictable assessment rate so that entities paying the assessment can make timely business decisions, CCC will levy four quarterly assessments in each of the 2005 through 2014 calendar years with payment due on March 31, June 30, September 30, and December 31 of each calendar year. But, as required by the 2004 Act, the December 31, 2014 payment will be due on September 30, 2014. Accordingly, this 40th quarter payment will be determined by using the same adjusted market share data of an entity that was used to determine the 39th quarter payment. To the extent practicable, each of the four quarterly assessments for a calendar year will be one-fourth of the estimated costs of the total expenditures for that calendar year, but CCC may adjust each of the amounts due each quarter to account for unanticipated savings or increased outlays.

Entities Subject to Payment of the Assessment

In order to collect these assessments, this rule provides that those domestic manufacturers and importers of tobacco products who must pay an assessment are those that, during the fiscal year, are required to have a permit from the Department of the Treasury as provided in 27 CFR parts 40.61 and 40.62 for manufacturers and 27 CFR parts 275.190 and 275.191 for importers. Since all domestic manufacturers and importers of tobacco products must have such a permit, use of this requirement will provide a readily identifiable process that imposes no additional burden on these entities.

Generally, for FY 2005, the assessment for an individual company would be determined by:

1. Taking the total calendar year 2005 expenditures CCC estimates it will incur and dividing that amount among the various classes of tobacco pursuant to the percentages specified above.

2. Taking that dollar amount for each class and dividing it among each entity in that class based on the entity's adjusted market share each quarter. With respect to the first calendar year quarterly payment that is due March 31, 2005, CCC would calculate an individual entity's required payment based upon the entity's adjusted market share as determined as of the ''* * * quarter that ended at the end of the preceding calendar year quarter,'' which would be the October 1 through December 31, 2004 time frame. With respect to the payment due on June 30, 2005, the market share would be adjusted to reflect marketings between January 1, 2005 and March 31, 2005.

Notification of Information

Section 625(d) of the 2004 Act provides that each domestic manufacturer and importer of tobacco products will be given actual notice, not later than 30 calendar days prior to the date payment of each quarterly assessment is due to CCC, of certain determinations made under the 2004 Act. These determinations relate to:

1. The total combined assessment for all domestic manufacturers and importers of tobacco products, which is referred to as the ''national assessment'' in the rule;

2. The total assessment for each class of tobacco product;

3. Any adjustments that have been made to the percentage allocation of the gross volume of tobacco products among classes of tobacco products;

4. Any adjustment to the national assessment due to changes of CCC expenditures during the fiscal year;

5. The volume of gross sales for each class of tobacco made by the domestic manufacturer or importer of tobacco products that was used in determining the market share of such entity;

6. The total volume of gross sales of the applicable class of tobacco products that was used in determining the market share of domestic manufacturer and importers of tobacco products;

7. The domestic manufacturers' and importers' of tobacco products market share of the applicable class of tobacco product; and

8. The market share of each domestic manufacturer and importers of tobacco products.

In reviewing the notification of information provision with officials of the Department of the Treasury, it has been determined that the disclosure of market share information on an entity to another party, item 8, would be in violation of 26 U.S.C. 6103. That provision of the Internal Revenue Code precludes the disclosure by the United States Government of information obtained from a tax return or other form to a third party. Accordingly, the notifications provided by this rule will not include disclosure of an entity's market share to any third party.

In addition to the first seven items noted above, the notification that CCC will provide to domestic manufacturers and importers of tobacco products will also include:

1. The manner in which assessments are to be remitted to CCC; and

2. Identification of those Department of the Treasury and Department of Homeland Security forms filed by the domestic manufacturer and importer of tobacco products that must also be filed with CCC.

Appeals

Notice of appeal rights will be provided when applicable. Section 625(i) of the 2004 Act sets forth specific times by which CCC must resolve certain administrative appeals that arise with respect to the levy of assessments. Accordingly, the administrative review procedure set forth in this rule provides that for those appeals in which the appellant disputes the amount of the assessments CCC will, within 30 business days of receipt of the notice of the appeal, determine if a revision should be made. If a decision has not been made within 30 business days, for purposes of seeking judicial review, the appellant will have been deemed to have exhausted all administrative remedies. The administrative procedure established by this rule provides for the opportunity for a hearing, if requested by the appellant, and also provides for the appeal of other determinations arising under the act that are not subject to the 30-day appeal process.

Analysis of Benefits and Costs

This rule was determined to be economically significant by the Office of Management and Budget under Executive Order 12866. Thus, an analysis of the benefits and costs of this rule has been performed by the Agency. This analysis is available from Misty Jones at (202) 720–7413 or at *http://www.fsa.usda.gov/tobacco/*. A summary of the estimated impacts of this rule are as follows:

Tobacco Market Prices

The price tobacco manufacturers pay for domestic tobacco is higher than that for imported tobacco. This is largely due to the price support program for domestic tobacco which established a higher minimum price for U.S. product. The elimination of the tobacco price support is expected to move domestic tobacco market prices toward the lower market price of imported tobacco. Academic research suggests that tobacco market prices may decline 25 percent or more from their levels under the previous program. However, over the longer term, tobacco producers are expected to benefit from reduced production costs from elimination of quota rent, increased production as domestic leaf will compete more effectively with imports, more competitiveness in the export market, and economy of scale as farms consolidate into larger and more efficient units. Also, elimination of tobacco marketing quotas will result in a loss of income to quota owners because owning a tobacco quota allows a person to market tobacco in the higher-price domestic market and, therefore, it has an intrinsic value.

CCC Stocks

Lower domestic market tobacco prices may cause a reduction in the value of CCC tobacco stocks which are collateral for CCC nonrecourse marketing loans. If tobacco prices fall below the loan value of tobacco pledged as collateral, CCC could lose a significant amount of money. Compensating tobacco producers, quota holders, and CCC is viewed as an equitable remedy for the loss of future tobacco income and the potentially diminished value of loan collateral. The assessments collected from tobacco importers and manufacturers will fund the payments for quota holders and tobacco producers and will also compensate CCC for any losses associated with tobacco loan stocks.

Payments to Holders and Producers

CCC will enter into a contract with each tobacco quota holder or producer to compensate them for terminating quotas and price support. Assessments on manufacturers and importers of tobacco products will finance the payments. As provided in this rule the total payments due an eligible tobacco quota holder is $7 per pound multiplied by the pounds of basic quota at the 2002 quota level. Total payments due a tobacco producer is, in the case of flue-cured and burley tobacco, $3 per pound of effective quota for the 2002 marketing year and, for other kinds of tobacco, $3 per pound of the allotment for 2002, times the average annual yield per acre produced in the 2001, 2002, and 2003 crop years. Total transition payments are estimated at $9.6 billion based on known payment rates per pound and 2002 acreage/poundage quotas. Reimbursable expenses incurred by CCC and financial institutions related to assessments and payments are expected to be about $540 million.

Costs to Manufacturers and Importers

On August 18, 2004, there were 158 product manufacturers and 666 product importers providing data on tobacco product sales. Tobacco manufacturer and importer assessments are based on their shares of sales volume for 6 major tobacco product classes: cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and roll-your-own tobacco. Product classes are measured in number of units of product or pounds of product, and each category is assigned a percentage of the market for that product class based on its pro rata share of the total sales of that product. Total assessments on cigarette manufacturers and importers during fiscal year 2005 are estimated at about $975 million based on 2003 taxable removal of cigarettes of about 400 billion, or about 20 billion packs of 20 each. Thus, the assessment per pack of cigarettes will be around 4.8 cents. In order to cover their share of the product class's assessment, cigarette manufacturers and importers would likely raise the price of cigarettes by a similar amount.

Cigars' proportion of the fiscal year 2005 assessment is 2.783 percent, about $28.2 million. This implies a price increase of about 0.4 cents per cigar based on 2003 removals of 7.0 billion units. Other products' share of the assessment in million dollars, and the implied increase in product price in cents per pound, in parenthesis, are: snuff—$5.5 (7.3), chewing tobacco—$1.1 (2.4), pipe tobacco—$.7 (13.8), and roll-your-own—$1.7 (13.8).

Manufacturers and importers are expected to pass most of these costs to consumers of tobacco products through small increases in sales prices, since demand tends to be much more inelastic than supply. Specific estimates of the supply elasticity are not available, however, most studies assume supply to be perfectly elastic. The additional burden of providing information on sales volume to CCC is deemed negligible inasmuch as these data are already provided to other government agencies.

Impact on Consumers

Consumers are expected to pay marginally higher prices for tobacco products than they would in the absence of the assessments, as manufacturers pass on most of the cost of assessments through higher product sales prices. The recent national average retail price of cigarettes is calculated to be $3.8066 per pack. A 4.8-cent-per-pack increase in the price would equate to a 1.3-percent rise in the retail price. Numerous studies have calculated the price elasticity of demand for cigarettes to be quite inelastic, ranging from a low of −0.4 to a high of −0.75. The range of estimates for youth smoking is wider, ranging from 0 to −1.44. Based on these estimates, a 1-percent rise in the price of cigarettes would be expected to reduce overall consumption by 0.4 percent to 0.75 percent. However, among youth, the expected impact may range from no decline to as much as a 1.44-percent decline. Nonetheless, consumers, in aggregate, are not expected to significantly reduce consumption of tobacco products due to the expected increases in tobacco prices attributable to the assessments alone.

Administrative Burden

CCC will likely incur modest additional staffing requirements associated with the ongoing administration of this assessment, however, automated processes will limit staff requirements somewhat. CCC loan operation net expenses will be paid by the assessments collected under these regulations. However, since the tobacco program has been administered at no-net-cost for years, these assessments are expected to have no significant impact on CCC loan operation expenses.

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: 10.051—Commodity Loans and Loan Deficiency Programs.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Review

Due to the brief time-frame FSA had to promulgate these regulations, sufficient time was not available to complete an environmental review prior to implementing this program. Therefore, an environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.,* the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA at 7 CFR part 799. A copy of the draft environmental assessment will be available after completion for review upon request.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions, but the rule is not retroactive. Before any judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because neither the Secretary of Agriculture nor CCC is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 642(c) of the 2004 Act requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 642(b) of the 2004 Act requires that these regulations be promulgated and administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these provisions and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the date that the regulations for this program are required to be published, the forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

List of Subjects in 7 CFR Part 1463

Agriculture, Acreage allotments, Marketing quotas, Price support programs, Tobacco.

■ Accordingly, title 7 is amended by adding part 1463, as set forth below:

PART 1463—2005–2014 TOBACCO TRANSITION PROGRAM

Subpart A—Tobacco Transition Assessments

Sec.

1463.1 General.
1463.2 Administration.
1463.3 Definitions.
1463.4 National assessment.
1463.5 Division of national assessment among classes of tobacco.
1463.6 Determination of persons liable for payment of assessments.
1463.7 Division of class assessment to individual entities.
1463.8 Notification of assessments.
1463.9 Payment of assessments.
1463.10 Civil penalties and criminal penalties.
1463.11 Appeals and judicial review.

Subpart B—[Reserved]

Authority: 7 U.S.C. 714b and 714c; and Title VI of Pub. L. 108–357.

Subpart A—Tobacco Transition Assessments

§ 1463.1 General.

The Commodity Credit Corporation (CCC) will levy assessments from January 1, 2005 through September 30, 2014 on certain domestic manufacturers and importers of tobacco products as provided for in this subpart in order to fund the issuance of payments made under subpart B of this part and to fund other activities authorized by Title VI of the American Jobs Creation Act of 2004. The total amount of assessments that may be collected under this part shall not exceed $10.140 billion.

§ 1463.2 Administration.

The provisions of this subpart will be administered under the general supervision of the Executive Vice President, CCC.

§ 1463.3 Definitions.

The definitions in this section shall apply for all purposes of administering the provisions of this subpart:

Act means Title VI of the America Jobs Creation Act of 2004 (Public Law 108–357).

Adjusted market share means the market share of a manufacturer of tobacco products or an importer of tobacco products adjusted to reflect such entity's share of a class of tobacco during the immediately preceding calendar year quarter. With respect to the 39th and 40th quarterly payments due on September 30, 2014, the adjusted market share will be the entity's share of a class of tobacco during the April 1–June 30, 2014 quarter.

Base period means the period July 1 through June 30 immediately preceding the beginning of a fiscal year.

CCC's point of contact means, for items physically sent to CCC, ''Tobacco Division (TD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 4080–S, 1400 Independence Avenue, SW., Washington, DC 20250–0514'' unless otherwise specified by CCC through actual notice and, for all correspondence by email, *tob_comments@wdc.usda.gov.*

Calendar year means the period January 1 through December 31.

Class of tobacco means each of the following types of tobacco and tobacco products: cigarettes; cigars; snuff; roll-your-own tobacco; chewing tobacco; and pipe tobacco.

Domestic manufacturer of tobacco products means an entity that is required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the production of tobacco products under title 27 of the Code of Federal Regulations.

Fiscal year means the period October 1 through September 30.

Gross domestic volume means the volume of tobacco products removed, as defined by section 5702 of the Revenue Code, and not exempt from tax under chapter 52 of such code at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States.

Importer of tobacco products means an entity that is required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the importation of tobacco products under title 27 of the Code of Federal Regulations.

Market share means the share of each domestic manufacturer and importer of a class of tobacco product, to the fourth decimal place, of the total volume of domestic sales of the class of tobacco product in a base period.

National assessment means the total amount of funding that CCC has determined to be necessary to collect in a year from domestic manufacturer and importer of tobacco products in order to reimburse CCC for expenditures that it will incur in the year for expenses incurred under sections 622 and 623 of the Act in making payments under subpart B of this part; losses sustained by CCC in the disposition of tobacco acquired under price support loan agreements as provided in section 641(c) of the Act; and costs incurred by CCC in the utilization of financial institutions in administering sections 622 and 623 of the Act.

Revenue Code means the Internal Revenue Code of 1986.

Tobacco Trust Fund means an account established for deposit of assessments collected under this subpart, plus interest that accrues on such assessments, to be used to implement this subpart.

§ 1463.4 National assessment.

Annually, CCC will make a determination of a national assessment in as far in advance of when the first assessment is due as CCC determines to be practicable. Based upon the amount of assessments received and expenditures incurred in a calendar year quarter, CCC may adjust the national assessment for one or more classes of tobacco established for a particular year with respect to succeeding calendar year quarters.

§ 1463.5 Division of national assessment among classes of tobacco.

(a) Except as provided in paragraph (b) of this section, the national assessment will be divided by CCC among each class of tobacco based upon CCC's determination of each class's share of the excise taxes paid. The value of the excise taxes paid for each class of tobacco will be based upon the reports filed by domestic manufacturers and importers of tobacco products with the Department of the Treasury and the Department of Homeland Security:

(b) For fiscal year 2005, the national assessment will be divided as follows:

(1) Cigarettes, 96.331 percent;

(2) Cigars, 2.783 percent;

(3) Snuff, 0.539 percent;

(4) Roll-your-own tobacco products, 0.171 percent;

(5) Chewing tobacco, 0.111 percent; and

(6) Pipe tobacco, 0.066 percent.

(c) For fiscal years 2006 through 2014, the division of the national assessment for each class of tobacco will be adjusted annually.

§ 1463.6 Determination of persons liable for payment of assessments.

(a) All domestic manufacturers and importers of tobacco products are required to pay to CCC their proportionate share of a calendar year's national assessment. Such entities are those that import or manufacture tobacco products in a calendar year and are required to report to the United States Department of the Treasury or to the Department of Homeland Security the removal of tobacco products into domestic commerce under the Revenue Code or are required to pay taxes under chapter 52 of such code.

(b)(1) Such entities must provide to CCC's point of contact:

(i) Entity name; mailing address of the entity's principal place of business; an office or individual that CCC may contact for further information; an e-mail address and postal address at which they wish to receive notifications required by the Act to be made to them by CCC; and

(ii) On a monthly basis for each class of tobacco, the total amount of tobacco products, summarized by employer identification number or such other method as may be prescribed by CCC, that are required to be reported to the United States Department of the Treasury or to the Department of Homeland Security in each month beginning October 1, 2004, and ending September 30, 2014.

(2) The information required to be submitted to CCC under paragraph (b)(1) of this section must be submitted by:

(i) With respect to fiscal year 2005 activities occurring prior to February 10, 2005, by February 25, 2005; and

(ii) With respect to all other activities, on the same date the information was required to be submitted to the United States Department of the Treasury or to the Department of Homeland Security.

§ 1463.7 Division of class assessment to individual entities.

(a) In order to determine the assessment owed by an entity, that portion of the national assessment assigned to each class of tobacco will be further divided at the entity level. The amount of the assessment for each class of tobacco to be paid by each domestic manufacturer and importer of tobacco products will be determined by multiplying:

(1) With respect to each class of tobacco, the adjusted market share of such manufacturer or importer; by

(2) The total amount of the assessment for that class of tobacco for the calendar year quarter.

(b) For purposes of determining the volume of domestic sales of each class of tobacco and for each entity, such sales shall be based upon the reports filed by domestic manufacturers and importers of tobacco products with the Department of the Treasury and the Department of Homeland Security:

(1) For cigarettes and cigars, on the number of cigarettes and cigars reported on such reports;

(2) For all other classes of tobacco, on the number of pounds of those products.

(c) In determining the adjusted market share of each manufacturer or importer of a class of tobacco products, CCC will determine to the fourth decimal place an entity's share of excise taxes paid of that class of tobacco product during the immediately prior calendar year quarter.

§ 1463.8 Notification of assessments.

(a) Once CCC has determined a national assessment, CCC will collect that amount on a quarterly basis from all domestic manufacturers and importers of tobacco products subject to § 1463.5.

(b) 30 calendar days prior to the end of each calendar year quarter domestic manufacturers and importers of tobacco products will receive notification of:

(1) The national assessment;

(2) The percentage of the national assessment that has been allocated to each class of tobacco product and the total amount of assessments due from each such class;

(3) Any adjustments that have been from the prior fiscal year with respect to the allocation of the gross domestic volume determined for use in a fiscal year among the classes of tobacco products;

(4) An adjustment in the national assessment if CCC determines that the assessments imposed will result in insufficient funds due to changes in the amount of expenditures that CCC has determined will be made in a calendar year;

(5) The national volume of gross sales of each class of tobacco product that CCC has allocated to the domestic manufacturer or importer of tobacco products for the purpose of determining such entity's adjusted market share;

(6) The total volume of gross sales of each class of tobacco product that CCC has allocated to a class of tobacco product, within the gross domestic volume determined for use in a fiscal year, that was used for the purpose of determining a tobacco product manufacturer's or tobacco importer's adjusted market share;

(7) For that quarter, the adjusted market share of the domestic manufacturer or importer of tobacco products;

(8) The manner in which assessments are to be remitted to CCC; and

(9) Identification of those Department of the Treasury and Department of Homeland Security forms filed by the domestic manufacturer or importer of tobacco products that are used to calculate assessments.

§ 1463.9 Payment of assessments.

(a) Assessments under this subpart are imposed for the expenditures CCC has determined it will incur in the 2005 through 2014 calendar years. Except as provided in paragraph (c) of this section, payment of such assessments are due to CCC no later than the end of each calendar year quarter. If prior to 30 calendar days before the end of a calendar year quarter CCC has not notified an entity of the amount that is required to be remitted in that quarter, no interest will be assessed by CCC under paragraph (d) of this section until 30 calendar days have elapsed from the date CCC provided notification of the amount owed.

(b) Payments due under this subpart must be submitted to CCC by electronic fund transfer unless prior written approval has been obtained from CCC.

(c) The final two calendar year quarterly payments due to CCC under this part shall be due to CCC on September 30, 2014.

(d) Notwithstanding any other provision of this chapter, if CCC has not received payment of assessments determined to be owed at the end of a calendar year quarter, CCC will assess interest on such unpaid amount beginning on the first day of the calendar year quarter immediately following the end of such prior quarter. Such interest will be at the rate CCC assesses on delinquent debts in accordance with part 1403 of this title.

(e) With respect to funds placed in escrow that are refunded to the domestic manufacturer or importer of tobacco products due to the resolution of an appeal, interest will be paid on such amount from the date of receipt by CCC until the date of the refund. Such interest rate will be at the rate charged by the U.S. Treasury for CCC's borrowing that is in effect on the date of receipt by CCC of such funds.

§ 1463.10 Civil penalties and criminal penalties.

(a) Any person who knowingly fails to provide information required to be filed under this subpart, or provides false information under this subpart, may be subject to the penalties prescribed in 15 U.S.C. 714m, 18 U.S.C. 1003, and such other civil and criminal statutes as the United States determines to be appropriate.

(b) In addition to an action that may be taken under paragraph (a) of this section, with respect to any person who knowingly fails to provide information required to be filed under this subpart, or that provides false information under this subpart, a person may be subject to assessment of a civil penalty by CCC. Such civil penalty will be imposed by CCC taking into account the severity of the action; whether the action is of a repetitive nature; and the disruption the action has caused with respect to other parties subject to this subpart. Any such civil penalty will not exceed two percent of the value of the kind of tobacco products manufactured or imported by such entity in the fiscal year in which the violation occurred.

§ 1463.11 Appeals and judicial review.

(a) An entity may appeal any adverse determination made under this subpart, including with respect to the amount of the assessment, by submitting a written statement that sets forth the basis of the dispute by submitting such a request to the Executive Vice President, CCC, at 1400 Independence Avenue, SW., Room 4080–S, Washington DC 20250–0514, within 30 business days of the date of receipt of the notification by CCC of its determination.

(b) The Executive Vice President shall assign a person to act as the hearing officer on behalf of CCC. The duty of the hearing officer will be to develop an administrative record that will provide the Executive Vice President, or a designee, with sufficient information to render a final determination on the matter in dispute. The hearing to be

conducted by the hearing officer will be an informal hearing at which the appellant may present oral and written evidence in support of the appellant's position. A copy of the rules of conduct that will be applicable to the proceeding will be provided to the appellant upon receipt of the appeal by CCC.

(c) With respect to any appeal filed under this section regarding an assessment imposed on a domestic manufacturer or importer of tobacco products, the rules of conduct will provide that within 30 calendar days of receiving the final submission of material by the appellant, CCC will render a final administrative decision. In the event CCC has not rendered a decision by such date, all administrative remedies available to the appellant shall be deemed to be exhausted.

(d) Any domestic manufacturer or importer of tobacco products aggrieved by a determination made by CCC under this subpart may seek review of the determination upon the exhaustion of the administrative remedies provided by this part in the United States District Court for the District of Columbia, or for the district in which such importer or manufacturer has its principal place of business.

Subpart B—[Reserved]

Signed in Washington, DC on February 3, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05–2552 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–37–AD; Amendment 39–13962; AD 2005–03–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG (formerly Rolls-Royce plc), Model Tay 611–8, 620–15, 650–15, and 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce Deutschland Ltd. & Co KG (RRD) (formerly Rolls-Royce plc) Model Tay 611–8, 620–15, 650–15, and 651–54 turbofan engines, with low pressure (LP) fuel tube, part number (P/N) JR33021A, installed. That AD currently requires initial and repetitive inspections of the LP fuel tubes. This AD requires the same inspections and adds a requirement to replace the fuel tube with a new design tube, as mandatory terminating action to the repetitive inspections. This AD results from the manufacturer introducing a new design fuel tube, which eliminates the unsafe condition. We are issuing this AD to prevent a dual-engine flameout due to fuel exhaustion, which could lead to forced landing and possible damage to the airplane.

DATES: This AD becomes effective March 17, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 17, 2005.

ADDRESSES: You can get the service bulletins identified in this AD from Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service bulletins, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to RRD Model Tay 611–8, 620–15, 650–15, and 651–54 turbofan engines, with LP fuel tube, P/N JR33021A, installed. We published the proposed AD in the **Federal Register** on June 9, 2004 (69 FR 32285). That action proposed to require initial and repetitive inspections of LP fuel tubes, and replacement of the fuel tube with a new design tube as mandatory terminating action to the repetitive inspections. That proposed action results from the manufacturer introducing a new design fuel tube, which eliminates the unsafe condition.

Special Flight Permits Paragraph Removed

Paragraph (g) of the current AD, AD 2003–05–04, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 1,300 RRD Model Tay 611–8, 620–15, 650–15, and 651–54 turbofan engines of the affected design in the worldwide fleet. We estimate that 1,206 engines installed on airplanes of U.S. registry would be affected by this AD. We also estimate that it will take about two work hours per engine to perform the tube inspection, and two work hours per engine to perform the tube replacement. The average labor rate is $65 per work hour. Required parts will cost about $1,300 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,720,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2002–NE–37–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13080 (69 FR 11467, March 11, 2003) and by adding a new airworthiness directive, Amendment 39–13962, to read as follows:

2005–03–06 Rolls-Royce Deutschland Ltd. & Co KG (formerly Rolls-Royce plc): Amendment 39–13962. Docket No. 2002–NE–37–AD.

Effective Date

(a) This AD becomes effective March 17, 2005.

Affected ADs

(b) This AD supersedes AD 2003–05–04.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD) (formerly Rolls-Royce plc) Model Tay 611–8, 620–15, 650–15, and 651–54 turbofan engines, with low pressure (LP) fuel tube, part number (P/N) JR33021A, installed. These engines are installed on, but not limited to, Fokker F.28 Mark 0100 airplanes, Supplemental Type Certificate No. SA842SW, Boeing 727 airplanes, and Gulfstream G–IV airplanes.

Unsafe Condition

(d) This AD results from the manufacturer introducing a new design LP fuel tube which eliminates the unsafe condition. The actions specified in this AD are intended to prevent a dual-engine flameout due to fuel exhaustion which could lead to forced landing and possible damage to the airplane.

Compliance

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

Initial Inspection

(f) Before further flight, for Tay 611–8 and 651–54 turbofan engines with part 4 of RRD service bulletin (SB) TAY–73–1194 incorporated, inspect the LP fuel tube for fretting, and replace as necessary. Use 3.C.1. through 3.C.13. of the Accomplishment Instructions of RRD Service Bulletin (SB) No. TAY–73–1553, Revision 2, dated April 23, 2003.

(g) Before further flight, for Tay 620–15 and 650–15 turbofan engines, inspect the LP fuel tube for fretting, and replace as necessary. Use 3.C.1. through 3.C.13. of the Accomplishment Instructions of RRD SB No. TAY–73–1593, dated April 23, 2003.

Repetitive Inspections

(h) Thereafter, inspect the LP fuel tube for fretting, at intervals not to exceed 2,000 hours time-in-service (TIS) since the last inspection, and replace as necessary. Use 3.C.1. through 3.C.13. of the Accomplishment Instructions of RRD SBs referenced in paragraphs (f) and (g) of this AD.

Mandatory Terminating Action

(i) As mandatory terminating action to the repetitive inspections required by this AD, replace fuel tube, P/N JR33021, with a fuel tube P/N that is not listed in this AD. Information on fuel tube replacement can be found in RRD SB No. TAY–73–1592, dated April 30, 2003. Use the following compliance times:

(1) For fuel tubes with fewer than 4,000 hours TIS on the effective date of this AD, replace fuel tube within 10 additional cycles-in-service or before reaching 4,000 hours TIS, whichever occurs later.

(2) For fuel tubes with 4,000 or more hours TIS on the effective date of this AD, replace fuel tube before June 30, 2005.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(k) You must use the Rolls-Royce service bulletins listed in Table 1 of this AD to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin	Page number(s) shown on the page	Revision level shown on the page	Date shown on the page
TAY–73–1553, Total Pages: 11	ALL	2	April 23, 2003.
TAY–73–1593, Total Pages: 11	ALL	Original	April 23, 2003.

Related Information

(l) Luftfhart Bundesamt airworthiness directive No. 2002–358/5, dated November 18, 2003, and Rolls-Royce Deutschland Ltd. & Co KG Service Bulletin No. TAY–73–1592, dated April 30, 2003 also address the subject of this AD.

Issued in Burlington, Massachusetts, on February 1, 2005.

Francis A. Favara,

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

[FR Doc. 05–2370 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–07–AD; Amendment 39–13963; AD 2005–03–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (Bell) Model 407 helicopters that requires creating a component history card or equivalent record for each crosstube assembly, converting accumulated run-on landings to an accumulated Retirement Index Number (RIN) count, and establishing a maximum accumulated RIN for certain crosstube assemblies. This amendment is prompted by fatigue testing, analysis, and evaluation by the manufacturer that determined that run-on landings impose a high stress on landing gear or crosstubes and may cause cracking in the area above the skid tube saddle. The actions specified by this AD are intended to prevent fatigue failure in a crosstube assembly due to excessive stress during run-on landings and subsequent loss of control of the helicopter.

DATES: Effective March 17, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the Bell Model 407 helicopters was published in the **Federal Register** on August 4, 2004 (69 FR 47041). That action proposed to require, before further flight, creating a component history card or equivalent record for each crosstube assembly, converting accumulated run-on landings to an accumulated RIN count, and establishing a retirement life of 5,000 accumulated RIN for the affected crosstube assemblies.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 407 helicopters. Transport Canada advises that run-on landings impose high stress on landing gear crosstubes, and to prevent possible crosstube failure, the manufacturer has introduced the life limitation of 5,000 RIN. Further evaluation has confirmed the possibility that an extensive training environment with run-on landings may impose high stress on crosstubes. The same condition may result from repetitive landings with forward travel with rotorcraft weight on the skids.

Bell has issued Alert Service Bulletin No. 407–03–59, dated October 15, 2003, which specifies assigning a RIN count to forward and aft crosstube assemblies on Model 407 helicopters. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2004–03, dated February 11, 2004, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 319 helicopters of U.S. registry and it will take approximately 4 work hours per helicopter to replace the forward and aft crosstube assemblies at an average labor rate of $65 per work hour. Required parts will cost approximately $6,670 per helicopter for both forward and aft low gear crosstube assemblies, or $8,450 per helicopter for both forward and aft high gear crosstube assemblies. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,210,670 to replace the low gear crosstube assemblies on the entire fleet or $2,778,490 to replace the high-gear crosstube assemblies on the entire fleet and assuming the costs associated with creating and updating the historical component card are negligible.

Regulatory Findings

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final economic evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2005–03–07 Bell Helicopter Textron Canada (Bell): Amendment 39–13963. Docket No. 2004–SW–07–AD.

Applicability: Model 407 helicopters, with landing gear crosstube assemblies, part number (P/N) 407–050–101–101 and –103; P/N 407–050–102–101 and –103; P/N 407–050–201–101 and –103; P/N 407–050–202–101 and –103; P/N 407–704–007–119; P/N 407–722–101; P/N 407–723–104; P/N 407–724–101; or P/N 407–725–104, installed, certificated in any category.

Note 1: This AD applicability includes both Bell crosstube assemblies and Bell's approved production and spare alternate crosstube assemblies from Aeronautical Accessories Incorporated (AAI).

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the crosstube assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, create a component history card or equivalent record for each crosstube assembly.

(b) Before further flight, determine and record the accumulated Retirement Index Number (RIN) for each crosstube assembly as follows:

(1) For each crosstube assembly, record one (1) RIN for every run-on landing.

(2) For any crosstube assembly with an unknown number of run-on landings, assume and record ten (10) RINs for each 100 hours TIS since the crosstube assembly was installed (for example, 5,000 hours of time-in-service equals 500 RIN).

(c) Replace any crosstube assembly on or before reaching 5,000 RIN.

Note 2: Bell Helicopter Textron Alert Service Bulletin No. 407–03–59, dated October 15, 2003, pertains to the subject of this AD.

(d) This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a retirement life of 5,000 RIN for the affected crosstube assemblies.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Regulations and Policy Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) This amendment becomes effective on March 17, 2005.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2004–03, dated February 11, 2004.

Issued in Fort Worth, Texas, on January 24, 2005.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2589 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–38–AD; Amendment 39–13928; AD 2005–01–04]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 99, 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document incorporates corrections to Airworthiness Directive (AD) 2005–01–04, which was published in the **Federal Register** on January 6, 2005 (70 FR 1169) with regulatory corrections published on January 27, 2005 (70 FR 3871). AD 2005–01–04 applies to certain Raytheon Aircraft Company 90, 99, 100, 200, and 300 series airplanes. This action incorporates the corrections into one document to help eliminate any confusion. We are re-issuing the AD in its entirety.

EFFECTIVE DATE: The effective date of this AD remains February 22, 2005.

ADDRESSES: To get the service information identified in this AD, contact Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

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 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19089.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Pretz, Aerospace Engineer, ACE–116W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On December 27, 2004, FAA issued AD 2005–01–04, Amendment 39–13928 (70 FR 1169, January 6, 2005), which applies to certain Raytheon Aircraft Company 90, 99, 100, 200, and 300 series airplanes. That AD requires you to check the airplane maintenance records from January 1, 1994, up to and including the effective date of that AD, for any MIL-H–6000B fuel hose replacements on the affected airplanes.

On January 20, 2005, FAA made corrections to that AD through **Federal Register** publication (70 FR 3871). That AD correction changed the model number C90B in the applicability section to C90A.

Need for This Action

For clarity purposes, FAA is incorporating the original AD publication and the correction into one document to help eliminate any confusion. Consequently, we are re-issuing the AD in its entirety.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–15–13, Amendment 39–10664 (63 FR 38295–98, July 16, 1998), and by adding a new AD to read as follows:

2005–01–04 Raytheon Aircraft Company: Amendment 39–13928; Docket No.

FAA–2004–19089; Directorate Identifier 2000–CE–38–AD.

When Does This AD Become Effective?

(a) The effective date of this AD (2005–01–04) remains February 22, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 98–15–13, Amendment 39–10664.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Series
(1) 65–90	LJ–1 through LJ–75, and LJ–77 through LJ–113.
(2) 65–A90	LJ–76, LJ–114 through LJ–317, and LJ–178A.
(3) B90	LJ–318 through LJ–501.
(4) C90	LJ–502 through LJ–1062.
(5) C90A	LJ–1063 through LJ–1287, LJ–1289 through LJ–1294, and LJ–1296 through LJ–1299.
(6) C90A	LJ–1288, LJ–1295, and LJ–1300 through LJ–1445.
(7) E90	LW–1 through LW–347.
(8) F90	LA–2 through LA–236.
(9) H90	LL–1 through LL–61.
(10) 100	B–2 through B–89, and B–93.
(11) A100	B–1, B–90 through B–92, B–94 through B–204, and B–206 through B–247.
(12) A100–1 (RU–21J)	BB–3 through BB–5.
(13) B100	BE–1 through BE–137
(14) 200	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–735 through BB–792, BB–794 through BB–797, BB–799 through BB–822, BB–824 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912.
(15) 200C	BL–1 through BL–23, and BL–25 through BL–36.
(16) 200CT	BN–1.
(17) 200T	BT–1 through BT-BT–22, and BT–28.
(18) A200	BC–1 through BC–75, and BD–1 through BD–30.
(19) A200C	BJ–1 through BJ–66.
(20) A200CT	BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, FE–1 through FE–36, and GR–1 through GR–19.
(21) B200	BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, BB–913 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1095, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB-1290 through BB–1300, BB–1302 through BB–1425, BB–1427 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, and BB–1458 through BB–1536
(22) B200C	BL–37 through BL–57, BL–61 through BL–140, BU–1 through BU–10, BV–1 through BV–12, and BW–1 through BW–21.
(23) B200CT	BN–2 through BN–4, BU–11, BU–12, FG–1, and FG–2.
(24) B200T	BT–23 through BT–27, and BT–29 through BT–38
(25) 300	FA–1 through BA–230, and FF–1 through FF–19.
(26) B300	FL–1 through FL–141.
(27) B300C	FM–1 through FM–9, and FN–1.
(28) 99, 99A, A99, A99A	U–1 through U–49, U–51 through U–145, and U–147
(29) B99	U–146, and U–148 through U–164.
(30) C99	U–50, and U–165 through U–239.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of blockage of fuel hose due to hose delamination. The actions specified in this AD are intended to prevent fuel flow interruption, which could lead to uncommanded loss of engine power and loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) For airplanes manufactured prior to January 1, 1994, check airplane maintenance records for any MIL–H–6000B fuel hose replacement from January 1, 1994, up to and including the effective date of this AD.	For all affected airplanes other than the Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours time-in-service (TIS) after August 28, 1998 (the effective date of AD 98–15–13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after February 22, 2005 (the effective date of this AD).	Documented compliance with AD 98–15–13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000. An owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.7 of the Federal Aviation Regulations (14 CFR 43.9) can accomplish paragraph (e)(1) required of this AD.
(2) If the airplane records show that a MIL–H–6000B fuel hose has been replaced, inspect the airplane fuel hoses for a ⅜-inch-wide red or orange-red, length-wise stripe, with manufacturer's code, 94519, printed periodically along the line in red letters on one side. The hoses have a spiral or diagonal outer wrap with a fabric-type texture on the rubber surface.	For all affected airplanes other than the Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours TIS after August 28, 1998 (the effective date of AD 98–15–13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after February 22, 2005 (the effective date of this AD).	Documented compliance with AD 98–15–13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(3) Replace any fuel hose that matches the description in paragraph (e)(2) of AD with an FAA-approved MIL–H–6000B fuel hose that has a criss-cross or braided external wrap.	For all affected airplanes other than the Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours TIS after August 28, 1998 (the effective date of AD 98–15–13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after February 22, 2005 (the effective date of this AD).	Documented compliance with this AD 98–15–13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(4) For Raytheon Models C90A, B200, and B300 airplanes that were manufactured on January 1, 1994, and after, replace the MIL–H–6000B fuel hoses.	Within 200 hours TIS after August 28, 1998 (the effective date of AD 98–15–13).	Documented compliance with AD 98–15–13 or follow PART I of ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(5) Do not install a rubber fuel hose having spiral or diagonal external wrap with a ⅜-inch-wide red or orange-red, length-wise stripe running down the side of the hose, with the manufacturer's code, 94519, printed periodically along the line in red letters on any of the affected airplanes.	As of February 22, 2005 (the effective date of this AD).	Not applicable.

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, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Jeffrey A. Pretz, Aerospace Engineer, ACE–116W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. 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 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19089.

Issued in Kansas City, Missouri, on February 4, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2604 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20062; Airspace Docket No. 05–ACE–4]

Modification of Class E Airspace; Nevada, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Nevada, MO. A review of the Class E airspace area extending upward from 700 feet above the surface at Nevada, MO, revealed it does not reflect the current Nevada Municipal Airport airport reference point (ARP) nor the correct location of the Nevada nondirectional radio beacon (NDB) and is not in compliance with established airspace criteria. Extensions to this airspace area are enlarged and modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Nevada Municipal Airport.

DATES: This direct final rule is effective on 0901 UTC, May 12, 2005. Comments for inclusion in the Rules Docket must be received on or before March 14, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20062/Airspace Docket No. 05–ACE–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Nevada, MO. An examination of controlled airspace for Nevada, MO revealed the Nevada Municipal Airport ARP used in the legal description is incorrect, the location of the Nevada NDB is erroneous and extensions to the airspace area do not comply with airspace requirements as set forth in FAA Orders 7400.2E, Procedures for Handling Airspace Matters and 8260.19C, Flight Procedures and Airspace. This action decreases the length of the current northeast extension from 7.5 miles to 7 miles, decreases the width of this extension from 2.6 miles to 2.5 miles either side of centerline and defines the extension in relation to the Nevada NDB. This action also creates an additional northeast extension 2 miles either side of 025° bearing from the airport extending from the 6.6-mile radius to 9.5 miles northeast of the airport, corrects the ARP and location of the Nevada NDB in the legal description and brings the legal description of the airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20062/Airspace Docket No. 05–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have 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 government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

This rulemaking is promulgated under the authority described in subtitle VII, part a, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign

the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Nevada Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

ACE MO E5 Nevada, MO

Nevada Municipal Airport, MO
(Lat. 37°51′07″ N., long. 94°18′18″ W.)
Nevada NDB
(Lat. 37°51′32″ N., long. 94°18′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Nevada Municipal Airport and within 2 miles each side of the 025° bearing from the airport extending from the 6.6-mile radius to 9.5 miles northeast of the airport and within 2.5 miles each side of the 036° bearing from the Nevada NDB extending from the 6.6-mile radius of the airport to 7 miles northeast of the NDB.

* * * * *

Issued in Kansas City, MO, on January 26, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–2553 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20061; Airspace Docket No. 05–ACE–3]

Modification of Class E Airspace; Ozark, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Ozark, MO. A review of the Class E airspace area extending upward from 700 feet above ground level (AGL) at Ozark, MO revealed it is not in compliance with established airspace criteria. This airspace area is enlarged and modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrumental Approach Procedures (SIAPs) to Air Park South Airport. This rule also amends the Air Park South Airport airport reference point (ARP) in the legal description to reflect current data. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, May 12, 2005. Comments for inclusion in the Rules Docket must be received on or before March 14, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20061/ Airspace Docket No. 05–ACE–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR Part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Ozark, MO. An examination of controlled airspace for Ozark, MO revealed the Class E area does not comply with airspace requirements for diverse departures from Air Park South Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mule is converted to the next higher tenth of a mile. Additionally, the examination revealed the description and dimensions of the north extension to the airspace area were not in compliance with FAA Orders 7400.2ZE and 8260.19C, Flight Procedures and Airspace. This amendment expands the airspace area from a 6-mile to a 6.8-mile radius of Air Park South Airport, decreases the width of the north extension from 2.6 miles to 2 miles each side of the Springfield collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) 165° radial and defines the extension in relation to the VORTAC. Additionally, the Air Park South Airport ARP is corrected in the legal description. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and existing SIAPs to Air Park South Airport and bring the legal description of the Ozark, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment,

or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20061/Airspace Docket Nol 05–ACE–3.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Air Park South Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

ACE MO E5 Ozark, MO

Ozark, Air Park South Airport, MO
(Lat. 37°03′34″ N., long. 93°14′03″ W.)
Springfield VORTAC
(Lat. 37°21′21″ N., long. 93°20′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Air Park South Airport and within 2 miles each side of the Springfield VORTAC 165° radial extending from the 6.8-mile radius of the airport to 10 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on January 25, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–2554 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902 and 50 CFR Part 660

[Docket No. 031125294–5018–03; I.D. 102903C]

RIN 0648–AP42

Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries; Data Collection Requirements for U.S. Commercial and Recreational Charter Fishing Vessels

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

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements pertaining to permits, logbooks, vessel monitoring systems (VMS), and pre-trip notifications contained in the final rule to implement the approved portions of the U.S. West Coast Highly Migratory Species Fishery Management Plan (HMS FMP). The HMS FMP was partially approved on February 4, 2004, and the final rule to implement the approved portions of the HMS FMP was published in the **Federal Register** on April 7, 2004. At that time, the HMS FMP final rule contained collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that were undergoing OMB review. This action announces receipt of OMB approval of data collections in the HMS FMP final rule for HMS permits, recordkeeping and reporting (daily logbooks), VMS, and pre-trip notification requirements for West Coast based U.S. fishing vessels targeting HMS. The intent of this notice is to inform the public of the effective date of the requirements approved by OMB.

DATES: This rule is effective February 10, 2005. Title 50 § 660.707 permits, § 660.708 reporting and recordkeeping, § 660.712(d) VMS, and § 660.712(f) pre-trip notification of the final rule for the U.S. West Coast Highly Migratory Species Fishery Management Plan

published on April 7, 2004 (69 FR 18444), are effective on April 11, 2005.

ADDRESSES: Copies of the HMS FMP may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Copies of the HMS FMP final rule, the Final Environmental Impact Statement (FEIS), the Final Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA) are available from NMFS, Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the Small Entity Compliance Guide for the HMS FMP final rule are available on the Southwest Region, NMFS website *http://swr.nmfs.noaa.gov*. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be submitted to Rodney A. McInnis, Regional Administrator, NMFS, Southwest Regional Office at the above address. These comments may also be submitted by e-mail to *David_Rostker@omb.eop.gov*, or to the Federal e-rulemaking portal *http://www.regulations.gov*, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4034 or 760–431–9440, ext. 303.

SUPPLEMENTARY INFORMATION: On April 7, 2004 (69 FR 18444), NMFS published a final rule that implemented the approved portion of the HMS FMP establishing, among other measures, data collection and reporting requirements for U.S. West Coast commercial and recreational charter fishing vessels targeting HMS. The HMS FMP final rule contained collection-of-information requirements that could not be enforced prior to approval by the OMB under the PRA. Delayed enforcement of these sections were announced in the April 7, 2004, HMS FMP final rule pending OMB approval of the proposed collections-of-information. In the HMS FMP final rule, NMFS requested comments on the reporting burden estimate or any other aspect of the collection-of-information requirements. No comments were received on the collection-of-information requirements. OMB has approved the collections-of-information requirements codified at 50 CFR 660.707 for permits; § 660.708 for recordkeeping and reporting; § 660.712(d) for a vessel monitoring system, and § 660.712(f) for pre-trip notification. These sections are effective April 11, 2005 and will be enforced beginning on that date. Section 660.707 requires a HMS permit with an endorsement for a specific gear for all commercial and recreational charter fishing vessels fishing for HMS. Section 660.708 requires all HMS permit holders to maintain and submit to NMFS a daily logbook of catch and effort in the HMS fisheries. Section 660.712(d) requires the holder of a HMS permit registered for use of longline gear to carry a vessel monitoring system (VMS) onboard the vessel after the date scheduled for installation by the NMFS. Section 660.712(f) requires that an operator of a vessel registered for use of longline gear must notify NMFS at least 24 hours prior to embarking on a fishing trip regardless of the intended area of fishing. The OMB has not yet cleared the vessel identification requirements detailed in 50 CFR 660.704, and those requirements will be dealt with in a future **Federal Register** document. Pursuant to the PRA, part 902 of title 15 CFR displays control numbers assigned to NMFS information collection requirements by OMB. This part fulfills the requirements of section 3506(c)(1)(B)(i) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement. This final rule codifies OMB control numbers for 0648–0204 for § 660.707 and 0648–0498 for §§ 660.708, 660.712(d), and 660.712(f).

Classification

The Regional Administrator, NMFS, Southwest Region determined that the data collection requirements implemented by this final rule are necessary for the conservation and management of the U.S. West Coast HMS fisheries and are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

The data collection requirements implemented by this final rule have been determined to be not significant for purposes of Executive Order 12866.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of the HMS FMP final rule published April 7, 2004. The FRFA described the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities, including HMS commercial and recreational charter fishing vessels affected by this action. The contents of the FRFA and the incorporated documents (the IRFA, the RIR, and the FEIS) are not repeated here. A copy of these documents is available upon request (see **ADDRESSES**).

Under this HMS FMP final rule there will be no Federal fee borne by the fishing industry for the required HMS permit. Industry costs arise from the time required to recover the necessary information and complete the permit forms. The permit requirement under this final rule will establish an initial one-time reporting burden of 562.9 hours for the 1,337 participating vessels (an average of 0.42 hours/per vessel). Permits are valid for 2 years, so the additional annualized burden is 281.5 hours for initial permit issuance.

This final rule requires all surface hook and line fishing vessels targeting HMS to maintain and submit logbooks for fishing in the U.S. EEZ and on the adjacent high seas areas covered under the HSFCA if they do not already submit logbooks under another regulation. This final rule establishes an annual reporting burden of 2,661 hours for the 887 participating vessels (887 vessels x 3 trips per year x 1 hour per trip to report).

For VMS, the reporting burden for the longline fleet is estimated to be 324.6 hours based on 20 longline vessels making 6 trips each year, with an average of 15 days at sea for each trip (24 reports/day x 24 sec/report).

This final rule contains new collection-of-information requirements approved by OMB under the PRA. Public reporting burden for these collections of information are estimated to average as follows:

1. Twenty to thirty five minutes for a permit application depending on the extent of correction of information on application forms and of new information to be submitted on those forms,
2. Five minutes for filling out the HMS log each day,
3. Five minutes for a pre-trip notification by longline vessel operators,
4. Four hours for installation of a VMS on longline vessels,
5. Two hours for maintenance of the VMS system,
6. Twenty four seconds for each electronic report submitted via the satellite based VMS.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate;

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, including through the use of automated collection techniques or other forms of information technology. Send comments or any other aspects of the collections of information to NMFS (see **ADDRESSES**).

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designated such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared for the HMS FMP final rule. This guide will be posted on the NMFS SWR website (http://swr.nmfs.noaa.gov) and a hard copy will be sent to all interested parties upon request (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Permits and Reporting and recordkeeping requirements.

Dated: February 4, 2005.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 15 CFR chapter IX, Part 902, is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order entries for § § 660.707, 660.708, and 660.712(d) and (f) as follows:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b)* * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
660.707	–0204
660.708	–0498
660.712(d) and (f)	–0498
* * * *	*

[FR Doc. 05–2531 Filed 2–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–008]

Drawbridge Operation Regulations: Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Long Beach Bridge, at mile 4.7, across Reynolds Channel New York. This temporary deviation allows the bridge to remain in the closed position from February 21, 2005 through February 27, 2005. This temporary deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This temporary deviation is effective from February 21, 2005 through February 27, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Long Beach Bridge has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water. The existing regulations are listed at 33 CFR 117.799(g).

The bridge owner, Nassau County Department of Public Works, requested a temporary deviation for the Long Beach Bridge to facilitate scheduled maintenance repairs, gear rack repairs, at the bridge.

Under this temporary deviation the Long Beach Bridge need not open for vessel traffic from February 21, 2005 through February 27, 2005.

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

Dated: January 31, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–2557 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV100–6030; FRL–7861–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format for materials submitted by West Virginia that are incorporated by reference (IBR) into its State implementation plan (SIP). The regulations affected by this format change have all been previously submitted by West Virginia and approved by EPA. This format revision will primarily affect the ''Identification of plan'' section, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office. EPA is also adding a table in the ''Identification of plan'' section which summarizes the approval actions that EPA has taken on the non-regulatory and quasi-regulatory portions of the West Virginia SIP.

EFFECTIVE DATE: This final rule is effective on February 10, 2005.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

I. Background
What a SIP is.
How EPA enforces SIPs.
How the State and EPA updates the SIP.
How EPA compiles the SIPs.
How EPA organizes the SIP compilation.
Where you can find a copy of the SIP compilation.
The format of the new Identification of Plan section.
When a SIP revision becomes federally enforceable.
The historical record of SIP revision approvals.
II. What EPA Is Doing in This Action
III. Statutory and Executive Order Reviews

I. Background

What a SIP is—Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA enforces SIPs—Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions upon which EPA must formally act. Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), title 40 of the Code of Federal Regulations (40 CFR part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are ''incorporated by reference'' (IBR'd) which means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

How the State and EPA updates the SIP—The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA must, from time to time, take action on SIP revisions containing new and/or revised regulations in order to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR).

EPA began the process of developing: (1) A revised SIP document for each state that would be IBR'd under the provisions of Title 40 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the ''Identification of plan'' sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA compiles the SIPs—The Federally-approved regulations, source-specific permits, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been compiled by EPA into a ''SIP compilation.'' The SIP compilation contains the updated regulations, source-specific permits, and nonregulatory provisions approved by EPA through previous rulemaking actions in the **Federal Register**.

How EPA organizes the SIP compilation—Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP, and part three contains nonregulatory provisions that have been EPA approved. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific permit, and each nonregulatory SIP provision. In this action, EPA is publishing the tables summarizing the applicable SIP requirements for West Virginia. The EPA Regional Offices have the primary responsibility for updating the compilations and ensuring their accuracy.

Where you can find a copy of the SIP compilation—EPA Region III developed and will maintain the compilation for West Virginia. A copy of the full text of West Virginia's regulatory and source-specific SIP compilation will also be maintained at NARA and EPA's Air Docket and Information Center.

The format of the new Identification of Plan section—In order to better serve the public, EPA revised the organization of the ''Identification of plan'' section and included additional information to clarify the enforceable elements of the SIP. The revised Identification of plan section contains five subsections:

1. Purpose and scope.
2. Incorporation by reference.
3. EPA-approved regulations.
4. EPA-approved source-specific permits.
5. EPA-approved nonregulatory and quasi-regulatory provisions such as air quality attainment plans, rate of progress plans, maintenance plans, monitoring networks, and small business assistance programs.

When a SIP revision becomes federally enforceable—All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of Plan section found in each subpart of 40 CFR part 52. In general, SIP revisions become effective 30 to 60 days after publication of EPA's SIP approval action in the **Federal Register**. In specific cases, a SIP revision action may become effective less than 30 days or greater than 60 days after the **Federal Register** publication date. In order to determine the effective date for a specific West Virginia SIP provision that is listed in paragraph 52.2520(c),(d), or (e) charts, consult the **Federal Register** date, volume and page cited in the ''EPA approval date'' column for that particular provision.

The historical record of SIP revision approvals—To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether

or not to retain the Identification of plan appendices for some further period.

II. What EPA Is Doing in This Action

Today's rule constitutes a ''housekeeping'' exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. 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. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This 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). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). 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, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of February 10, 2005. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these ''Identification of plan'' reorganization actions for West Virginia.

List of Subjects in 40 CFR Part 52

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

Dated: January 5, 2005.

Richard Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is redesignated as § 52.2565 and the heading and paragraph (a) are revised to read as follows:

§ 52.2565 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of West Virginia'' and all revisions submitted by West Virginia that were federally approved prior to December 1, 2004.

* * * * *

■ 3. A new Section 52.2520 is added to read as follows:

§ 52.2520 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for West Virginia under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.*

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after December 1, 2004, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of December 1, 2004.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-Approved Regulations.*

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
[45 CSR] Series 1	**NO_X Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides**			
Section 45–1–1	General	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–2	Definitions	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–3	Measurements, Abbreviations and Acronyms	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–4	NO_X Budget Trading Program Applicability	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–5	Retired Unit Exemption	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–6	NO_X Budget Trading Program Standard Requirements.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–7	Computation of Time	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–10	Authorization and Responsibilities of the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–11	Alternate NO_X Authorized Account Representative	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–12	Changing the NO_X Authorized Account Representative and the Alternate NO_X Authorized Account Representative; Changes in Owners and Operators.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–13	Account Certificate of Representation	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–14	Objections Concerning the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–20	General NO_X Budget Trading Program Permit Requirements.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–21	NO_X Budget Permit Applications	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–22	Information Requirements for NO_X Budget Permit Applications.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–23	NO_X Budget Permit Contents	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 44–1–24	NO_X Budget Permit Revisions	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–30	Compliance Certification Report	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–31	Secretary's and Administrator's Action on Compliance Certifications.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–40	State NO_X Trading Program Budget	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–41	Timing Requirements for State NO_X Allowance Allocations.	5/1/02	5/10/02 67 FR 37133	(c)(46)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–1–42	State NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–43	Compliance Supplement Pool	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–50	NO_X Allowance Tracking System Accounts	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–51	Establishment of Accounts	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–52	NO_X Allowance Tracking System Responsibilities of NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–53	Recordation of NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–54	Compliance	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–55	NO_X Allowance Banking	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–56	Account Error	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–57	Closing of General Accounts	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–60	Submission of NO_X Allowance Transfers	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–61	Allowance Transfer Recordation	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–62	Notification	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–70	General Monitoring Requirements	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–71	Initial Certification and Recertification Procedures	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–72	Out of Control Periods	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–73	Notifications	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–74	Recordkeeping and Reporting	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–75	Petitions	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–76	Additional Requirements to Provide Heat Input Data.	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–80	Individual Opt-in Applicability	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–81	Opt-in General Requirements	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–82	Opt-in NO_X Authorized Account Representative	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–83	Applying for NO_X Budget Opt-in Permit	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–84	Opt-in Process	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–85	NO_X Budget Opt-in Permit Contents	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–86	Withdrawal from NO_X Budget Trading Program	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–87	Change in Regulatory Status	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–88	NO_X Allowance Allocations to Opt-in Units	5/1/02	5/10/02 67 FR 37133	(c)(46)
Section 45–1–100	Requirements for Emissions of NO_X from Cement Manufacturing Kilns.	5/1/02	5/10/02 67 FR 37133	(c)(46)
[45 CSR] Series 2 To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers				
Section 45–2–1	General	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–2	Definitions	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–3	Visible Emissions of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.	8/31/00	8/11/03 68 FR 47473	(c)(56)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–2–4	Weight Emission Standards	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–5	Control of Fugitive Particulate Matter	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–6	Registration	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–7	Permits	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–8	Testing, Monitoring, Recordkeeping, and Reporting	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–9	Start-ups, Shutdowns, and Malfunctions	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–10	Variances	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–11	Exemptions	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 45–2–12	Inconsistency Between Rules	8/31/00	8/11/03 68 FR 47473	(c)(56)
Table 45–2A	[Total Allowable Particulate Matter Emission Rate for All Typce 'c' Fule Burning Units Located at One Plant].	8/31/00	8/11/03 68 FR 47473	(c)(56)
45CSR2 Appendix Compliance Test Procedures for 45CSR2				
Section 1	General	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 3	Symbols	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 4	Adoption of Test Methods	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 5	Unit Load and Fuel Quality Requirements	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 6	Minor Exceptions	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 7	Pretest and Post Test General Requirements	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 8	Heat Input Data Measurements	8/31/00	8/11/03 68 FR 47473	(c)(56)
Section 9	Computations and Data Analysis	8/31/00	8/11/03 68 FR 47473	(c)(56)
[45 CSR] Series 3 To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt Plants				
Section 45–3–1	General	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–2	Definitions	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement—Visible.	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–4	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement—Weight Emissions.	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–5	Permits	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–6	Reports and Testing	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–7	Variance	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–8	Circumvention	8/31/00	10/11/02 67 FR 63270	(c)(48)
Section 45–3–9	Inconsistency Between Rules	8/31/00	10/11/02 67 FR 63270	(c)(48)
[45 CSR] Series 5 To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations, and Coal Refuse Disposal Areas				
Section 45–5–1	General	8/31/00	10/07/02 67 FR 63279	(c)(47)
Section 45–5–2	Definitions	8/31/00	10/07/02 67 FR 63279	(c)(47)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–5–3	Emission of Particulate Matter Prohibited and Standards of Measurement.	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–4	Control and Prohibition of Particulate Emissions from Coal Thermal Drying Operations of a Coal Preparation Plant.	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–5	Control and Prohibition of Particulate Emissions From an Air Table Operation of a Coal Preparation Plant.	10/22/93	7/13/99 64 FR 37681	(c)(42)
Section 45–5–6	Control and Prohibition of Fugitive Dust Emissions From Coal Handling Operations and Preparation Plants.	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–7	Standards for Coal Refuse Disposal Areas	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–8	Burning coal Refuse Disposal Areas	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–9	Monitoring of Operations	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–10	Construction, Modification, and Relocation Permits	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–11	Operation Permits	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–12	Reporting and Testing	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–13	Variance	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–14	Transfer of Permits	8/31/00	10/7/02 67 FR 62379	(c)(47)
Section 45–5–15	Inconsistency Between Rules	8/31/00	10/7/02 67 FR 62379	(c)(47)
Appendix	Particulate Emission Limitations and Operational Monitoring Requirements Applicable to Thermal Dryers Installed Before October 24, 1974.	8/31/00	10/7/02 67 FR 62379	(c)(47)
[45 CSR] Series 6 To Prevent and Control Air Pollution From Combustion of Refuse				
Section 45–6–1	General	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–2	Definitions	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–3	Open Burning Prohibited	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–4	Emission Standards for Incinerators and Incineration.	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–5	Registration	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–6	Permits	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–7	Reports and Testing	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–8	Variances	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–9	Emergencies and Natural Disasters	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–10	Effect of the Rule	7/1/01	2/10/03 68 FR 6627	(c)(51)
Section 45–6–11	Inconsistency Between Rules	7/1/01	2/10/03 68 FR 6627	(c)(51)
[45 CSR] Series 7 To Prevent and Control Particulate Matter Air Pollution From Manufacturing Process Operations				
Section 45–7–1	General	8/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–2	Definitions	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–3	Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement.	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–4	Control and Prohibition of Particulate Emissions by Weight from Manufacturing Process Source Operations.	08/31/00	06/03/03 68 FR 33010	(c)(55)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–7–5	Control of Fugitive Particulate Matter	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–6	Registration	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–7	Permits	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–8	Reporting and Testing	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–9	Variance	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–10	Exemptions	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–11	Alternative Emission Limits for Duplicate Source Operations.	08/31/00	06/03/03 68 FR 33010	(c)(55)
Section 45–7–12	Inconsistency Between Rules	08/31/00	06/03/03 68 FR 33010	(c)(55)
TABLE 45–7A TABLE 45–7B	[Maximum Allowable Emission Rates From Sources Governed by 45 CFR Series 7].	08/31/00	06/03/03 68 FR 33010	(c)(55)
[Ch. 16–20] TP–4 Compliance Test Procedures for Regulation VII—''To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations''				
Section 1	General	2/23/84	6/28/85 45 FR 26732	no (c) number;
Section 2	Visible Emission Test Procedure	2/23/84	6/28/85 45 FR 26732	no (c) number;
Section 3	Mass Emission Test Procedures	2/23/84	6/28/85 45 FR 26732	no (c) number;
[45 CSR] Series 8 Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter				
Section 45–8–1	General	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–2	Definitions	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–3	Ambient Air Quality Standards	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–4	Methods of Measurement	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–8–5	Inconsistency Between Regulations	4/25/90	6/28/93 58 FR34526	(c)(28)
[45 CSR] Series 9—Ambient Air Quality Standards for Carbon Monoxide and Ozone				
Section 45–9–1	General	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–2	Anti-Degradation Policy	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–3	Definitions	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–4	Ambient Air Quality Standards	6/1/00	10/7/02 67 FR 62381	(c)(50)
Section 45–9–5	Methods of Measurement	6/1/00	10/7/02 67 FR 62381	(c)(50)
[45 CSR] Series 10—To Prevent and Control Air Pollution from The Emission of Sulfur Oxides				
Section 45–10–1	General	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–2	Definitions	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–3	Sulfur Dioxide Weight Emission Standards for Fuel Burning Units.	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–4	Standards for Manufacturing Process Source Operations.	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–5	Combustion of Refinery or Process Gas Streams	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–6	Registration	8/31/00	6/3/03 68 FR 33002	(c)(53)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–10–7	Permits	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–8	Testing, Monitoring, Recordkeeping and Reporting	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–9	Variance	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–10	Exemptions and Recommendations	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–11	Circumvention	8/31/00	6/3/03 68 FR 33002	(c)(53)
Section 45–10–12	Inconsistency Between Rules	8/31/00	6/3/03 68 FR 33002	(c)(53)
TABLE 45–10A	[Priority Classifications]	8/31/00	6/3/03 68 FR 33002	(c)(53)
TABLE 45–10B	[Allowable Percent Sulfur Content of Fuels]	8/31/00	6/3/03 68 FR 33002	(c)(53)
[45 CSR] Series 11 Prevention of Air Pollution Emergency Episodes				
Section 45–11–1	General	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–2	Definitions	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–3	Episode Criteria	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–4	Methods of Measurement	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–5	Preplanned Reduction Strategies	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–6	Emission Reduction Plans	4/25/90	6/28/93 58 FR34526	(c)(28)
TABLE I	Emission Reduction Plans—Alert Level	4/25/90	6/28/93 58 FR34526	(c)(28)
TABLE II	Emission Reduction Plans—Warning Level	4/25/90	6/28/93 58 FR34526	(c)(28)
TABLE III	Emission Reduction Plans—Emergency Level	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–7	Air Pollution Emergencies; Contents of Order; Hearings; Appeals.	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–11–8	Inconsistency Between Regulations	4/25/90	6/28/93 58 FR34526	(c)(28)
[45 CSR] Series 12 Ambient Air Quality Standard for Nitrogen Dioxide				
Section 45–12–1	General	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12-2	Anti-Degradation Policy	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12–3	Definitions	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12–4	Ambient Air Quality Standard	6/1/00	10/7/02 67 FR 62378	(c)(49)
Section 45–12–5	Methods of Measurement	6/1/00	10/7/02 67 FR 62378	(c)(49)
[45 CSR] Series 13 Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation				
Section 45–13–1	General	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–2	Definitions	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–3	Reporting Requirements for Stationary Sources	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–4	Administrative Updates to Existing Permits	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–5	Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources.	6/1/00	2/28/03 68 FR 9559	(c)(52)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–13–6	Determination of Compliance of Stationary Sources	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–7	Modeling	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–8	Public Review Procedures	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–9	Public Meetings	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–10	Permit Transfer, Suspension, Revocation and Responsibility.	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–11	Temporary Construction or Modification Permits	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–12	Permit Application Fees	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–13	Inconsistency Between Rules	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–14	Statutory Air Pollution	6/1/00	2/28/03 68 FR 9559	(c)(52)
Section 45–13–15	Hazardous Air Pollutants	6/1/00	2/28/03 68 FR 9559	(c)(52)
TABLE 45–13A	Potential Emission Rate	6/1/00	2/28/03 68 FR 9559	(c)(52)
TABLE 45–13B	De Minimus Sources	6/1/00	2/28/03 68 FR 9559	(c)(52)
[45 CSR] Series 14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration				
Section 45–14–1	General	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–2	Definitions	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–3	Ambient Air Quality Increments and Ceilings	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–4	Area Classification	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–14–5	Prohibition of Dispersion Enhancement Techniques	5/1/95	10/22/96 61 FR 54735	(c)(40)
Section 45–14–6	Registration, Report and Permit Requirements for Major Stationary Sources and Major Modifications.	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–7	Requirements Relating to Control Technology	5/1/95	10/22/96 61 FR 54735	(c)(40)
Section 45–14–8	Requirements Relating to the Source's Impact on Air Quality.	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–9	Requirements for Air Quality Models	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–10	Requirements for Air Quality Monitoring	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–11	Requirements for Additional Impacts Analysis	4/25/90	6/28/93 58 FR34526	(c)(28)
Section 45–14–12	Additional Requirements and Variances for Sources Impacting Federal Class I Areas.	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–13	Procedures for Sources Employing Innovative Control Technology.	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–14	Exclusions From Increment Consumption	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–15	Exemptions From Specific Requirements of This Rule.	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–16	Public Review Procedures	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–17	Public Meetings	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–18	Permit Transfer, Cancellation, and Responsibility	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–19	Disposition of Permits	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)
Section 45–14–20	Conflict with Other Permitting Rules	7/7/93 5/1/95	10/22/96 61 FR 54735	(c)(39), (c)(40)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
(Ch. 16–20) Series XIX Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants				
Section 1	General	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 2	Definitions	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 3	Applicability	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 4	Conditions for a Permit Approval for Proposed Major Sources That Would Contribute to a Violation of NAAQS.	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 5	Conditions for Permit Approval for Sources Locating in Attainment or Unclassifiable Areas That Would Cause a New Violation of a NAAQS.	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 6	Exemptions from Certain Conditions	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 7	Baseline for Determining Credit for Emission Offsets.	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 8	Location of Offsetting Emissions	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 9	Administrative Procedures for Emission Offset Proposals.	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 10	Control of Fugitive Emissions	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 11	Offsetting of Secondary Emissions	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 12	Bubble Concept for Intrasource Pollutants	5/27/83	7/2/85 50 FR 27247	(c)(22)
Section 13	Discretionary Decisions Made by the Director	5/27/83	7/2/85 50 FR 27247	(c)(22)
[45 CSR] Series 20 Good Engineering Practice as Applicable to Stack Heights				
Section 45–20–1	General	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–2	Definitions	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–3	Standards	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–4	Public Review Procedures	7/14/89	4/19/94 59 FR 18489	(c)(27)
Section 45–20–5	Inconsistency Between Regulations	7/14/89	4/19/94 59 FR 18489	(c)(27)
[45 CSR] Series 21 Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds				
Section 45–21–1	General	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–2	Definitions	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–3	Applicability	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–4	Compliance Certification, Recordkeeping, and Reporting Procedures for Coating Sources.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–5	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating Sources.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–6	Requirements for Sources Complying by Use of Control Devices.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–7	Circumvention	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–8	Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs).	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–9	Compliance Programs, Registration, Variance, Permits, Enforceability.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–11	Can Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–12	Coil Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–21–14	Fabric Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–15	Vinyl Coating	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–16	Coating of Metal Furniture	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–17	Coating of Large Appliances	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–18	Coating of Magnet Wire	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–19	Coating of Miscellaneous Metal Parts	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–21	Bulk Gasoline Plants	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–22	Bulk Gasoline Terminals	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–23	Gasoline Dispensing Facility—Stage I Vapor Recovery.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–24	Leaks From Gasoline Tank Trucks	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–25	Petroleum Refinery Sources	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–26	Leaks From Petroleum Refinery Equipment	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–27	Petroleum Liquid Storage in External Floating Roof Tanks.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–28	Petroleum Liquid Storage in Fixed Roof Tanks	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–29	Leaks From Natural Gas/Gasoline Processing Equipment.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–31	Cutback and Emulsified Asphalt	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–39	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–41	Test Methods and Compliance Procedures: General Provisions.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–42	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–43	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–44	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–45	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–46	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOCs)..	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–47	Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons.	7/7/93	2/1/95 60 FR 6022	(c)(33)
Section 45–21–48	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	7/7/93	2/1/95 60 FR 6022	(c)(33)
Appendix A	VOC Capture Efficiency	7/7/93	2/1/95 60 FR 6022	(c)(33)
[45 CSR] Series 26 NO_X Budget Training Program as a Means of Control and Reduction of Nitrogen Oxides from Electrical Generating Units				
Section 45–26–1	General	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–2	Definitions	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–3	Measurements, Abbreviations and Acronyms	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–4	NO_X Budget Trading Program Applicability	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–5	Retired Unit Exemption	5/1/02	5/10/02 67 FR 31733	(c)(46)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–26–6	NO_X Budget Trading Program Standard Requirements.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–7	Computation of Time	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–10	Authorization and Responsibilities of the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–11	Alternate NO_X Authorized Account Representative	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–12	Changing the NO_X Authorized Account Representative and the Alternate NO_X Authorized Account Representative; Changes in Owners and Operators.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–13	Account Certificate of Representation	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–14	Objections Concerning the NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–20	General NO_X Budget Trading Program Permit Requirements.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–21	NO_X Budget Permit Applications	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–22	Information Requirements for NO_X Budget Permit Applications.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–23	NO_X Budget Permit Contents	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–24	NO_X Budget Permit Revisions	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–30	Compliance Certification Report	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–31	Secretary's and Administrator's Action on Compliance Certifications.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–40	State NO_X Trading Program Budget	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–41	Timing Requirements for State NO_X Allowance Allocations.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–42	State NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–43	Compliance Supplement Pool	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–50	NO_X Allowance Tracking System Accounts	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–51	Establishment of Accounts	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–52	NO_X Allowance Tracking System Responsibilities of NO_X Authorized Account Representative.	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–53	Recordation of NO_X Allowance Allocations	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–54	Compliance	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–55	NO_X Allowance Banking	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–56	Account Error	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–57	Closing of General Accounts	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–60	Submission of NO_X Allowance Transfers	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–61	Allowance Transfer Recordation	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–62	Notification	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–70	General Monitoring Requirements	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–71	Initial Certification and Recertification Procedures	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–72	Out of Control Periods	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–73	Notifications	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–74	Recordkeeping and Reporting	5/1/02	5/10/02 67 FR 31733	(c)(46)

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
Section 45–26–75	Petitions	5/1/02	5/10/02 67 FR 31733	(c)(46)
Section 45–26–76	Additional Requirements to Provide Heat Input Data.	5/1/02	5/10/02 67 FR 31733	(c)(46)
[45 CSR] Series 29 Rule Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions				
Section 45–29–1	General	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–2	Definitions	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–3	Applicability	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–4	Compliance Schedule	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–5	Emission Statement Requirements	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–6	Enforceability	7/7/93	8/4/95 60 FR 39855	(c)(34)
Section 45–29–7	Severability	7/7/93	8/4/95 60 FR 39855	(c)(34)
[45 CSR] Series 35 Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)				
Section 45–35–1	General	5/1/95	9/5/95 60 FR 46029	(c)(37)
Section 45–35–2	Definitions	5/1/95	9/5/95 60 FR 46029	(c)(37)
Section 45–35–3	Adoption of Criteria, Procedures and Requirements	5/1/95	9/5/95 60 FR 46029	(c)(37)
Section 45–35–4	Requirements	5/1/95	9/5/95 60 FR 46029	(c)(37)

(d) *EPA approved state source-specific requirements.*

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2560
Mountaineer Carbon Co.	Consent Order	7/2/82	9/1/82 47 FR 38532	(c)(18)
National Steel Corp.—Weirton Steel Division.	Consent Order (Bubble)	7/6/82	12/9/82 47 FR 55396	(c)(19)
Columbia Gas Transmission Corporation—Lost River Station.	Consent Order	9/12/90	4/24/91 56 FR 18733	(c)(24)
Wheeling-Pittsburgh Steel Corp	Consent Order CO–SIP–91–29	11/14/91	7/25/94 59 FR 37696	(c)(26)
Standard Lafarge	Consent Order CO–SIP–91–30	11/14/91	7/25/94 59 FR 37696	(c)(26)
Follansbee Steel Corp	Consent Order CO–SIP–91–31	11/14/91	7/25/94 59 FR 37696	(c)(26)
Koppers Industries, Inc	Consent Order CO–SIP–91–32	11/14/91	7/25/94 59 FR 37696	(c)(26)
International Mill Service, Inc	Consent Order CO–SIP–91–33	11/14/91	7/25/94 59 FR 37696	(c)(26)
Starvaggi Industries, Inc	Consent Order CO–SIP–91–34	11/14/91	7/25/94 59 FR 37696	(c)(26)
Quaker State Corporation	Consent Order CO–SIP–95–1	1/9/95	11/27/96 61 FR 60191	(c)(35)
Weirton Steel Corporation	Consent Order CO–SIP–95–2	1/9/95	11/27/96 61 FR 60191	(c)(35)
PPG Industries, Inc	Consent Order CO–SIP–2000–1	1/25/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*1*)

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS—Continued

Source name	Permit/order or registration number	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2560
Bayer Corporation	Consent Order CO–SIP–2000–2	1/26/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*2*)
Columbian Chemicals Company	Consent Order CO–SIP–2000–3	1/31/00	8/2/00 65 FR 47339	(c)(44)(i)(B)(*3*)
PPG Industries, Inc	Consent Order CO–SIP–C–2003–27	7/29/03	4/28/04 69 FR 23110	(c)(58)
Wheeling-Pittsburgh Steel Corporation.	Operating Permit R13–1939A	8/19/03	05/05/04 69 FR 24986	(c)(59)(i)(B)(*1*)
Weirton Steel Corporation	Consent Order CO–SIP–C–2003–28	8/4/03	05/05/04 69 FR 24986	(c)(59)(i)(B)(*2*)

(e) *EPA-approved nonregulatory and quasi-regulatory material.*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
PM–10 Attainment Plan	Folansbee Area	11/15/91	7/25/94 59 FR 37688	52.2522(f); renumbered as (d) at 60 FR 33925.
		11/22/95	11/15/96 61 FR 58481	52.2522(g).
Sulfur Dioxide Attainment Demonstration.	City of Weirton Butler and Clay Magisterial Districts (Brooke & Hancock Counties).	12/29/03	05/05/04 69 FR 24986	52.2525(b).
1990 Base Year Emissions Inventory-VOC, CO, NO_X.	Greenbrier County	12/22/92	8/4/95 60 FR 39857	52.2531.
Small Business stationary source technical and environmental compliance assistance program.	Statewide	1/13/93	9/15/93 58 FR 48309	52.2560.
Lead (Pb) SIP	Statewide	6/13/80	10/29/81 46 FR 53413	52.2565(c)(15).
Air Quality Monitoring Network	Statewide	11/4/83	4/27/84 49 FR 18094	52.2565(c)(21).
Ozone Maintenance Plan, emissions inventory & contingency measures.	Huntington Area (Cabell & Wayne Counties)	8/10/94	12/21/94 59 FR 65719	52.2565(c)(30).
Ozone Maintenance Plan, emissions inventory & contingency measures.	Parkersburg Area (Wood County)	8/10/94	9/6/94 59 FR 45978	52.2565(c)(31).
Ozone Maintenance Plan, emissions inventory & contingency measures.	Charleston Area (Kanahwa & Putnam Counties)	8/10/94	9/6/94 59 FR 45985	52.2565(c)(32).
Sulfur Dioxide Plan	Grant Magisterial District (Hancock County)	2/17/95	11/27/96 61 FR 60253	52.2565(c)(35).
Ozone Maintenance Plan & contingency measures.	Greenbrier County	9/9/94	8/4/95 60 FR 39857	52.2565(c)(36).
Sulfur Dioxide Plan	Marshall County	2/17/00	8/2/00 65 FR 47339	52.2565(c)(44).
Ozone Maintenance Plan—amendments.	Huntington Area (Cabell & Wayne Counties)	8/10/94	2/8/02 67 FR 5953	52.2565(c)(45).

[FR Doc. 05–2518 Filed 2–9–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ131–125; FRL–7860–8]

Revisions to the Arizona State Implementation Plan Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving an emission statement rule and a negative declaration for a volatile organic compound (VOC) source category.

DATES: This rule is effective on April 11, 2005, without further notice, unless EPA receives adverse comments by March 14, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the rule and the negative declaration, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007.

Maricopa County Department of Environmental Services, Air Pollution Control Division, 1001 North Central Avenue, Suite 100, Phoenix, Arizona 85004.

Copies of the rule and the negative declaration may also be available via the Internet at the following site, *http://www.maricopa.gov/envsvc/AIR/ruledesc.asp.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov.*

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

Table of Contents

I. The State's Submittal
A. What rule and negative declaration did the State submit?
B. Are there other versions of this rule or negative declaration?
C. What is the purpose of the submitted rule and negative declaration?
II. EPA's Evaluation and Action.
A. How is EPA evaluating the rule and the negative declaration?
B. Do the rule and the negative declaration meet the evaluation criteria?
C. Public comment and final action.
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rule and Negative Declaration Did the State Submit?

Table 1 lists the rule and negative declaration we are approving with the dates that they were adopted by the MCESD and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULE AND NEGATIVE DECLARATION

Local agency	Rule #	Rule title	Adopted	Submitted
MCESD	100, Sec. 504	Emission Statements Required	11–16–92	02–04–93
MCESD	Negative Declaration	Fiberglass Boat Manufacturing	03–24–04	04–21–04

On March 10, 1993, and October 26, 2004, Rule 100, Section 504 and the negative declaration, submitted on February 4, 1993, and April 21, 2004, respectively, were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule or Negative Declaration?

There are no previous versions of the emission statement rule nor the Fiberglass Boat Manufacturing negative declaration.

C. What is the Purpose of the Submitted Rule and Negative Declaration?

Emission Statement Rule

Section 182(a)(3)(B)(i) of the CAA requires that States with areas designated as nonattainment for ozone require emission statement data from sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the nonattainment areas. This requirement applies to all ozone nonattainment areas regardless of the classification (Marginal, Moderate, etc.) Emission statements were required to be submitted by November 15, 1993, and annually thereafter. Section 182(a)(3)(B)(ii) of the CAA allows the States and local agencies to waive the requirement for emission statements for classes or categories of sources with less than 25 tons per year if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA or other methods acceptable to EPA.

Negative Declaration

Section 182(b)(2) of the CAA requires States to submit reasonably available control technology (RACT) regulations for major stationary sources of VOC emissions in areas designated as nonattainment and classified as moderate or above. In order to fulfill this requirement, MCESD imposed source-specific RACT standards in the Title V permit for their Fiberglass Boat Manufacturing source. On December 3, 2001, the source notified MCESD of its intent to close their Phoenix facility and cease operations no later than December 31, 2001. In addition, the source requested the cancellation of existing operating air quality permits as of that date. On April 21, 2004, ADEQ submitted a SIP revision including a redesignation request and maintenance plan for the Maricopa County Nonattainment Area. As part of that revision, ADEQ also submitted a negative declaration for the Fiberglass Boat Manufacturing source category. The negative declaration was adopted to fulfill the requirements of section 182(b)(2) of the CAA.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule and the Negative Declaration?

Emission Statement

The emission statement rule requires owners or operators of sources which emit VOC and NO_X to provide the Control Officer with a statement showing actual emissions of NO_X and VOC annually. The statement must contain a certification by a responsible official of the company that the information contained in the statement is accurate. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

Negative Declaration

The MCESD has certified that it currently does not have any sources of Fiberglass Boat Manufacturing with the closure of Sea Ray Boats, Inc. The MCESD reviewed Department permit files, the 2002 Arizona Industrial Directory, and the Toxic Release Inventory System to determine if any other major sources of fiberglass boat manufacturing exist in Maricopa County. Based on this review, MCESD declares that there are no major sources of fiberglass boat manufacturing present in Maricopa County.

B. Do the Rule and the Negative Declaration Meet the Evaluation Criteria?

We believe the emission statement rule and the negative declaration are consistent with the relevant policy and guidance regarding enforceability and SIP revisions. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule as a revision to the SIP and is approving the negative declaration as additional information to the SIP. We believe the rule and the negative declaration fulfill all the relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule and negative declaration. If we receive adverse comments by March 14, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 11, 2005. This will incorporate the rule into the federally enforceable SIP and add the negative declaration as additional information.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 22, 2004.

Sally Seymour,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(78)(i)(B) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(78) * * *

(i) * * *

(B) Rule 100, Section 504 adopted on November 16, 1992.

* * * * *

■ 3. Section 52.122 is amended by adding paragraph (a)(1)(ii) to read as follows:

§ 52.122 Negative declarations.

(a) * * *

(1) * * *

(ii) Fiberglass Boat Manufacturing was adopted on March 24, 2004 and submitted on April 21, 2004.

* * * * *

[FR Doc. 05–2520 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0001; FRL–7871–7]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions To Control Volatile Organic Compound Emissions From Consumer Related Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve Texas State Implementation Plan (SIP) revisions. The revisions pertain to regulations to control volatile organic compound (VOC) emissions from consumer related sources. The control of VOC emissions will help to attain and maintain national ambient air quality standards for ozone in Texas. This approval will make the revised regulations Federally enforceable.

DATES: This rule is effective on April 11, 2005 without further notice, unless EPA receives adverse comment by March 14, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2005–TX–0001, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/.* Regional Materials in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.
- EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R06–OAR–2005–TX–0001. EPA's policy is that all comments received will be included in the public file without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Materials in EDocket (RME), *regulations.gov* or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or *regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available materials relevant to this rulemaking are available either electronically in RME or in the official file, which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

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

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6645; fax number 214–665–7263; e-mail address *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'' ''us'' or ''our'' is used, we mean the EPA.

Outline

I. What Is a SIP?
II. What Action Is EPA Taking?
III. What Is the Effect of This Action?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Is a SIP?

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

Each state which contains areas that are not attaining the NAAQS, must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable State Implementation Plan (SIP).

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

II. What Action Is EPA Taking?

EPA is taking direct final action to approve revisions to the Texas ozone SIP (Texas SIP) that pertain to regulations which control VOC emissions from consumer related sources. The regulations can be found in the Texas Administrative Code, title 30, chapter 115, subchapter G. The revisions were adopted by the Texas Commission on Environmental Quality (TCEQ) and submitted to EPA. One revision was adopted on January 28, 2004 and submitted on February 13, 2004. Another revision was adopted on October 27, 2004 and submitted on November 16, 2004.

On May 4, 1994 Texas adopted a VOC emissions regulation for consumer products sold or distributed in Texas. The regulation was approved by EPA on May 22, 1997 (62 FR 27964). On September 11, 1998 EPA issued a national regulation for VOC emissions from consumer products similar to that adopted by Texas (63 FR 48819). The national regulation can be found at 40 CFR part 59 subpart C. The national regulation adopted a less stringent VOC standard for automotive windshield wiper fluid than that found in the Texas regulation. The national standard is a limit of 35% VOC content by weight, while the Texas standard is 23.5%. Texas revised the state VOC regulation on January 28, 2004 and submitted it to EPA on February 13, 2004. This revision removed state VOC standards for all consumer products except automotive windshield washer fluid sold or distributed in Texas because national standards are now in place. Texas retained the state VOC standard for windshield washer fluid because a more restrictive state standard would help attain national ambient air quality standards for ozone in Texas. EPA is approving this change because equivalent emission reduction will continue to be achieved.

The revision adopted on October 27, 2004 set requirements for portable fuel containers and spouts sold or distributed in Texas that are manufactured on or after December 31, 2004. The purpose of this revision is to lower VOC emissions in Texas from portable fuel containers that spill or leak. EPA is approving this revision as it strengthens the SIP.

III. What Is the Effect of This Action?

This action approves revisions to the Texas SIP that pertain to regulations to control VOC emissions from consumer related sources. This approval will make these revised regulations Federally enforceable. Enforcement of the regulations in a State SIP before and after it is incorporated into the federally approved SIP is primarily a state responsibility. However, after the regulations are Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the Clean Air Act.

The revisions (1) removed state VOC emission standards for all consumer products except automotive windshield washer fluid sold or distributed in Texas because national standards are in place, and (2) set requirements for portable fuel containers and spouts sold or distributed in Texas. Consumer products sold or distributed in Texas must meet national VOC emission standards found in 40 CFR part 59 subpart C and Texas standards for windshield wiper fluid and portable fuel containers found in the Texas Administrative Code, title 30, chapter 115, subchapter G.

Portable fuel containers and spouts sold or distributed in Texas that are manufactured on or after December 31, 2004 must comply with new requirements. Portable fuel containers must have only one opening in the vessel. Spouts for these containers must (1) have an automatic shutoff device to prevent spilling, (2) automatically close and seal when removed from the fuel tank, and (3) seal without leakage when affixed to the portable fuel container vessel. The requirements do not apply to (1) containers with a capacity less than or equal to one quarter, or greater than ten gallons, (2) safety cans when their use is required by the Occupational Safety and Health Administration under 29 CFR 1926.155(l), and (3) containers filled with fuel by the manufacturer prior to sale to consumers and that are not intended for reuse as portable fuel containers.

IV. Final Action

EPA is approving revisions to the Texas SIP pertaining to control of VOC emissions from consumer related sources.

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA air quality regulations, and is consistent with EPA policy. Therefore, we are approving revisions to the Texas SIP which amend and add regulations to control VOC emissions from consumer related sources.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on April 11, 2005 without further notice unless we receive adverse comment by March 14, 2005. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. 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 action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 31, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7402 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' under Chapter 115 (Reg 5) is amended as follows:

■ a. Under the heading ''Subchapter G: Consumer-Related Sources,'' by removing the entry for Section 115.600 to 115.619, Consumer Products;

■ b. Immediately following the centered heading ''Subchapter G: Consumer-Related Sources,'' by adding a new centered heading ''Division 1: Automotive Windshield Washer Fluid'' followed by entries for Sections 115.600, 115.610, 115.612, 115.613, 115.615, 115.616, 115.617, and 115.619, immediately followed by a new centered heading.''Division 2: Portable Fuel Containers' immediately followed by new entries for Sections 115.620, 115.621, 115.622, 115.626, 115.627, and 115.629, to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter G: Consumer-Related Sources				
Division 1: Automotive Windshield Washer Fluid				
Section 115.600	Consumer Products Definitions	01/28/04	02/10/05 [Insert date of FR publication].	
Section 115.610	Applicability	01/28/04	02/10/05 [Insert date of FR publication].	
Section 115.612	Control Requirements	01/28/04	02/10/05 [Insert date of FR publication].	
Section 115.613	Alternate Control Requirements	01/28/04	02/10/05 [Insert date of FR publication].	
Section 115.615	Testing Requirements	01/28/04	02/10/05 [Insert date of FR publication].	
Section 115.616	Recordkeeping and Reporting Requirements.	01/28/04	02/10/05 [Insert date of FR publication].	
Section 115.617	Exemptions	01/28/04	02/10/05 [Insert date of FR publication].	
Section 115.619	Counties and Compliance Schedules.	01/28/04	02/10/05 [Insert date of FR publication].	
Division 2: Portable Fuel Containers				
Section 115.620	Definitions	10/27/04	02/10/05 [Insert date of FR publication].	
Section 115.621	Applicability	10/27/04	02/10/05 [Insert date of FR publication].	
Section 115.622	Performance Standards and Testing Requirements.	10/27/04	02/10/05 [Insert date of FR publication].	
Section 115.626	Labeling	10/27/04	02/10/05 [Insert date of FR publication].	
Section 115.627	Exemptions	10/27/04	02/10/05 [Insert date of FR publication].	
Section 115.629	Affected Counties and Compliance Schedules.	10/27/04	02/10/05 [Insert date of FR publication].	
*	*	*	*	*

[FR Doc. 05–2616 Filed 2–9–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0025; FRL–7690–6]

Pesticides; Removal of Expired Time-limited Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending 40 CFR part 180 to remove time-limited tolerances for several pesticides that were originally established to support emergency exemptions issued under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These time-limited tolerances are being removed from 40 CFR part 180 because they have since expired. The expired time-limited tolerances are obsolete and therefore unnecessary and are being removed with this final rule to ensure that the regulatory listings of tolerances is properly updated.

DATES: This regulation is effective February 10, 2005. Objections and requests for hearings must be received on or before April 11, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID number OPP–2005–0025. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9366; and e-mail address: *rosenblatt.dan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

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

C. How Can I Submit an Objection or Request a Hearing Under FFDCA?

Although section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA), allows any person to file an objection or request a hearing when the Agency issues a final tolerance action under section 408, EPA does not expect that anyone will file an objection or request a hearing for this particular rule because the tolerances being revoked here are obsolete. If, for some reason, anyone wishes to file an objection or request for a hearing under section 408(g), please follow the EPA procedural regulations which govern the submission of objections and requests for hearings that appear in 40 CFR part 178. Note that the period for filing objections is now 60 days, rather than 30 days.

II. Authority

A. What is EPA's Authority for Revoking these Tolerances?

This final rule is issued pursuant to section 408(e) of FFDCA, as amended by the FQPA (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)).

B. Why is EPA Issuing this as a Final Rule?

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the actions taken in this final rule represent technical corrections to the regulations and do not involve substantive Agency action.

The removal of an expired time-limited tolerance from 40 CFR part 180 represents a simple correction of the regulations, and does not involve any substantive Agency action. The expiration date for the time-limited tolerance is set when the Agency issues the final rule that originally establishes, or a subsequent final rule that amends, the specific time-limited tolerance. Once that time-limited tolerance expires, the associated listing in 40 CFR part 180 is obsolete and must be removed to reflect that expiration.

For these reasons, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Overview of Today's Action

A. What Action is EPA Taking?

For each pesticide chemical and commodity combination listed below, EPA previously established a time-limited tolerance, under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. These time-limited tolerances are being removed from 40 CFR part 180 today because they have since expired making these time-limited tolerances obsolete.

B. Which Time-Limited Tolerances are Obsolete?

The time-limited tolerances for the following pesticide chemicals on specific commodities are being removed from 40 CFR part 180 because the time-limited tolerances have expired for the pesticide and commodity covered by the time-limited tolerance. Therefore, the time-limited tolerance is obsolete and no longer necessary:

1. *Aluminum tris.* The time-limited tolerance for succulent pea is being removed from § 180.415 because it expired on September 31, 2000.

2. *Azoxystrobin.* Time-limited tolerances for chickpea seed, lychee and pepper are being removed from § 180.507 because they expired on December 31, 2003.

3. *Bifenthrin.* Time-limited tolerances for peanut and potato are being removed from § 180.442 because they expired on or before December 31, 2003.

4. *Bromoxynil.* Time-limited tolerances for timothy hay and forage are being removed from § 180.324 because they expired on June 30, 2003.

5. *Clethodim.* The time-limited tolerances for tall fescue hay and forage are being removed from § 180.458 because they expired on June 30, 2004.

6. *Cymoxanil.* The time-limited tolerance for dried cone hop is being removed from § 180.503 because it expired on December 31, 2003.

7. *Cyprodinil.* The time-limited tolerance for caneberries is being removed from § 180.532 because it expired on December 31, 2003.

8. *Cyfluthrin.* Time-limited tolerances for grape and raisin are being removed from § 180.436 because they expired on June 30, 2003.

9. *Dimethomorph.* Time-limited tolerances for cantaloupe, cucumber, squash, and watermelon are being removed from § 180.493 because they expired on December 31, 2003.

10. *Fluroxypyr 1-methylheptyl ester.* Time-limited tolerances for cattle kidney, goat kidney, grass forage and hay, hog kidney, horse kidney, milk and sheep kidney are being removed from § 180.535 because they expired on December 31, 2004.

11. *Imidacloprid.* Time-limited tolerances for garden beet roots and tops, blueberry, cranberry, prune, and legume vegetable are being removed from § 180.472 because they expired on or before June 30, 2004.

12. *Metolachlor.* Time-limited tolerances for grass forage and hay, spinach, tomato, tomato paste and tomato puree are being removed from § 180.368 because they expired on or before December 31, 2004.

13. *Methoxyfenozide.* Time-limited tolerances for field corn forage, grain and stover and corn oil are being removed from § 180.544 because they expired on December 31, 2003.

14. *Norflurazon.* Time-limited tolerances for Bermuda grass hay and forage are being removed from § 180.356 because they expired on November 30, 2002.

15. *Propamocarb.* Time-limited tolerances for tomato and tomato paste are being removed from § 180.499 because they expired on December 31, 2003.

17. *Pymetrozine.* The time-limited tolerance for pecan is being removed from § 180.556 because it expired on December 31, 2002.

18. *Pyriproxyfen.* The time-limited tolerance for stone fruit (group 12) is being removed from § 180.510 because it expired on December 31, 2002.

19. *Spinosad.* The time-limited tolerance for cranberry is being removed from § 180.495 because it expired on June 30, 2003.

20. *Sulfentrazone.* The time-limited tolerance for chickpea seed is being removed from § 180.498 because it expired on December 31, 2004.

21. *Tebuconazole.* The time-limited tolerance for hops is being removed from § 180.474 because it expired on December 31, 2003.

22. *Tebufenozide.* Time-limited tolerances for egg, grass forage and hay, longan, lychee, peanut, peanut hay, peanut meal, peanut oil, poultry fat, poultry meat, poultry meat byproducts, sunflower seed, foliage of legume vegetable (group 7) and legume vegetable (group 6) are being from § 180.482 removed because they expired on or before December 31, 2003.

23. *Triflumizole.* The time-limited tolerance for filbert is being removed from § 180.476 because it expired on June 30, 2004.

24. *Zinc phosphide.* The time-limited tolerance for wheat aspirated grain fractions is being removed from § 180.284 because it expired on December 31, 2003.

IV. Regulatory Assessment Requirements

This final rule removes obsolete time-limited tolerances that were previously established under FFDCA section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted tolerance actions like this revocation from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see discussion in Unit II.B. of this preamble), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA)(Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, this action does not require any action under Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 et seq.). 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, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated in Unit II.B., EPA has made such a good cause finding for this rule, including the reasons therefor, and established an effective date of February 10, 2005. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 30, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§ 180.284 [Amended]

■ 2. In § 180.284 in the table in paragraph (b), remove the entry for wheat, aspirated grain fractions.

■ 3. In § 180.324, paragraph (b) is removed and reserved as follows:

§ 180.324 Bromoxynil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

■ 4. In § 180.356, paragraph (b) is removed and reserved as follows:

§ 180.356 Norflurazon; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

■ 5. In § 180.368, paragraph (b) is removed and reserved as follows:

§ 180.368 Metholachlor; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

■ 6. In § 180.415, paragraph (b) is removed and reserved as follows:

§ 180.415 Aluminum tris (O-ethylphosphate); tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

■ 7. In § 180.436, paragraph (b) is removed and reserved as follows:

§ 180.436 Cyfluthrin; tolerances for residues

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

§ 180.442 [Amended]

■ 8. In § 180.442 in the table in paragraph (b), remove the entries for peanut and potato.

■ 9. In § 180.458, paragraph (b) is removed and reserved as follows:

§ 180.458 Clethodim; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

■ 10. In § 180.472, the table in paragraph (b) is revised to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Almond	0.05	12/31/05
Almond, hulls	4.0	12/31/05
Soybean, seed	1.0	12/31/06

* * * * *

§ 180.474 [Amended]

■ 11. In § 180.474, in the table in paragraph (b), remove the entry for hop.

■ 12. In § 180.476, paragraph (b) is removed and reserved as follows:

§ 180.476 Triflumizole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

■ 13. In § 180.482, the table in paragraph (b) is revised to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Beet, garden, roots	0.3	12/31/05
Beet, garden, tops	9.0	12/31/05
Grape	3.0	12/31/05
Sweet potato, roots	0.25	12/31/05

* * * * *

■ 14. In § 180.493, paragraph (b) is removed and reserved as follows:

§ 180.493 Dimethomorph; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

§ 180.495 [Amended]

■ 15. In § 180.495, in the table in paragraph (b), remove the entry for cranberry.

§ 180.498 [Amended]

■ 16. In § 180.498, in the table in paragraph (b), remove the entry for chickpea, seed.

■ 17. In § 180.499, paragraph (b) is removed and reserved as follows:

§ 180.499 Propamocarb hydrochloride; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

■ 18. In § 180.503, paragraph (b) is removed and reserved as follows:

§ 180.503 Cymoxanil, tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

§ 180.507 [Amended]

■ 19. In § 180.507, the table in paragraph (b) is Amended by removing the entries for chickpea, seed; lychee; and pepper.

§ 180.510 [Amended]

■ 20. In § 180.510, in the table in paragraph (b), remove the entry for Fruit, stone, group 12.

■ 21. In § 180.532, paragraph (b) is removed and reserved as follows:

§ 180.532 Cyprodinil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

§ 180.535 [Amended]

■ 22. In § 180.535, in the table in paragraph (b), remove the entries, cattle, kidney; goat, kidney; grass, forage; grass, hay; hog, kidney; horse, kidney; milk and sheep, kidney.

§ 180.544 [Amended]

■ 23. In § 180.544, in the table in paragraph (b), remove the entries, corn, field, forage; corn, field, grain; corn, field, stover; and corn, oil.

■ 24. In § 180.556, paragraph (b) is removed and reserved as follows:

§ 180.556 Pymetrizone; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 05–2614 Filed 2–9–05; 8:45 a.m.]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety

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

ACTION: Interim final rule.

SUMMARY: FRA is amending regulations on Railroad Workplace Safety to clarify an ambiguous provision concerning the circumstances under which life vests or buoyant work vests are required for bridge workers working over water.

DATES: *Effective Date:* This rule becomes effective April 11, 2005.

Written Comments: Written comments must be received no later than March 28, 2005. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FRA–2001–10426, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the

online instructions for submitting comments.

• *Web site:* Go to *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

• *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 20590–001.

• *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.

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. Please see the Privacy Act heading under Regulatory Impact, below.

Docket: For access to the docket 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.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6320); or Anna Nassif, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6166).

SUPPLEMENTARY INFORMATION:

Public Participation

The Administrative Procedure Act (5 U.S.C. 551–559) permits an agency to dispense with notice of rulemaking when it is otherwise not required by statute and the agency ''for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). FRA finds that notice and public participation are, in this case, unnecessary and contrary to the public interest for the reasons set forth below.

These amendments do not expand the scope of the rule, nor do they impose additional burdens on those covered by the rule. Moreover, FRA finds that any further delay in issuance of this rule could perpetuate confusion or inconsistencies regarding the use of personal floatation devices in conjunction with effective fall prevention measures. FRA believes that the identification of inconsistent safety requirements and the noncontroversial nature of the amendments necessary to make the requirements consistent justify the issuance of an interim final rule. FRA will consider, however, any comments received during the post-publication comment period before it issues a final rule in this proceeding.

Background

On June 24, 1992, FRA issued Railroad Workplace Safety Regulations in 49 CFR part 214. 57 FR 28127. Subsequent amendments to that regulation have added subpart C, Roadway Worker Protection, and subpart D, On-Track Roadway Maintenance Machines and Hi-Rail Vehicles. 61 FR 65959 (December 16, 1996), 68 FR 44388 (July 28, 2003). Additional amendments have provided technical corrections and changes to improve the effectiveness of the regulation.

FRA has since received a request from the Norfolk Southern Railway Company (NS) to permit NS employees who are working on a bridge deck over water to work without a life vest or buoyant work vest under circumstances in which falls are effectively prevented. NS refers to factual situations under the present regulation, where a bridge worker who is located 12 feet or more over the ground is prevented from falling by hand rails, walkways, or acceptable work procedures and is therefore not required to use a personal fall arrest system. However, if the same circumstances prevail on a bridge over water, the bridge worker is required to wear a life vest or buoyant work vest even though the bridge worker over water may have the same safety hand rails, walkways, or acceptable work procedures in place as the bridge worker has over dry land. FRA has considered this request, and has found that the situation addressed by NS is not limited to one railroad. FRA therefore considers it advisable to provide an industry-wide resolution by issuing a technical amendment to the regulation.

The present regulation, in section 214.107, ''Working over or adjacent to water'' states, in part:

(a) Bridge workers working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to bridge workers using personal fall arrest systems or safety nets that comply with this subpart.

(b) Life vests or buoyant work vests shall not be required when bridge workers are conducting inspections that involve climbing structures above or below the bridge deck.

The present regulation also provides for circumstances in which bridge workers are not required to use personal fall arrest systems or safety nets while working at heights over land because the risk of falling is minimized by components of the bridge or by suitable work procedures. In particular, section 214.103, ''Fall protection, generally'' states:

(a) Except as provided in paragraphs (b) through (d) of this section, when bridge workers work twelve feet or more above the ground or water surface, they shall be provided and shall use a personal fall arrest system or safety net system. All fall protection systems required by this section shall conform to the standards set forth in § 214.105 of this subpart.

(b)(1) This section shall not apply if the installation of the fall arrest system poses a greater risk than the work to be performed. In any action brought by FRA to enforce the fall protection requirements, the railroad or railroad contractor shall have the burden of proving that the installation of such device poses greater exposure to risk than performance of the work itself.

(2) This section shall not apply to bridge workers engaged in inspection of railroad bridges conducted in full compliance with the following conditions:

(i) The railroad or railroad contractor has a written program in place that requires training in, adherence to, and use of safe procedures associated with climbing techniques and procedures to be used;

(ii) The bridge worker to whom this exception applies has been trained and qualified according to that program to perform bridge inspections, has been previously and voluntarily designated to perform inspections under the provision of that program, and has accepted the designation;

(iii) The bridge worker to whom this exception applies is familiar with the appropriate climbing techniques associated with all bridge structures the bridge worker is responsible for inspecting;

(iv) The bridge worker to whom this exception applies is engaged solely in moving on or about the bridge or observing, measuring and recording the dimensions and condition of the bridge and its components; and

(v) The bridge worker to whom this section applies is provided all equipment necessary to meet the needs of safety, including any specialized alternative systems required.

(c) This section shall not apply where bridge workers are working on a railroad bridge equipped with walkways and railings of sufficient height, width, and strength to prevent a fall, so long as bridge workers do

not work beyond the railings, over the side of the bridge, on ladders or other elevation devices, or where gaps or holes exist through which a body could fall. Where used in place of fall protection as provided for in § 214.105, this paragraph (c) is satisfied by:

(1) Walkways and railings meeting standards set forth in the American Railway Engineering Association's Manual for Railway Engineering; and

(2) Roadways attached to railroad bridges, provided that bridge workers on the roadway deck work or move at a distance six feet or more from the edge of the roadway deck, or from an opening through which a person could fall.

(d) This section shall not apply where bridge workers are performing repairs or inspections of a minor nature that are completed by working exclusively between the outside rails, including but not limited to, routine welding, spiking, anchoring, spot surfacing, and joint bolt replacement.

The exceptions to the requirement for a personal fall arrest system or safety net are found in paragraphs (b) through (d) of § 214.103. Sub-paragraph (b)(2), and paragraphs (c) and (d), address alternate means of fall protection. In strict application of the regulation, these exceptions may be used in appropriate circumstances by bridge workers working at heights over dry land, but do not relieve bridge workers from the requirement to use life vests or buoyant work vests when over water, even though the risk of a fall to the water is minimized.

This inconsistency was not intended. FRA is therefore issuing this technical amendment to resolve the inconsistency. This amendment will permit the exceptions in § 214.103 which presently only apply to the use of personal fall arrest systems and safety nets over dry land to also apply to the use of life vests or buoyant work vests while working over water. Including § 214.103(b)(2) and its related sub-paragraphs concerning bridge inspectors among the exceptions in § 214.107(a) makes § 214.107(b) redundant. It is therefore being deleted.

This amendment will have the effect, in a common example, of permitting a railroad track inspector, when on a bridge that is over water and equipped with effective handrails and walkways, to replace a joint bolt without having to wear a life vest or buoyant work vest, without the need to have a life preserver within ready access, and without the need for ring buoys and a boat or skiff in the water. The amendment should also have the beneficial effect of encouraging bridge owners to install effective fall prevention components on low bridges over water in order to improve labor efficiency.

Section-by-Section Analysis

Section 214.107 Working Over or Adjacent to Water

This section sets forth standards for bridge workers working over or adjacent to water. Paragraph (a) requires that bridge workers must wear life vests or buoyant work vests in compliance with various Coast Guard requirements, when working over water, except where bridge workers are working with fall arrests systems or in compliance with the provisions of § 214.103(b)(2), (c) or (d). These provisions establish exceptions to the general requirement for protection against drowning. The exceptions include situations where there is little or no risk of falling, since bridge workers are working on bridges with walkways and railings, or, when on bridges with roadways, are working more than six feet from the edge of a roadway deck or any opening through which they could fall.

Regulatory Impact

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FRA's 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.*

Executive Order 12866 and DOT Regulatory Policies and Procedures

This amendment clarifying the final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this amendment will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This amendment to the final rule clarifies existing requirements. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this amendment of the final rule.

Environmental Impact

FRA has evaluated this amendment in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The amendment meets the criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

This amendment will not have a substantial 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. Thus, in accordance with Executive Order 13132, preparation of a Federalism Assessment is not warranted.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,700,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * * ''detailing the effect on State, local and tribal governments and the private sector. The rule issued today does not include any mandates which will result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of a statement is not required.

List of Subjects in 49 CFR Part 214

Bridges, Fall arrest equipment, Incorporation by reference, Occupational safety and health,

Personal protective equipment, Railroad employees, Railroad safety.

The Interim Final Rule

■ In consideration of the foregoing, FRA amends part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 214—[AMENDED]

■ 1. The authority for part 214 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 214.107 is revised to read as follows:

§ 214.107 Working over or adjacent to water.

(a) Bridge workers working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR 160.047, 160.052, and 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to bridge workers using personal fall arrest systems or safety nets that comply with this subpart or to bridge workers who are working under the provisions of § 214.103(b)(2), (c) or (d) of this subpart.

(b) Prior to each use, all flotation devices shall be inspected for defects that reduce their strength or buoyancy by designated individuals trained by the railroad or railroad contractor. Defective units shall not be used.

(c) Where life vests are required by paragraph (a) of this section, ring buoys with at least 90 feet of line shall be provided and readily available for emergency rescue operations. Distance between ring buoys shall not exceed 200 feet.

(d) Where life vests are required, at least one lifesaving skiff, inflatable boat, or equivalent device shall be immediately available. If it is determined by a competent person that environmental conditions, including weather, water speed, and terrain, merit additional protection, the skiff or boat shall be manned.

Issued in Washington, DC, on February 2, 2005.

Robert D. Jamison,

Acting Federal Railroad Administrator.

[FR Doc. 05–2560 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 020705A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Reduction of the Yellowtail Flounder Trip Limit for the U.S./Canada Management Area

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

ACTION: Reduction of the Yellowtail Flounder Trip Limit for the U.S./Canada Management Area.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that the total allowable catch (TAC) for Georges Bank (GB) yellowtail flounder allocated for harvest from the U.S./Canada Management Area will be fully harvested prior to the end of the fishing year if the rate of GB yellowtail flounder harvest remains at the current level. The Regional Administrator, therefore, is reducing the GB yellowtail flounder trip limit from 15,000 lb (6,408 kg) per trip to 5,000 lb (2,268 kg) per trip for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area, effective February 9, 2005.

DATES: Effective 0001 hrs local time, February 9, 2005, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Tasker, (978) 281–9273, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder trip limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (April 27, 2004, 69 FR 22906). Section 648.85(a)(3)(iv)(D) authorizes the Regional Administrator to modify certain conditions regarding the harvesting of fish from the U.S./Canada Management Area, including trip limits for GB yellowtail flounder harvested from that area.

On October 1, 2004 (69 FR 59815), upon determination by the Regional Administrator that 85 percent of the GB yellowtail flounder TAC had been harvested, NMFS closed the Eastern U.S./Canada Area to all NE multispecies DAS vessels and prohibited all NE multispecies vessels from harvesting, possessing, or landing GB yellowtail flounder from the U.S./Canada Management Area, because of concerns that the yellowtail flounder TAC would be fully harvested or overharvested prior to the end of the fishing year. Full harvest of the TAC was anticipated due to the amount of yellowtail flounder harvested by vessels targeting yellowtail flounder in the U.S./Canada Management Area, and because of concerns regarding anticipated yellowtail flounder bycatch by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area. Additional concern was raised by the potential impact that may be caused by scallop vessels fishing in Closed Area II under the Sea Scallop Access Program implemented under Frameworks 16/39 to the Atlantic Sea Scallop/NE Multispecies FMPs. Because of these potential sources of yellowtail flounder harvest, this action was necessary to ensure that the GB yellowtail flounder TAC would not be exceeded during the 2004 fishing year.

On January 14, 2005 (70 FR 2820, January 18, 2005), under the authority of § 648.85(a)(3)(iv)(D), NMFS re-opened the Eastern U.S./Canada Area; removed the prohibition on the harvest, possession, and landing of GB yellowtail flounder by all NE multispecies vessels within the entire U.S./Canada Management Area; and established a trip limit of 15,000 lb (6,804 kg) for GB yellowtail flounder for vessels fishing in the U.S./Canada Management Area. In addition, the daily poundage limit for yellowtail flounder and cod were removed to allow vessels additional flexibility, should they need to end a trip prematurely due to an unexpected event; i.e., vessels would have the ability to retain their entire catch onboard when entering port and on their subsequent trip. This action was taken in response to data indicating that the amount of GB yellowtail flounder harvested under the Sea Scallop Access Program and the amount of GB yellowtail flounder bycatch caught by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area

would likely not result in the overharvest of the TAC.

Vessel Monitoring System (VMS) reports and other information collected since the re-opening of the U.S./Canada Management Area indicate that many more vessels than initially anticipated are directly targeting GB yellowtail flounder in the U.S./Canada Management Area, and are thereby harvesting more yellowtail flounder than NMFS initially anticipated they would. Based on this information, and the rate at which GB yellowtail flounder is being harvested, NMFS is reducing the trip limit for GB yellowtail flounder to 5,000 lb (2268 kg) per trip, effective February 9, 2005, for NE multispecies DAS vessels fishing in the U.S./Canada Management Area. By reducing the trip limits for GB yellowtail flounder at this time, the fishing industry is more likely to achieve the full harvest of the GB yellowtail flounder TAC and other TACs for this region without a substantial risk of overharvesting the resource. To allow the fishery to continue at its current trip limit could necessitate closure of the Eastern U.S./Canada Area before the full harvest of the GB haddock and GB cod TACs in place for this area, in order to ensure that the yellowtail flounder TAC is not exceeded.

Yellowtail flounder landings will be closely monitored through VMS and other available information and, if 100 percent of the TAC allocation for GB yellowtail flounder is projected to be harvested, the Eastern U.S./Canada Area will be closed to NE multispecies DAS vessels and the harvesting, possession, and landing of yellowtail flounder by NE multispecies vessels in the U.S./Canada Management Area would be prohibited, in accordance with the regulations § 648.85(a)(3)(iv)(C)(3).

Classification

This action reduces the trip limit for GB yellowtail flounder in the U.S./Canada Management Area in order to allow vessels to fully harvest the GB cod and GB haddock TACs while ensuring that overharvesting of GB yellowtail flounder does not occur. To allow the higher trip limit for GB yellowtail flounder to continue during the period necessary to publish and receive comments on a proposed rule could necessitate that NMFS close the Eastern U.S./Canada Area before the fishing industry achieves the available TACs of GB cod and GB haddock for the area, and before a final rule to lower the trip limit could be implemented. Such a delay, therefore, would create an unnecessary burden on the fishing industry. Based on this possibility, under 5 U.S.C. 553(b)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest. Furthermore, for the same reason, there is good cause under 5 U.S.C 553(d)(3) to waive the 30–day delayed effectiveness period for this action.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: February 7, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–2625 Filed 2–7–05; 2:22 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 27
Thursday, February 10, 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–2005–20325; Directorate Identifier 2003–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 Series Airplanes; and Model 747SP and 747SR Series Airplanes; Equipped With Pratt & Whitney Model JT9D–3, and –7 Series Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing transport category airplanes listed above. This proposed AD would require repetitive inspections for cracks of the upper surface of the aft lower spar web of the inboard and outboard struts, as applicable; and repetitive inspections for cracks of the upper surface of the intermediate web bay of the aft lower spar. This proposed AD would also require repetitive inspections and torque checks of the bolts common to the aft lower spar chords and the fitting of the rear engine mount bulkhead for missing, loose, or fractured bolts, as applicable; and corrective action, if necessary. This proposed AD is prompted by reports of cracking in the aft lower spar web and reports of missing and fractured bolts. We are proposing this AD to detect and correct cracking of the aft lower spar web, and to prevent missing, loose, or fractured bolts common to the aft lower spar chords and the fitting of the rear engine mount bulkhead, which could result in the loss of the aft lower spar load path and reduced structural capability of the pylon, which may result in the separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by March 28, 2005.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20325; the directorate identifier for this docket is 2003–NM–129–AD.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20325; Directorate Identifier 2003–NM–129–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received several reports of cracking in the aft lower spar web on Boeing Model 747–200B series airplanes equipped with Pratt & Whitney Model JT9D–7 series engines. The cracking in the aft lower spar web is the result of fatigue and sonic induced vibration. We also received reports of missing or fractured bolts common to the aft lower spar chord and the fitting of the rear engine mount bulkhead on Model 747–100 series airplanes. The missing and fractured bolts were found on strut No. 1, No. 3 and No. 4. The missing and fractured bolts are made of Maraging or H–11 steel and are subject to stress corrosion cracking. These conditions, if not corrected, could result in the loss of the aft lower spar load path and reduced structural capability of the pylon, which may result in the separation of the engine from the airplane.

The subject area on Model 747–100 and –200B series airplanes equipped with Pratt & Whitney Model JT9D–3 series engines is identical to that on the

affected Model 747–100 and –200B series airplanes equipped with Pratt & Whitney Model JT9D–7 series engines. Therefore, those Model 747–100 and –200B series airplanes equipped with Pratt & Whitney Model JT9D–3 series engines are subject to the unsafe condition revealed on the affected Model 747–100 and –200B series airplanes equipped with Pratt & Whitney Model JT9D–7 series engines.

In addition, the subject area on Model 747–100B, –100B SUD, –200C, –200F, and –300 series airplanes, and Model 747SP and 747SR series airplanes, equipped with Pratt & Whitney Model JT9D–3 and –7 series engines, is identical to that on the affected Model 747–100 and –200B series airplanes equipped with Pratt & Whitney Model JT9D–3 and –7 series engines. Therefore, those Model 747–100B, –100B SUD, –200C, –200F, and –300 series airplanes; and Model 747SP and 747SR series airplanes equipped with Pratt & Whitney Model JT9D–3 and –7 series engines are subject to the unsafe condition revealed on the affected Model 747–100 and –200B series airplanes equipped with Pratt & Whitney Model JT9D–3 and –7 series engines.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–54A2212, dated May 1, 2003, which describes the following procedures:

1. Part 1—Web Inspection

For certain airplanes, do initial and repetitive detailed visual inspections of the upper surface of the aft lower spar web on the inboard struts, and outboard struts as applicable, for cracks. Do repairs, if necessary, and/or do ''Part 4—Stiffener Addition.''

2. Part 2—Intermediate Web Bay Inspection

For certain airplanes, do initial and repetitive detailed visual inspections of the upper surface of the intermediate web bay of the aft lower spar for cracks, do repairs if necessary, and/or do ''Part 5—Intermediate Stiffener Addition.''

3. Part 3—Maraging or H–11 Steel Bolt Inspection

For certain airplanes, do initial and repetitive detailed visual inspections and torque checks of the bolts common to the aft lower spar chords and the fitting of the rear engine mount bulkhead for missing, loose, or fractured bolts; and replace bolt with new bolt if necessary. Replacing the bolt in accordance with ''Part 3'' includes related investigative actions and corrective action. The related investigative actions include high frequency eddy current (HFEC) inspections for cracks of the chord, web, and fitting and detailed visual inspections for corrosion of the hole in the fitting of the rear engine mount bulkhead. The corrective action specifies contacting the manufacturer if any crack or corrosion is found.

4. Part 4—Stiffener Addition (Optional)

For certain airplanes, install stiffeners for inboard and outboard struts as applicable, do related investigative actions, and do repairs if necessary. The related investigative actions include HFEC inspections for cracks of the hole and around the aft fasteners of the fitting of the rear engine mount bulkhead. ''Part 4—Stiffener Addition'' procedures will either extend the repetitive inspection interval or end the repetitive inspections of ''Part 1—Web Inspection.''

5. Part 5—Intermediate Stiffener Addition (Optional)

For certain airplanes, installing stiffeners for inboard and outboard struts will end the repetitive inspections of ''Part 2—Intermediate Web Bay Inspection.'' Boeing Alert Service Bulletin 747–54A2212 refers to Boeing Service Bulletins 747–71–2188 and 747–54–2115, as additional sources of service information for accomplishment of the installation.

6. Part 6—Maraging or H–11 Steel Bolt Replacement

For certain airplanes, replace all Maraging or H–11 steel bolts with new inconel bolts; do related investigative actions (includes HFEC inspections for cracks of the chord and web, the chord and the fitting of the rear engine mount bulkhead fitting and the pylon skin; and detailed visual inspections for corrosion of the pylon skin and the hole of the fitting of the rear engine mount bulkhead); and do corrective action (includes contacting the manufacturer if any crack, corrosion, or damage is found which cannot be removed within the oversize limit). Replacement of all bolts with new inconel bolts in accordance with ''Part 6—Maraging or H–11 Steel Bolt Replacement'' ends the repetitive inspections of ''Part 3—Maraging or H–11 Steel Bolt Inspection.''

We have determined that accomplishing the actions specified in the service information will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require the following actions:

- Repetitive inspections for cracks of the upper surface of the aft lower spar web on the inboard and outboard struts, as applicable.
- Repetitive inspections for cracks of the upper surface of the intermediate web bay of the aft lower spar, as applicable.
- Repetitive inspections and torque checks of the bolts common to the aft lower spar chords and the fitting of the rear engine mount bulkhead for missing, loose, or fractured bolts, as applicable.
- Corrective action, if necessary.

The proposed AD would require you to use the service information described previously to do these actions, except as discussed under ''Differences Between the Proposed AD and the Service Bulletins.''

Differences Between the Proposed AD and the Service Bulletins

The following differences between the proposed AD and the service bulletins have been coordinated with the manufacturer:

1. Operators should note that although Boeing Alert Service Bulletin 747–54A2212, dated May 1, 2003, specifies that operators may contact the manufacturer for additional instructions for certain repairs, this proposed AD would require operators to repair according to a method approved by the FAA, or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

2. Operators should also note that where Boeing Alert Service Bulletin 747–54A2212, dated May 1, 2003, references ''service bulletin 747–71–2188 Revision 1 or later releases,'' this proposed AD would require that operators refer to Boeing Service Bulletin 747–71–2188, Revision 1, dated January 17, 1986; or Revision 2, dated September 24, 1988. When referencing a specific service bulletin in an AD, using the phrase, ''or later FAA-approved revisions,'' violates Office of the Federal Register regulations for approving materials that are incorporated by reference.

3. Operators should also note, that where the referenced Boeing Service

Bulletins 747–71–2188, Revision 1, dated January 17, 1986, and Revision 2, dated September 24, 1988; and Boeing Service Bulletins 747–54–2115, dated February 14, 1986, and Revision 1, dated May 12, 1988; specify to repair according to an operators equivalent procedure, this proposed AD would require operators to repair according to a method approved by the FAA, or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in Boeing Alert Service Bulletin 747–54A2212, dated May 1, 2003, is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

There are about 244 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 82 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Applicable airplanes identified in Boeing alert service bulletin 747–54A2212 as—	Action	Work hours	Average labor rate per hour	Cost per airplane, per inspection cycle
Groups 1–6	Web Inspection	8	$65	$520
Groups 7–8	Web Inspection	4	65	260
Groups 1–5	Web Bay Inspection	4	65	260
Groups 1–6	Bolt Inspection	4	65	260

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–20325; Directorate Identifier 2003–NM–129–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by March 28, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes, and Model 747SP and 747SR series airplanes; certificated in any category; equipped with Pratt & Whitney Model JT9D–3 and –7 series engines; as identified in Boeing Alert Service Bulletin 747–54A2212, dated May 1, 2003.

Unsafe Condition

(d) This AD was prompted by reports of cracking in the aft lower spar web and reports of missing and fractured bolts. We are issuing this AD to detect and correct cracking of the aft lower spar web and to prevent missing, loose, or fractured bolts common to the aft lower spar chords and the fitting of the rear engine mount bulkhead, which could result in the loss of the aft lower spar load path and reduced structural capability of the pylon, which may result in the separation of the engine from the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin 747–54A2212, dated May 1, 2003.

Part 1—Web Inspections

(g) At the applicable times specified in paragraph (g)(1), (g)(2), or (g)(3) of Table 1 of this AD, do initial and repetitive detailed inspections for cracks of the upper surface of the aft lower spar web of the inboard and outboard struts, as applicable; and before further flight, do any applicable repair; by doing all the actions specified in ''Part 1—Web Inspection'' of the Work Instructions of the service bulletin. For certain airplanes, the repetitive inspections may be deferred or ended provided that the optional stiffener addition specified in paragraph (k) of this AD is done.

Note 1: For the purposes of this AD, a detailed inspection is ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or

irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

TABLE 1.—COMPLIANCE TIMES FOR WEB INSPECTION

For Airplanes Identified in the Service Bulletin As—	Initial Compliance Time Is—	Repetitive Interval Is—
(1) Group 1 airplanes on which the modification specified in Boeing Service Bulletin 747–54–2028, dated August 1, 1972, has been done; and Group 2 airplanes.	Within 12 months after the effective date of this AD.	At intervals not to exceed 2,400 flight cycles.
(2) Group 1 airplanes on which the modification specified in Boeing Service Bulletin 747–54–2028, dated August 1, 1972, has not been done; and Group 7 airplanes.	Within 6 months after the effective date of this AD.	At intervals not to exceed 350 flight cycles.
(3) Group 3, 4, 5, 6, and 8 airplanes	Within 12 months after the effective date of this AD.	At intervals not to exceed 1,200 flight cycles.

Part 2—Intermediate Web Bay Inspection

(h) At the applicable times specified in paragraph (h)(1) or (h)(2) of Table 2 of this AD, do initial and repetitive detailed inspections for cracks of the upper surface of the intermediate web bay of the aft lower spar; and before further flight do any applicable repair; by doing all the actions specified in ''Part 2—Intermediate Web Bay Inspection'' of the Work Instructions of the service bulletin. The repetitive inspections may be ended provided that the optional intermediate stiffener addition specified in paragraph (l) of this AD is done.

TABLE 2.—COMPLIANCE TIMES FOR INTERMEDIATE WEB BAY INSPECTIONS

For Airplanes Identified in the Service Bulletin As—	Initial Compliance Time Is—	Repetitive Interval Is—
(1) Group 1 through 4 airplanes on which the modification specified in Boeing Service Bulletin 747–71–2188, dated March 14, 1983, has been done and on which the additional work specified in Boeing Service Bulletin AD 747–71–2188, Revision 1, dated January 17, 1986; or Revision 2, dated September 24, 1988; has not been done.	Within 6 months after the effective date of this AD.	At intervals not to exceed 350 flight cycles.
(2) Group 5 airplanes on which the modification specified in Boeing Service Bulletin 747–54–2115, dated February 14, 1986; or Revision 1, dated May 12, 1988; has not been done.	Within 6 months after the effective date of this AD.	At intervals not to exceed 350 flight cycles.

Part 3—Maraging or H–11 Steel Bolt Inspection

(i) For Group 1 through 6 airplanes identified in the service bulletin: Within 12 months after the effective date of this AD, do a detailed inspection and torque check of the bolts common to the aft lower spar chords and the fitting of the rear engine mount bulkhead for missing, loose, or fractured bolts, and do any applicable replacement (including related investigative actions and corrective action), by doing all the actions specified in ''Part 3 ''Maraging or H–11 Steel Bolt Inspection'' of the Work Instructions of the service bulletin, except as provided by paragraph (o) of this AD. Do any applicable replacements (including related investigative actions and corrective action) before further flight, except as provided by paragraph (j) of this AD. Repeat the actions thereafter at intervals not to exceed 18 months. The inspections and torque checks specified in paragraph (i) of this AD may be ended provided that the replacement specified in paragraph (n) of this AD is done.

(j) If during any inspection required by paragraph (i) of this AD, one of the conditions specified in paragraphs (j)(1) and (j)(2) of this AD is found, do the applicable actions specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) If a missing or fractured bolt is found on the inboard strut in any one bay, within 36 months after replacing the bolt with a new bolt, do the replacement specified in paragraph (n) of this AD.

(2) If two or more missing or fractured bolts are found in any one bay, before further flight, do the replacement specified in paragraph (n) of this AD.

Part 4—Optional Stiffener Addition

(k) Except as provided by paragraph (o) of this AD, accomplishing the optional stiffener addition for the inboard and outboard struts, doing the related investigation actions, and doing any applicable repair, by doing all the actions specified in ''Part 4—Stiffener Addition'' of the Work Instructions of the service bulletin before further flight after accomplishing the actions specified in paragraph (g) of this AD, defers or ends the repetitive inspections required by paragraph (g) of this AD as follows:

(1) For airplanes listed in paragraph (g)(2) of Table 1 of this AD, accomplishing the optional stiffener addition extends the repetitive inspections required by paragraph (g) of this AD to intervals not to exceed 2,400 flight cycles.

(2) For airplanes listed in paragraph (g)(3) of Table 1 of this AD, accomplishing the optional stiffener addition ends the repetitive inspections required by paragraph (g) of this AD.

Part 5—Optional Intermediate Stiffener Addition

(l) For airplanes identified in paragraphs (h)(1) and (h)(2) of Table 2 of this AD: Accomplishing the optional intermediate stiffener addition for the inboard and outboard struts, by doing all the actions specified in ''Part 5—Intermediate Stiffener Addition'' of the Work Instructions of the service bulletin before further flight after accomplishing the actions specified in paragraph (h) of this AD, except as provided by paragraph (m) of this AD, ends the repetitive inspections required by paragraph (h) of this AD.

(m) Where the service bulletin specifies to install stiffeners as shown in ''service bulletin 747–71–2188 Revision 1 or later releases (Group 1, 2,3, and 4 Airplanes) or 747–54–2115 Original Issue or Revision 1 (Group 5 Airplanes),'' this AD requires that those actions be done in accordance with Boeing Service Bulletin 747–71–2188, Revision 1, dated January 17, 1986, or Revision 2, dated September 24, 1988; or Boeing Service Bulletin 747–54–2115, dated February 14, 1986, or Revision 1, dated May 12, 1988; as applicable, except as provided by paragraph (o) of this AD.

Part 6—Maraging or H–11 Steel Bolt Replacement

(n) For Group 1 through 6 airplanes identified in the service bulletin: Except as provided by paragraph (o) of this AD, replacing all Maraging or H–11 steel bolts with new inconel bolts, doing the related investigation actions, and doing any applicable corrective action, by doing all the actions specified in ''Part 6—Maraging or H–11 Steel Bolt Replacement'' of the Work Instructions of the service bulletin ends the inspections and torque checks required by paragraph (i) of this AD.

Contact the FAA

(o) If during any action required by this AD the service bulletin specifies to contact Boeing for additional instructions; or if Boeing Service Bulletin 747–71–2188, Revision 1, dated January 17, 1986, or Revision 2, dated September 24, 1988; or Boeing Service Bulletin 747–54–2115, dated February 14, 1986, or Revision 1, dated May 12, 1988, specifies to repair according to operators equivalent procedures: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Parts Installation

(p) As of the effective date of this AD, no person may install a Maraging or H–11 steel bolt in the locations specified in this AD, on any airplane.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on January 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–2575 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20289; Directorate Identifier 2003–SW–55–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC120 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model EC120 helicopters. This proposal would require inspecting the tail rotor drive shaft (drive shaft) damper half-clamps (half-clamps) to determine if they are centered on the friction ring, and if not correctly positioned, centering the half-clamps on the friction ring. This proposal is prompted by the discovery of half-clamps that were incorrectly positioned. This condition, if not detected, could result in interference of the two half-clamps with the drive shaft, which could result in scoring on the drive shaft, failure of the drive shaft, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 11, 2005.

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

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

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Haight, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5204, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2005–20289, Directorate Identifier 2003–SW–55–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. 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.*

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC120B helicopters. The DGAC advises of the discovery of a case of incorrect drive shaft damper positioning, which led to interference of the two half-clamps with the drive shaft tube and caused a score on the drive shaft.

Eurocopter has issued Alert Telex No. 65A004, Revision 1, dated January 27, 2004, which specifies re-positioning of the drive shaft damper, if necessary. The DGAC classified this alert telex as mandatory and issued AD No. UF–2003–465, dated December 22, 2003, and AD No. F–2003–465(A), dated January 21, 2004, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require, for Eurocopter Model EC120B helicopters, serial number 1362 and below, a one-time inspection of the half-clamps to determine if they are centered on the friction ring, and if they are not, centering the half-clamps on the friction ring. The actions would have to be accomplished within 50 hours time-in-service (TIS) for helicopters with 500 or more hours TIS; or no later than 550 hours TIS for helicopters with less than 500 hours TIS, in accordance with the alert telex described previously.

We estimate that this proposed AD would affect 78 helicopters of U.S. registry. The one-time inspection would take approximately 2 work hours to accomplish, and the modification would take 6 work hours, at an average labor rate of $65 per work hour. Required modification parts would cost approximately $180 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators would be $14,700, assuming 8 helicopters would need modification.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. FAA–2005–20289; Directorate Identifier 2003–SW–55–AD.

Applicability: Model EC120B helicopters, serial number 1362 and below, certificated in any category.

Compliance: Required within 50 hours time-in-service (TIS) for helicopters with 500 or more hours TIS; or no later than 550 hours TIS for helicopters with less than 500 hours TIS, unless accomplished previously.

To detect incorrect positioning of the tail rotor drive shaft (drive shaft) damper half-clamps (half-clamps), and to prevent interference of the half-clamps with the drive shaft, which could result in scoring on the drive shaft, failure of the drive shaft, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the half-clamps, part number C651A4103201 or C651A4103202, to determine if they are centered on the friction ring, using the Operational Procedure, paragraph 2.B., of Eurocopter Alert Telex No. 65A004, Revision 1, dated January 27, 2004 (Alert Telex). If the half-clamps are not centered on the friction ring, center the half-clamps on the friction ring in accordance with the Operational Procedure, paragraph 2.B, and Rework Sheet No. EC 120–53–02–04 in Appendix 1 of the Alert Telex.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) Special flight permits will not be issued.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. UF–2003–465, dated December 22, 2003, and AD No. F–2003–465, Revision A, dated January 21, 2004.

Issued in Fort Worth, Texas, on February 1, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2586 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20291; Directorate Identifier 2004–SW–25–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A119 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A119 helicopters. This proposal would require visually inspecting each main transmission support fitting (fitting) attachment bolt (bolt) for a fracture, a crack, or looseness, and verifying the torque on each fitting bolt. This proposal is prompted by two incidents of fatigue failure of the bolts that secure the transmission rear support fittings to the helicopter. The actions specified by this proposed AD are intended to detect a fracture, a crack, or looseness of a fitting bolt, and prevent fatigue failure of a fitting bolt and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 11, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically;

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;

• Fax: 202–493–2251; or

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send or deliver your comments to the address listed under the caption **ADDRESSES.** Include the docket number ''FAA–2005–20291, Directorate Identifier 2004–SW–25–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. 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.*

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A119 helicopters. ENAC advises of the need to check the bolts that secure the transmission support fittings to the structure by following the manufacturer's Bollettino Tecnico 119–8, dated April 7, 2004.

Agusta has issued Bollettino Tecnico No. 119–8, dated April 7, 2004, which specifies a periodic visual inspection to verify the condition (visible damage) of the airframe mounted main transmission fittings attaching hardware, and successively checking the torque of the bolts to exclude the possible presence of looseness and/or a fracture or a crack. ENAC classified this bollettino tecnico as mandatory and issued AD No. 2004–108, dated April 8, 2004, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, ENAC has kept us informed of the situation described above. We have examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require inspecting each fitting bolt, part number (P/N) NAS625–14 and P/N NAS625–18, for a fracture, a crack, or looseness, within 5 hours time-in-service (TIS) and then at intervals not to exceed 10 hours TIS until accomplishing a torque inspection of each fitting bolt, which would have to be accomplished before further flight if looseness is found, or within 25 hours TIS if looseness is not found. If a fracture or a crack is found on any bolt in a fitting, replacing all 4 of the bolts in the fitting would be required. If looseness is detected on any fitting bolt, a torque inspection would be required. If any torque inspection reveals that the torque of any bolt in a fitting is not between 11.3–15.8 Nm (100–140 inch-pounds), all 4 of the bolts in the fitting would have to be replaced with airworthy fitting bolts before further flight. The actions would have to be accomplished in accordance with the bolletino tecnico described previously.

We estimate that this proposed AD would affect 21 helicopters of U.S. registry. The three inspections (one initial, one repetitive, and the torque inspection) would take approximately 4 work hours to accomplish at an average labor rate of $65 per work hour. (The manufacturer states that it shall recognize a reimbursement of $120 per helicopter for the labor.) Required parts would cost approximately $1,600 per helicopter ($100 per fitting bolt for 16 fitting bolts). Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $39,060, assuming that no warranty credit is available and that all affected fitting bolts are replaced.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Agusta S.p.A.: Docket No. FAA–2005–20291; Directorate Identifier 2004–SW–25–AD.

Applicability: Model A119 helicopters, serial numbers 14001 through 14037, except serial number 14036, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect a fracture, a crack, or looseness of a main transmission support fitting (fitting) attachment bolt (bolt) and prevent fatigue failure of a fitting bolt and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 5 hours time-in-service (TIS), and then at intervals not to exceed 10 hour TIS until a torque inspection of each fitting bolt is accomplished in accordance with paragraph (b) of this AD, inspect each fitting bolt, part number NAS625–14 and NAS625–18, for a fracture, a crack, or looseness, using a light and a mirror.

(1) On each of the 4 fittings, if a fracture or a crack is found in any bolt, replace all 4 bolts in the fitting with airworthy fitting bolts before further flight.

(2) If looseness is found in any bolt in any fitting, inspect each of the 4 bolts on each of the 4 fittings (16 bolts total) to determine if the torque is between 11.3–15.8 Nm (100–140 inch-pounds). If the indicated torque is not within the acceptable range on any bolt in a fitting, before further flight, remove all 4 bolts in the fitting and replace them with airworthy fitting bolts in accordance with Part II, steps 4.1 through 5., of Agusta Bollettino Tecnico No. 119–8, dated April 7, 2004 (BT).

(b) Within 25 hours TIS, inspect each bolt in each fitting to determine if the torque is between 11.3–15.8 Nm (100–140 inch-pounds). If the indicated torque is not within the acceptable range on any bolt, before further flight, remove all 4 bolts in the fitting and replace them with airworthy fitting bolts in accordance with Part II, steps 4.1 through 5., of the BT.

(c) Accomplishing the inspections specified in paragraphs (a) and (b) constitute terminating actions for the requirements of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished, provided that no fracture, crack, or looseness was found during the inspections required by this AD.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2004–108, dated April 8, 2004.

Issued in Fort Worth, Texas, on February 1, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2588 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20293; Directorate Identifier 2004–SW–34–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. That AD currently requires replacing certain main or combiner gearboxes with airworthy gearboxes. Further investigation has shown that the main gearbox is not affected, and this action would require replacing a certain combiner gearbox with a modified airworthy gearbox. This proposal is prompted by a report of a freewheel unit slipping resulting in an engine overspeed and shutdown. Also, this proposal is prompted by the conclusion of the investigation, which finds the freewheel slippage is due to the surface treatment applied to certain freewheel rollers in the combiner gearbox. The actions specified by the proposed AD are intended to prevent an engine overspeed, an engine shutdown, and subsequent loss of control of the helicopter.

DATES: Comments must be received by April 11, 2005.

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

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

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES.** Include the docket number ''FAA–2005–20293, Directorate Identifier 2004–SW–34–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. 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.*

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On January 8, 2004, we issued Emergency AD 2004–01–51 followed by the publication in the **Federal Register** of the final rule AD, issued February 20, 2004, Amendment 39–13495, Docket No. 2004–SW–34–AD (69 FR 9201, February 27, 2004) for the specified model helicopters. The AD requires replacing a main or combiner gearbox received from Eurocopter Marignane, France, works with airworthy gearboxes received from another source. This was an interim action pending the results of an investigation. That action was prompted by a report of a main gearbox free-wheel unit slipping, resulting in an engine overspeed and shut down, which occurred during the single-engine phase of an acceptance flight. This condition, if not corrected, could result in an engine overspeed, an engine shut down, and subsequent loss of control of the helicopter.

Since issuing those ADs, the FAA has reviewed ECF Alert Telex No. 63.00.21 R2, dated February 4, 2004 (AT 63.00.21 R2). The Alert Telex describes the conclusion of the investigation that the freewheel slippage is due to the surface treatment applied to freewheel rollers, pre-MOD 077212. The freewheel rollers are located in the combiner gearbox; therefore, the main gearbox has been eliminated as the cause of this unsafe condition. The results of the investigation led ECF to cancel the cleaning procedure described in Alert Telex No. 63.00.21 R1, dated December 19, 2003, but to extend the effectivity of their instructions to all combiner gearboxes. Also, Alert Telex 63.00.21 R2 specifies modifying the combiner gearboxes at an approved repair station by replacing the freewheel rollers and after that recording the modification on the Equipment Log Card.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on the specified model helicopters. The DGAC advises of a combiner gearbox freewheel slippage with resulting engine shutdown due to overspeed, which occurred during the single-engine phase of an acceptance flight at the Eurocopter works. The DGAC classified AT 63.00.21 R2 as mandatory and issued AD F–2004–021, dated March 3, 2004, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would supersede AD 2004–01–51 to require, before further flight, replacing each combiner gearbox pre-MOD 077212 that has logged 10 hours or less TIS with a combiner gearbox modified by replacing the free-wheel rollers.

We estimate that this proposed AD would affect 104 helicopters of U.S. registry, and the proposed actions would take about ½ work hour to determine applicability and 12 work hours to replace a gearbox at an average labor rate of $65 per work hour. Required parts would cost about $97,000 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $981,180 assuming 10 gearboxes are replaced.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–13495 (69 FR 9201, February 27, 2004), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. FAA–2005–20293; Directorate Identifier 2004–SW–34–AD. Supersedes AD 2004–01–51, Amendment 39–13495, Docket No. 2003–SW–56–AD.

Applicability: Model AS355E, F, F1, F2, and N helicopters with a pre-MOD 077212 combiner gearbox that has 10 or less hours time-in-service installed, certificated in any category.

Compliance: Before further flight, unless accomplished previously.

To prevent an engine overspeed, an engine shutdown, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, replace each pre-MOD 077212 combiner gearbox with a combiner gearbox modified by replacing the freewheel rollers in accordance with MOD 077212.

Note 1: Eurocopter France Alert Telex No. 63.00.21 R2, dated February 4, 2004, pertains to the subject AD.

(b) Performing paragraph (a) of this AD is terminating action for the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, FAA, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

Note 2: The subject of this AD is addressed in Direction Generale de L'Aviation Civile, France, AD No. F–2004–021, dated March 3, 2004.

Issued in Fort Worth, Texas, on January 24, 2005.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2590 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20292; Directorate Identifier 2004–SW–26–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters. This proposal would require visually inspecting each main transmission support fitting (fitting) attachment bolt (bolt) for a fracture, a crack, or looseness, and verifying the torque on each fitting bolt. This proposal is prompted by two incidents of fatigue failure of the bolts that secure the transmission rear support fittings to the helicopter. The actions specified by this proposed AD are intended to detect a fracture, a crack, or looseness of a fitting bolt, and prevent fatigue failure of a fitting bolt and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 11, 2005.

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

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

You may get the service information identified in this proposed AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send or deliver your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2005–20292, Directorate Identifier 2004–SW–26–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. 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.*

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. ENAC advises of the need to check the bolts that secure the fittings to the structure by following the manufacturer's Bollettino Tecnico No. 109EP–43, dated March 3, 2004.

Agusta has issued Bollettino Tecnico No. 109EP–43, dated March 25, 2004, which specifies a periodic visual inspection to verify the integrity of the slippage marks, and successively checking the torque of the bolts to exclude the possible presence of looseness and/or a fracture or a crack. ENAC classified this bollettino tecnico as mandatory and issued AD No. 2004–099, dated March 29, 2004, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, ENAC has kept us informed of the situation described above. We have examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require inspecting the fitting bolts, part number (P/N) NAS625–14, for a fracture, a crack, or looseness within 5 hours time-in-service (TIS), and then at intervals not to exceed 10 hours TIS until performing a torque inspection of each fitting bolt. The torque inspection would have to be accomplished before further flight if looseness is found, or within 25 hours TIS if looseness is not found. If a fracture or a crack is found on any bolt in any fitting, replacing all 4 of the bolts in a fitting with airworthy fitting bolts would be required before further flight. If any torque inspection reveals that the torque of any bolt in a fitting is not between 11.3—15.8 Nm (100—140 inch-pounds), all 4 of the bolts in the fitting would have to be replaced with airworthy fitting bolts before further flight. The actions would be required to be accomplished in accordance with the bolletino tecnico described previously.

We estimate that this proposed AD would affect 58 helicopters of U.S. registry. Three inspections (one initial, one repetitive, and the torque inspection) would take approximately 4 work hours to accomplish at an average labor rate of $65 per work hour. (The manufacturer states that it shall recognize a warranty credit of up to $200 per helicopter for the labor). Required parts would cost approximately $1,600 per helicopter ($100 per fitting bolt for 16 fitting bolts). Based on these figures, the total estimated cost impact of the proposed AD on U.S. operators is $115,420, assuming that no warranty credit is available and that all affected fitting bolts are replaced.

Regulatory Findings

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

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

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

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

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

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Agusta S.p.A.: Docket No. FAA–200X–XXXXX; Directorate Identifier 2004–SW–26–AD.

Applicability: Model A109E helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect a fracture, a crack, or looseness of a main transmission support fitting (fitting) attachment bolt (bolt), and prevent fatigue failure of a fitting bolt and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 5 hours time-in-service (TIS), and then at intervals not to exceed 10 hours TIS until a torque inspection of each fitting bolt is accomplished in accordance with paragraph (b) of this AD, inspect each fitting bolt, part number NAS625–14, for a fracture, a crack, or looseness using a light and a mirror in accordance with Part I, steps 1. through 4., of Agusta Bollettino Tecnico No. 109EP–43, dated March 25, 2004 (BT).

(1) On each of the 4 fittings, if a fracture or a crack is found in any bolt, replace all 4 bolts in the fitting with airworthy fitting bolts before further flight.

(2) If looseness is found in any bolt in any fitting, inspect each of the 4 bolts on each of the 4 fittings (16 bolts total) to determine if the torque is between 11.3–15.8 Nm (100–140 inch-pounds). If the indicated torque is not within the acceptable range on any bolt in a fitting, before further flight, remove all 4 bolts in the fitting and replace them with airworthy fitting bolts in accordance with Part II, steps 5.1 through 9. of the BT.

(b) Within 25 hours TIS, inspect each bolt in each fitting to determine if the torque is between 11.3–15.8 Nm (100–140 inch-pounds). If the indicated torque is not within the acceptable range on any bolt, before further flight, remove all 4 bolts in the fitting and replace them with airworthy fitting bolts in accordance with Part II, steps 5.1 through 9., of the BT.

(c) Accomplishing the inspections specified in paragraphs (a) and (b) constitute terminating actions for the requirements of this AD.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199

to operate the helicopter to a location where the requirements of this AD can be accomplished, provided that no fracture or crack or looseness was found during the inspections required by this AD.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2004–099, dated March 29, 2004.

Issued in Fort Worth, Texas, on February 1, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2591 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–16–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for the MD Helicopters, Inc. (MDHI) Model 600N helicopters. That AD currently requires certain inspections of both upper tailboom attachments, nutplates, and angles for a crack or thread damage, and repairing or replacing any cracked or damaged part. Also, that AD requires replacing certain tailboom attachment bolts, adding a washer to each bolt, and modifying both upper access covers. This action would require installing six additional inspection holes in the aft fuselage skin panels and inspecting the upper and lower tailboom attachment fittings, the upper longerons, and the angles and nutplates for cracks. Also, the AD would provide a terminating action of modifying the fuselage aft section to strengthen the tailboom attachments and longerons. This proposal is prompted by an analysis that shows that certain tailboom attachments and longerons may develop cracks. The actions specified by the proposed AD are intended to prevent failure of a tailboom attachment, loss of the tailboom, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 11, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineers, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2004–SW–16–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

On November 28, 2001, the FAA issued Emergency AD 2001–24–51 for MDHI Model 600N helicopters and issued the final rule; request for comments on April 2, 2002 (Amendment 39–12706 (67 FR 17934, April 12, 2002)). That AD requires implementing the procedures described in MD Helicopters, Inc. Service Bulletin SB600N–03, dated November 2, 2001 (SB600N–03), for inspecting both upper tailboom attachments, nutplates, and angles for a crack or thread damage and repairing or replacing damaged parts. In addition, if one bolt is broken, the AD requires replacing all four bolts. Also, adding a washer to each bolt and modifying both upper access covers as well as a 25-hour time-in-service (TIS) repetitive borescope inspection of the tailboom attachments, nutplates, and angles is required. That action was prompted by the discovery of cracked bolts and attachments on several helicopters. The requirements of that AD are intended to prevent failure of a tailboom attachment, loss of the tailboom, and subsequent loss of control of the helicopter.

Since issuing that AD, the FAA has reviewed an analysis by the manufacturer and has determined that the tailboom fittings, part number (P/N) 500N3422–BSC (BSC is interchangeable with basic) and –3, and the upper longerons, P/N 500N3120–3 and –4, will develop cracks due to the same design error as the current AD. Also, the FAA has reviewed MDHI Service Bulletin SB600N–039, dated December 9, 2003, which provides information pertaining to adding six inspection holes in the fuselage and certain inspections of the tailboom attachment fittings and upper longerons for cracks. Also, MDHI has issued Technical Bulletin TB 600N–007, dated January 12, 2004, which provides information pertaining to modifying the fuselage aft section to strengthen tailboom attachment fittings and longerons.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would supersede AD 2001–24–51 to require the following:

- Before further flight, drill an inspection hole at fuselage station L167 and R167 (L indicates Left and R indicates Right) on each side of the fuselage.
- Within 25 hours time-in-service (TIS):
- Drill two additional inspection holes on each side of the fuselage at L166, R166, L153, and R153.
- Visually inspect the lower attachment fittings and the upper longerons through inspection holes at L166, R166, L153 and R153, respectively.
- Thereafter, at specified intervals, remove the plug buttons from the inspection holes at L167, R167, L166,

and R166. Using a bright light, inspect the attachment fittings, angles, and nutplates for a crack. Through inspection holes L153 and R153, using a bright light and mirror or borescope, visually inspect the bottom surface of each longeron for a crack.

• Before further flight, replace any cracked attachment fitting, angle, nutplate, longeron, and any nutplate with thread damage with an appropriate airworthy part.

This action proposes to require that operators modify the aft fuselage to strengthen the tailboom attachments and longeron within 4 years, which would constitute terminating action for the requirements of the AD.

The FAA estimates that this proposed AD would affect 39 helicopters of U.S. registry. The proposed actions would take about 322 work hours to modify and inspect the fuselage aft section per helicopter at an average labor rate of $65 per work hour. Required parts would cost approximately $14,960 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $1,399,710.

Regulatory Findings

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

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

Authority for this Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12706 (67 FR 17934) and by adding a new airworthiness directive (AD), to read as follows:

MD Helicopters, Inc.: Docket No. 2004–SW–16–AD. Supersedes AD 2001–24–51, Amendment 39–12706, Docket No. 2001–SW–57–AD.

Applicability: Model 600N, serial numbers with a prefix of ''RN'' 003 through 066 and 068, that have not been modified by following the Accomplishment Instructions of MDHI Technical Bulletin TB600N–007, dated January 12, 2004, certificated in any category.

Compliance: Required as indicated.

To prevent failure of a tailboom attachment, loss of the tailboom, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, unless accomplished previously, drill an inspection hole at fuselage station L167 and R167 (L indicates Left and R indicates Right) on each side of the fuselage by following the Accomplishment Instructions, paragraph 2.B.(6) of MD Helicopters, Inc. (MDHI) Service Bulletin SB600N–036, dated November 2, 2001.

(b) Within 25 hours time-in-service (TIS), unless accomplished previously:

(1) Drill two additional inspection holes (L166 and L153 on the left side and R166 and R153 on the right side) on each side of the fuselage as shown for the left side of the fuselage in Figure 1 of MDHI SB600N–039, dated December 9, 2003 (SB–039), by following the Accomplishment Instruction paragraphs of SB–039 as follows:

(i) Paragraphs 2.A.(1)(a), (b), and (d) for inspection holes at L166 and R166;

(ii) Paragraphs 2.A.(2)(a), (b), and (d) for inspection holes at L153 and R153; and

(2) Visually inspect for a crack by following the Accomplishment Instruction paragraphs of SB–039 at the following locations, except you are not required to contact MDHI.

(i) The lower left and right attachment fittings through inspection holes at L166 and R166, paragraph 2.A.(1)(c).

(ii) The upper left and right longerons through inspection holes at L153 and R153, paragraph 2.A.(2)(c).

Note: The reference in Figure 1 of SB–039 to inspection hole at L167 mistakenly states that it was ''Added by SB900–036.'' Inspection holes at L167 and R167 were originally specified by SB600N–036.

(c) Thereafter, at the specified intervals, remove the plug buttons from the inspection holes, and using a bright light, inspect the upper left and upper right attachment fittings, angles, and nutplates for a crack by following the Accomplishment Instruction paragraphs of SB–039, as follows, except you are not required to contact MDHI.

(1) At intervals not to exceed 25 hours TIS, for inspection holes at L167 and R167, inspect the upper left and upper right attachment fittings, angles, and nutplates by following paragraphs 2.B.(2) through 2.B.(4).

(2) At intervals not to exceed 100 hours TIS, for inspection holes at L166 and R166, inspect the lower left and lower right attachment fittings, angles, and nutplates by following paragraphs 2.B.(2) through 2.B.(4).

(3) At intervals not to exceed 1200 hours TIS, for inspection holes L153 and R153 using a mirror or borescope, inspect the bottom surface of each longeron by following paragraphs 2.C.(2) and 2.C.(3).

(d) Before further flight, replace any cracked attachment fitting, angle, nutplate, longeron, and any nutplate with thread damage with an appropriate airworthy part.

(e) On or before 4 years from the effective date of this AD, modify the aft fuselage to strengthen the tailboom attachments and the longerons by following the Accomplishment Instructions of MDHI Technical Bulletin TB600N–007, dated January 12, 2004 (TB–007). Modifying the aft fuselage by following TB–007 constitutes terminating action for the requirements of this AD.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office (LAACO), FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on February 2, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–2608 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan 05–007]

RIN 1625–AA87

Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U. S. Virgin Islands. The security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. The proposed rule would exclude entry into the proposed permanent security zone by all vessels without permission of the U.S. Coast Guard Captain of the Port San Juan or a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

DATES: Comments and related material must reach the Coast Guard on or before March 28, 2005.

ADDRESSES: You may mail comments and related material to Sector San Juan, 5 Calle La Puntilla, San Juan, PR 00901. Sector San Juan Waterways Management will maintain the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Resident Inspections Office in St. Croix, United States Virgin Island between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Katiuska Pabon of Sector San Juan Waterways Management at 787–289–0739.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Juan–05–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to SECTOR San Juan at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard has published similar temporary security zones in the **Federal Register** at 67 FR 2332, January 17, 2002; 67 FR 57952, September 13, 2002; 68 FR 22296, April 28, 2003; 68 FR 41081, July 10, 2003; 69 FR 6150, February 10, 2004; 69 FR 29232, May 21, 2004; and 70 FR 2950, January 19, 2005. Given the highly volatile nature of the substances stored at the HOVENSA facility, the Coast Guard recognizes that it could be a potential terrorist target and there is a continuing risk that subversive activity could be launched by vessels or persons in close proximity to the facility. This activity could be directed against tank vessels and the waterfront facility. This security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing risk by prohibiting all vessels without a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C from entering within approximately 2 miles of the HOVENSA facility unless specifically authorized by the Captain of the Port San Juan.

Discussion of Proposed Rule

The proposed permanent security zone around the HOVENSA facility would be encompassed by a line connecting the following coordinates: 17°41′31″ North, 64°45′09″ West; 17°39′36″ North, 64°44′12″ West; 17°40′00″ North, 64°43′36″ West; and 17°41′48″ North, 64°44′25″ West, and back to the point of origin. The security zone includes the waters extending approximately 2 miles seaward from the HOVENSA facility, Limetree Bay Channel and Limetree Bay. All coordinates are based upon North American Datum 1983 (NAD 1983). All vessels without a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C are excluded from the zone unless specifically authorized by the Captain of the Port San Juan.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The burden imposed on the public by this rule is minimal and mariners may obtain permission to enter the zone from the Coast Guard Captain of the Port San Juan or by scheduling vessel arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

Small Entities

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

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

The factual basis for this certification is as follows:

(1) Owners of small charter fishing or diving operations that operate near the HOVENSA facility may be affected by the existence of this security zone.

(2) This rule will not have a significant economic impact on the above mentioned or a substantial number of small entities because this zone covers an area that is not typically used by commercial fisherman.

Additionally, vessels may be allowed to enter the zone on a case-by-case basis with the permission of the Captain of the Port San Juan.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Katiuska Pabon, Sector San Juan Waterways Management, 787–289–0739. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. The proposed rule satisfies the criteria for paragraph (34)(g) because it is a security zone.

Under figure 2–1, paragraph (34)(g) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.766 to read as follows:

§ 165.766 Security Zone: HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* The Coast Guard is establishing a security zone in and around the HOVENSA Refinery on south coast of St. Croix, U.S. Virgin Islands. This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1: 17°41′31″ North, 64°45′09″ West, Point 2: 17°39′36″ North, 64°44′12″ West, Point 3: 17°40′00″ North, 64°43′36″ West, Point 4: 17°41′48″ North, 64°44′25″ West, and returning to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in the security zone in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Port of San Juan or vessels have a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

(2) Persons and vessels desiring to transit the Regulated Area may contact the U.S. Coast Guard Captain of the Port, San Juan, at telephone number 787–289–0739 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port.

Dated: January 31, 2005.

D.P. Rudolph,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Juan.

[FR Doc. 05–2595 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2005–20102]

Port Access Routes: Approaches to Portland, ME and Casco Bay

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments

SUMMARY: The Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the continued applicability of and the need for modifications to current vessel routing measures in the approaches to Portland, Maine and Casco Bay. The goal of the study is to help reduce the risk of marine casualties and increase the efficiency of vessel traffic management in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before April 11, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2005–20102 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call John J. Mauro, Project Officer, First Coast Guard District, telephone 617–223–8355, or send e-mail to *jmauro@d1.uscg.mil;* or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0574, or send e-mail to *Gdetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee K. Wright, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice of study (USCG–2005–20102), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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 can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Definitions

The following definitions are from the International Maritime Organization's (IMO's) publication ''Ships' Routeing'' (except those marked by an asterisk) and should help you review this notice:

Area to be avoided or (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all vessels, or certain classes of vessels.

Deep-water route means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Inshore traffic zone means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of vessels in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

*Regulated Navigation Area (RNA)** means a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout means a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation Zone or Separation line means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Why are port access route studies required? Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port access routes before establishing or adjusting fairways or TSSs. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Were there previous port access route studies? The area (known as Area 2 of the original PARS) which included the ports of Searsport, Bucksport, Portland, Maine, and Portsmouth, New Hampshire was last studied in 1979, and the final results of the study were published in the **Federal Register** on January 7, 1982 (47 FR 879). The study of Area 2 concluded that the existing TSS in the approaches to Portland, Maine is adequate for the traditional trade routes and amount of traffic to and from the Port of Portland, Maine.

Why is a new port access route study necessary? Portland Harbor is one of three deepwater ports in Maine, which are the nearest commercial ports in the United States to Europe; principal commerce items imported to the port include crude oil, refined petroleum products, chemicals, kaolin, and paper. Exported items from the port include wood pulp, lumber, scrap metal, and containerized goods, plus coastal receipts and reshipment of petroleum products, and internal receipts of fresh fish. About 65 percent of the tonnage is crude oil, which is transported by pipelines to refineries in Montreal, Quebec.

The report by the U.S. Army Corps of Engineers' (ACOE) ''Waterborne Commerce of the United States'' states that, from 1998 to 2002, annual trips to and from the Port of Portland, ME increased 7 percent from 34,571 to 37,233. Since 1982 the Corps of Engineers has maintained a navigation project for Portland Harbor. This project maintains: (1) An entrance channel 1,000 feet wide and 45 feet deep, which extends about 9,000 feet from deep water in Casco Bay opposite South Portland to a line about 2,000 feet seaward of the entrance to the Fore River, and allows vessels to call on the deepwater oil-receiving terminals at South Portland; (2) a maneuvering basin and anchorage area 45 feet deep, northwest of House Island and northeast of the head of the entrance channel; and (3) a channel depth of 40 feet in Soldier Ledge Channel in Hussey Sound, a passage between Peaks and Long Islands, which are part of a group of small, inhabited islands near the center of Casco Bay.

In response to a request by a local, commercial pipeline corporation, the ACOE is considering approving private maintenance dredging of part of its navigation project in Portland Harbor. If granted, this approval will allow the entrance channel to Portland Pipe Line Pier 2 and the western limits of Anchorage ''B'' to be deepened to a depth of 50 feet. This depth is five feet deeper than the Corp's congressionally authorized, project depth of 45 feet. If this project is approved and completed, vessel traffic to and from this port is expected to increase.

What are the timeline, study area, and process of this PARS? The First Coast Guard District will conduct this PARS. The study will begin immediately and should take 6 to 12 months to complete.

The study area will encompass the approaches to Portland, Maine and the waters of Portland Harbor and Casco Bay.

As part of this study, we will consider previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and affects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

Possible Scope of the Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will identify any problems and appropriate solutions. The study may recommend that we—

1. Maintain the current vessel routing measures;

2. Establish recommended routes or two-way routes in the approaches to Broad Sound;

3. Establish recommended routes or two-way routes in the approaches to Hussey Sound;

4. Establish recommended routes or two-way routes in the approach to Portland Harbor;

5. Establish recommended routes or two-way routes in the precautionary area in the approaches to Portland which would formalize routes historically used by tug and barge traffic, merchant vessels, and fishing vessels transiting the precautionary area;

6. Modify the precautionary area in the approaches to Portland;

7. Create one or more inshore traffic zones near either the recommended routes or approaches;

8. Establish an area to be avoided (ATBA) in shallow areas where the risk of grounding is present;

9. Establish, disestablish or modify anchorage grounds; and

10. Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under ''Public Participation and Request for Comments'' above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system, such as increasing traffic density? If so, please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and to improve traffic management efficiency in the study area? If so, please describe.

4. What costs and benefits are associated with the potential study recommendations listed above? What measures do you think are most cost-effective? What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: February 2, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–2559 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ131–125; FRL–7860–9]

Revisions to the Arizona State Implementation Plan Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County Environmental Services Department portion of the Arizona State Implementation Plan (SIP). These revisions concern an emissions statement rule and a negative declaration that addresses volatile organic compound (VOC) emissions from Fiberglass Boat Manufacturing. We are proposing to approve the rule and the negative declaration to update the Arizona SIP under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 14, 2005.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007

Maricopa County Department of Environmental Services, Air Pollution Control Division, 1001 North Central Avenue, Suite 100, Phoenix, Arizona 85004

Copies of the rule and the negative declaration may also be available via the Internet at *http://www.maricopa.gov/envsvc/AIR/ruledesc.asp.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses Rule 100, Section 504, Emission Statements Required, and a negative declaration for the VOC source category, Fiberglass Boat Manufacturing. In the Rules and Regulations section of this **Federal Register**, we are approving this rule and the negative declaration in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 22, 2004.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 05–2521 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0001; FRL–7871–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Control Volatile Organic Compound Emissions From Consumer Related Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Texas State Implementation Plan (SIP) revisions. The revisions pertain to regulations to control volatile organic compound (VOC) emissions from consumer related sources. The control of VOC emissions will help to attain and maintain national ambient air quality standards for ozone in Texas. This approval will make the revised regulations Federally enforceable.

DATES: Written comments should be received on or before March 14, 2005.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand deliver/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in

the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6645; fax number 214–665–7263; e-mail address *young.carl@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: January 31, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–2615 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[R07–OAR–2005–MO–0002; FRL–7871–3]

Air Quality Redesignation for the 8-Hour Ozone National Ambient Air Quality Standard; for Some Counties in the States of Kansas and Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 15, 2004, we, the U.S. Environmental Protection Agency (EPA) announced designations under the 8-hour ozone National Ambient Air Quality Standard (NAAQS). That action designated several counties in the Kansas City area as unclassifiable. The counties in the Kansas City area included in the designation were Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri. This document proposes to redesignate the above counties to attainment. We are soliciting comments on this proposed action.

DATES: Comments must be received on or before March 14, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2005–MO–0002, by one of the following methods:

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

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

3. *E-mail: daniels.leland@epa.gov.*

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

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

Instructions: Direct your comments to RME ID Number R07–OAR–2005–MO–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651, or by e-mail at *daniels.leland@epa.gov.*

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

What is the background for this action?

What are the statutory requirements for designations and redesignations and what are EPA's regulatory requirements and policy regarding redesignations?

What new information is available regarding air quality in Kansas City?

What about Kansas City's air quality in the future?

What action is EPA taking in regard to the designation of the Kansas City area?

What Is the Background for This Action?

On April 15, 2004, the Administrator of the EPA signed a final rule (69 FR 23858; April 30, 2004) announcing designations under the 8-hour ozone NAAQS. That action designated several counties in the Kansas City area as unclassifiable and provided that the designation was effective on June 15, 2004.

The Kansas City area designation was based on review of ozone data from 2001 through 2003. The counties in the Kansas City area designated as

unclassifiable are Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri. In that action, we stated that we would review all available information and make an attainment or nonattainment decision after reviewing the 2004 ozone data.

What Are the Statutory Requirements for Designations and Redesignations and What Are EPA's Regulatory Requirements and Policy Regarding Redesignations?

Section 107(d) of the Clean Air Act (CAA) sets forth the criteria and process for designations and redesignations. An explanation of statutory requirements for the 8-hour ozone designations that became effective on June 15, 2004, and the actions EPA took to meet those requirements can be found in the final rule that established the designations (69 FR 23858; April 30, 2004). In Section 107(d)(3), the CAA addresses redesignations and provides that the Administrator or the Governor of a state may initiate the redesignation process. One of the bases for redesignation under that section is air quality data.

To determine whether an area is attaining the 8-hour ozone NAAQS, we consider the most recent three consecutive years of data in accordance with 40 CFR part 50, appendix I. For the purpose of this rulemaking, we reviewed the ozone data from 2002 through 2004.

What New Information Is Available Regarding Air Quality in Kansas City?

The state of Missouri submitted a letter dated December 21, 2004, regarding air quality in Kansas City. The letter certified that the 8-hour ozone data collected during the 2004 ozone season is correct, complete and appropriate for regulatory use. The letter also requested that EPA redesignate the Kansas City area from unclassifiable to attainment. Similarly, the state of Kansas submitted letters of November 18, 2004, and January 10, 2005, certifying the accuracy of the ozone data and requesting redesignation from unclassifiable to attainment. The counties included in the redesignation request include Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri.

Consistent with 40 CFR part 50, appendix I, section 2.3, paragraph (d)(1), the 8-hour ozone standard is met if the three year average value of the annual fourth highest daily maximum (the design value) is 0.084 parts per million (ppm) or less. For the 2002–2004 time period, the design value for Kansas City is 0.082 ppm, indicating that the 8-hour ozone NAAQS has been attained.

What About Kansas City's Air Quality in the Future?

EPA's rule for implementing the 8-hour ozone standard calls for communities that were maintenance areas for the 1-hour ozone standard and are attainment areas for the 8-hour ozone standard to put in place a plan to maintain the 8-hour ozone standard for a ten-year period, no later than three years after designation. Thus both Kansas and Missouri are required to develop a plan to maintain the 8-hour ozone standard in the Kansas City area.

What Action Is EPA Taking in Regard to the Designation of the Kansas City Area?

Based upon regulatory requirements in 40 CFR part 50, appendix I and the 8-hour ozone air quality data for the 2002 through 2004 time period, we are proposing to redesignate Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri to attainment for the 8-hour ozone standard.

We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely designates an area for planning purposes based on air quality, and does not establish any new regulations. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore because it does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National park, Wilderness area.

Dated: January 26, 2005.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 05–2610 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. RSPA–99–6223 (HM–213B)]

RIN 2137–AD36

Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: RSPA is extending until April 28, 2005, the period for interested persons to submit comments on the December 30, 2004 notice of proposed rulemaking In the December 30, 2004 NPRM, we proposed to amend the Hazardous Materials Regulations to prohibit flammable liquids from being transported in unprotected product piping on existing and newly manufactured DOT specification cargo tank motor vehicles. If adopted as proposed, this action will reduce fatalities and injuries that result from accidents involving unprotected product piping. This proposal was developed jointly with the Federal Motor Carrier Safety Administration.

DATES: Submit comments by April 28, 2005. To the extent possible, we will consider comments received after this date in developing a final rule.

ADDRESSES: You may submit comments identified by the docket number RSPA–99–6223 (HM–213B) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name (Research and Special Programs Administration) and docket number (RSPA–1999–6223 (HM–213B)) or the Regulatory Identification Number (RIN 2137–AD36) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that RSPA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to ''*http://dms.dot.gov*'', including any personal information provided, and will be accessible to Internet users. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Stevens, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 2004, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (69 FR 78375) under Docket RSPA–99–6223 (HM–213B) to propose changes to the requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) for the transportation of flammable liquids in unprotected product piping on cargo tank motor vehicles.

The HMR, at § 173.33(e), prohibit the retention of certain liquid hazardous materials in the external product piping (wetlines) of a DOT specification cargo tank, unless the cargo tank motor vehicle (CTMV) is equipped with bottom damage protection devices. The current prohibition applies to liquid hazardous materials in Divisions 5.1 (oxidizer), 5.2 (organic peroxide), 6.1 (toxic), and Class 8 (corrosive to skin only), but does not apply to flammable liquids.

Wetlines are product piping located beneath the cargo tank on MC 306, MC 307, DOT 406, and DOT 407 CTMVs that remain filled with product after loading or unloading. Wetlines on a five-compartment CTMV carrying gasoline typically contain 30–50 gallons of gasoline. If another vehicle strikes the side of a CTMV, the impact likely will fracture unprotected wetlines. In such collisions, the other vehicle is often wedged under the CTMV. With the driver and passenger(s) trapped in the vehicle, the fractured wetlines may release their entire contents onto the other vehicle. If ignited, fire will rapidly engulf the vehicle. When ignited, a gasoline spill of 50 gallons will create a fire over an area of up to 5000 square feet, dooming those trapped in a vehicle at the site of the release and fire. If it is not extinguished immediately, the fire could result in significant loss of life or damage to property or the environment.

The December 30, 2004 NPRM proposed to prohibit the carriage of flammable liquids in wetlines, unless the cargo tank motor vehicle conforms to the accident damage protection requirements of § 178.337–10 or the bottom damage protection requirements of § 178.345–8(b)(1), as appropriate. We proposed a quantity limit of one liter or less in each pipe after it is drained. The NPRM included an exception from the proposed requirements for truck-mounted DOT specification CTMVs. The NPRM proposed to make the changes effective two years after the effective date of a final rule and to permit CTMV operators five years to phase in requirements applicable to existing CTMVs. The comment period for the proposed rule was to end on February 28, 2005.

The American Trucking Associations (ATA) and its affiliate the National Tank Truck Carriers, Inc. (NTTC), requested an additional 180 days in which to submit comments to the NPRM. ATA stated that an extension is necessary in order to accurately measure the proposal's full impact on the industry. NTTC asserted that a number of assumptions made in the NPRM and regulatory evaluation are wrong and that an extension is necessary in order to solicit and submit correct data from their industry. The Petroleum Marketers Association of America (PMAA) and the American Petroleum Institute (API) also requested an additional 180 days in which to submit comments to the NPRM. PMAA expressed concerns about the costs and available technology as a result of retrofitting existing CTMVs. API's extension request is identical to ATA's.

Because it appears that an extension of the comment period to allow additional time for commenters to address the proposals in the NPRM would be beneficial, we are allowing an additional 60 days for submission of comments, which should be sufficient to accommodate commenters' need for additional time. We do not agree that an extension of 180 days is in the public interest. Accordingly, the closing date of

the comment period is extended to April 28, 2005.

II. Regulatory Notice

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.*

Issued in Washington, DC, on February 4, 2005 under the authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 05–2561 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 70, No. 27

Thursday, February 10, 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

Forest Service

Plumas National Forest, Feather River Ranger District, California, Bald Mountain Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest trees from approximately 90 acres using group selection silviculture methods, from approximately 100 acres using individual tree selection silviculture methods, and perform associated road system improvements within the pilot project area defined in the Herger-Feinstein Quincy Library Group Forest Recovery Act, October 1998 (HFQLGFRA).

DATES: Comments concerning the scope of the analysis must be received within 30 days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by May, 2005 and the final environmental impact statement is expected by August, 2005.

ADDRESSES: Send written comments to Karen L. Hayden, District Ranger, Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965. Submit electronic comments to *comments-pacificsouthwest-plumas-featherrvr@fs.fed.us.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about filing comments.

FOR FURTHER INFORMATION CONTACT: Katherine Worn, Project Leader, at the above address or call (530) 534–6500.

SUPPLEMENTARY INFORMATION: The project area is approximately 8,000 acres and is entirely located within Plumas County, California. It is generally situated around Little Grass Valley Reservoir and the South Fork of the Feather River. The LaPorte/Quincy Road borders the project area to the east while Lumpkin Road and Forest Service Roads 22N27 and 22N57 transect the western half of the project area. The legal description of the project area is as follows: T.22N, R.8E, part of Section 24; T.22N., R.9E., portions of Sections 12, 13, 17, 18, 19, 20, 24, 27, 28, 29 and 34; and T.22N., R.10E. portions of Sections 7, 8, 17, 18, of the Mount Diablo Base Meridian. The project area ranges in elevation from 5,000 to 6,500 feet above mean sea level.

Purpose and Need for Action

Resource specialists examined the project area to determine the existing condition and to identify opportunities and specific management practices that could be implemented to accomplish management direction and goals described in the Plumas National Forest Land and Resource Management Plan, August 1988, as amended by the August 1999 Record of Decision for the HFQLGFRA, as well as the Sierra Nevada Framework Forest Plan Amendment of January 2004, which amended the Sierra Nevada Framework Forest Plan Amendment of January 2001.

Within the project area, treatment is needed to increase representation of fire-adapted tree species, improve forest health and vigor, reduce fuels, and increase canopy layer, seral stage, and age class diversity. The purpose of the project is to meet those needs by implementing group selection and individual tree selection silvicultural systems as directed in the HFQLGFRA and the Sierra Nevada Forest Plan Amendment 2004 Record of Decision.

The project is designed to: (1) Test the effectiveness of group selection and individual tree selection treatments in achieving an all-aged, multistory, fire-resilient forest, (2) provide an adequate timber supply that contributes to the economic stability of rural communities, and (3) promote ecological health of the forest.

Proposed Action

The Forest Service proposes to conduct group selection timber harvest in approximately 50 groups covering approximately 90 acres. Group selection involves harvest of trees up to 30-inches in diameter from small (less than two acres) areas, resulting in uneven-aged (all-aged) forests made up of a patchwork of small groups of same-aged trees. Undamaged, healthy, shade-tolerant conifers would be retained in groups. Individual tree selection would be used to remove individually-selected trees less than 30-inches in diameter from approximately 100 acres. Non-merchantable trees (small trees less than nine inches in diameter) would be masticated or removed for biomass to reduce ladder fuels and increase crown base height.

Responsible Official

Karen L. Hayden, District Ranger, Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965 is the Responsible Official.

Nature of Decision To Be Made

The Forest Service must decide whether it will implement this proposal, an alternative design that moves the area towards the desired condition, or not to implement any project at this time.

Scoping Process

Notice of the proposed action was first listed in the Plumas National Forest's Schedule of Proposed Actions in October, 1997. In August of 1998, a scoping letter was sent to interest and affected tribes, individuals, organizations, and Federal, State, and local agencies with responsibilities for local resource management. The Bald Mountain Landscape Analysis was completed in October, 1998 to: (1) Evaluate the condition of the landscape, (2) develop desired conditions for the Bald Mountain landscape, and (3) identify opportunities for moving the landscape toward desired conditions. An Environmental Assessment for the project was completed in March, 1999 and distributed for public review. A Decision Notice to proceed with the Bald Mountain Project was signed in June of 1999. The project was designed to treat approximately 1,907 acres by thinning and 66 acres by modified group selection. The resulting Decision (June, 1999) was never implemented. In December of 2004, a new proposed action for the Bald Mountain project was mailed to 192 individuals, groups, organizations, tribes, and Federal, State, and local agencies. The scoping letter was sent to those who expressed interest in the proposal, those who owned property or held mining claims in and

adjacent to the project area, and to agencies with responsibilities for local resource management. The revised proposal called for harvesting trees using group selection methods on approximately 90 acres and by individual tree selection on approximately 100 acres within the HFQLGFRA pilot project area. A Legal Notice announcing the start of the scoping process was published in the *Oroville Mercury-Register* on December 17, 2004. Eight comments have been received since the start of the scoping period.

After evaluating responses to the December 2004 scoping, the Forest Service has decided to prepare an environmental impact statement (EIS) for the Bald Mountain project. This notice of intent invites additional public comment on this proposal and initiates the preparation of the environmental impact statement. The proposal has not been changed since scoping in December 24. Comments submitted at that time will be used in the environmental analysis process. Due to the extensive scoping efforts already conducted, no scoping meeting is planned.

The scoping process will include identification of potential issues, in depth analysis of significant issues, development of alternatives to the proposed action, and determination of potential environmental effects of the proposal and alternatives. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. The public is encouraged to take part in the planning process and to visit with Forest Service officials at any time during the analysis and prior to the decision.

Addresses

Comments may be: (1) Mailed to the Responsible Official; (2) hand delivered between the hours of 8 a.m.–4:30 p.m. weekdays Pacific Time; (3) faxed to (530) 532–1210; or (4) electronically mailed to: *comments-pacificsouthwest-plumas-featherrvr@fs.fed.us.* Comments submitted electronically must be in Rich Text Format (.rtf).

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments submitted during the December 2004 scoping period will be used in the environmental analysis process. Those who submitted comments at that time do not need to comment again, unless they have new comments they would like to provide. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed vegetation management activities.

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 forty-five days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the forty-five day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

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. 05–2605 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest, Feather River Ranger District, California, Watdog Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to construct approximately 24 miles of defensible fuel profile zones (DFPZs), harvest trees from approximately 260 acres using group selection silviculture methods, and perform associated road-system improvements within the pilot project area defined in the Herger-Feinstein Quincy Library Group Forest Recovery Act, October 1998 (HFQLGFRA). The purpose of this project is to reduce the potential size of wildfires, provide fire suppression personnel safe locations for taking action against wildfires, achieve an all-aged, multi-story, fire-resilient forest, and provide an adequate timber supply that contributes to the economic health of rural communities as directed in the HFQLGFRA and Sierra Nevada Forest Plan Amendment, January 2004.

DATES: Comments concerning the scope of the analysis must be received within 30 days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by April, 2005 and the final environmental impact statement is expected by July, 2005.

ADDRESSES: Send written comments concerning this notice to James M. Peña, Forest Supervisor, Plumas National Forest, P.O. Box 11500, 159 Lawrence

Street, Quincy, CA 95971. Submit electronic comments to *comments-pacificsouthwest-plumas@fs.fed.us.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about filing comments.

FOR FURTHER INFORMATION CONTACT: Katherine Worn, Project Leader, Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA 95965, or call (530) 534–6500.

SUPPLEMENTARY INFORMATION: The project area is approximately 6,300 acres and is entirely located within Plumas County, California. It is generally situated between Feather Falls to the west, Little Grass Valley Reservoir to the east, Table Mountain to the north, and Frey Creek to the south. Proposed DFPXZ are located primarily on Hartman and Watson Ridges and include a portion of the north and east ends of Lumpkin Ridge, an area around Camel Peak, and an area near Jackson Ranch. Group selection units are distributed throughout the DFPZs and in some adjacent areas. The area ranges in elevation from approximately 3,000 to 6,200 feet above mean sea level. The legal description of the project area is as follows: Township (T) 21N, Range (R) 6E, portions of Sections 12, 13, 14, 22, 23, and 25; T21N, R7E, portions of Sections 5, 6, 7, 8 and 18; T21N, R8E, portions of Sections 2, 3, and 5; T21N, R9E, portions of Section 19 and 30; T22N, R7E, portions of Sections 13, 14, 23, 24, 26, 27, 32, 33, and 34; and T22N, R8E, portions of Sections 10, 11, 13, 14, 15, 17, 18, 19, 24, 25, 26,27, 28, 29, 33, 34, 35, and 36, Mount Diablo Base and Meridian.

Purpose and Need for Action

Resource specialists examined the project area to determine the existing condition and to identify opportunities and specific management practices that could be implemented to accomplish management direction and goals described in the Plumas National Forest Land and Resource Management Plan, August 1988, as amended by the August 1999 Record of Decision for the HFQLGFRA, as well as the recent Sierra Nevada Framework Forest Plan Amendment of January 2004, which amended the Sierra Nevada Framework Forest Plan Amendment of January 2001. Within the project area, treatment is needed to reduce the potential size of wildfires, provide fire suppression personnel safe locations for taking action against wildfires, achieve an all-aged, multi-story, fire-resilient forest, and provide an adequate timber supply that contributes to the economic health of rural communities. The purpose of the Watdog project is to meet those needs by constructing DFPZs and implementing group selection silvicultural system as directed in the HFQLGFRA and Sierra Nevada Forest Plan Amendment 2004 Record of Decision.

Proposed Action

The Forest Service proposes to construct approximately 24 miles of DFPZs averaging ¼ mile in width with a total treatment area of approximately 4,000 acres. A DFPZ is a strategically located strip of land on which fuels, both living and dead, have been modified in order to reduce the potential for sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Proposed DFPZs are located primarily on Hartman and Watson Ridges and include a portion of the north and east ends of Lumpkin Ridge, an area around Camel Peak, and an area near Jackson Ranch.

Group selection timber harvest would be conducted in 172 groups covering approximately 260 acres within and near the DFPZ treatment units. Group selection involves harvest of trees up to 30-inches in diameter from small (less than two acres) areas, resulting in uneven-aged (all-aged) forests made up of a patchwork of small groups of same-aged trees.

Responsible Official

James M. Peña, Forest Supervisor, P.O. Box 11500, 159 Lawrence Street, Quincy, CA 95971, is the Responsible Official.

Nature of Decision To Be Made

The Forest Service must decide whether it will implement this proposal, an alternative design that moves the area towards the desired condition, or not to implement any project at this time.

Scoping Process

In October of 2002, the Watdog DFPZ Project was included in the Plumas National Forest's Schedule of Proposed Action, which was posted on the Plumas National Forest's internet website and mailed to interested parties. The proposal was to construct approximately 25 miles of DFPZs. A public field trip to units in proposed DFPZs was held on October 30, 2002. In March of 2003, a scoping letter for the Watdog DFPZ Project was mailed to interested and affected tribes, individuals, organizations, and Federal, State, and local agencies with responsibilities for local resource management. A Legal Notice announcing the start of the scoping process was published in the Oroville Mercury-Register on March 4, 2003.

In December of 2004, a revised proposed action was mailed to 93 individuals, groups, organizations, tribes, and Federal, State, and local agencies. The scoping letter was sent to those who expressed interest in the proposal, those who owned property or held mining claims in and adjacent to the project area, and to agencies with responsibilities for local resource management. The revised proposal called for the construction of approximately 24 miles of DFPZs and timber harvesting using group selection on approximately 260 acres. A Legal Notice announcing the start of the scoping process was published in the Feather River Bulletin on December 7, 2004. Six comments were received during the 30-day comment period.

After evaluating responses to the December 2004 scoping period, the Forest Service has decided to prepare an environmental impact statement (EIS) for the Watdog project. This notice of intent invites additional public comment on this proposal and initiates the preparation of the environmental impact statement. The proposal has not been changed since scoping in December 2004. Comments submitted at that time will be used in the environmental analysis process. Due to the extensive scoping efforts already conducted, no scoping meeting is planned.

The scoping process will include identification of potential issues, in depth analysis of significant issues, development of alternatives to the proposed action, and determination of potential environmental effects of the proposal and alternatives. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. The public is encouraged to take part in the planning process and to visit with Forest Service officials at any time during the analysis and prior to the decision.

Addresses

Comments may be: (1) Mailed to the Responsible Official; (2) hand delivered between the hours of 8 a.m.–4:30 p.m. weekdays Pacific Time; (3) faxed to (530) 283–7746; or (4) electronically mailed to: *comments-pacificsouthwest-plumas@fs.fed.us.* Comments submitted electronically must be in Rich Text Format (.rtf).

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments submitted during the December 2004 scoping period will be used in the environmental analysis process. Those who submitted comments at that time do not need to comment again, unless they have new comments they would like to provide. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed vegetation management activities.

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 forty-five days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the forty-five day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

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. 05–2607 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest; California; Browns Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Browns Project is being proposed by the Shasta-Trinity National Forest to improve fuel condition through commercial timber harvest and closing of some unneeded roads. The purpose for the project is to decrease fire hazards in an area adjacent to the community of Weaverville. The project area located within T34N, R10W, sections 27, 34, and 36; T33N, R10W, section 1; T34N R9W, sections 16, 20–22, and 27–34; T33N, R9W, section 6, M.D.M. approximately 2 miles north of the community of Weaverville, California

DATES: Comments concerning the scope of the analysis must be received no later than 30 days after the publication of this notice in the **Federal Register** The draft environmental impact statement is expected in April, 2005, and the final environmental impact statement is expected in July, 2005.

ADDRESSES: Send written comments to Sam Frink, Planning Team Leader, c/o USFS, P.O. Box 1190, Weaverville, CA 96093. For further information, mail correspondence to Sam Frink, Planning Team Leader, c/o USFS, PO Box 1190, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Bill Branham, Planning Officer, phone 530–623–1750.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Thinning will reduce overcrowded conditions in forest areas where too many trees currently exist. Reducing density will improve the health of these forest areas by making more water, nutrients and sunlight available for use by the remaining trees (conifers and hardwoods). This will improve the health of the forest and improve tree resistence to insects, pathogens and drought. Too many small trees in the understory can act as a fuel ladder and carry fire into the canopy layer of the forest resulting in the death of a large number of trees. Small trees act as a fuel ladder because their crowns are closer to the ground and allow flames to move into the canopy. Removing small trees raises the crown base height and reduces the likelihood of flames reaching the canopy layer.

The removal of groups of trees and re-planting with tree seedlings is being proposed to increase the amount of younger forests to improve the diversity of age classes. The harvest and sale of wood products will provide wood products to society and offset the cost of treatment.

Proposed Action

The project will include the following treatments:

—Timber harvest treatments will include thinning harvest on about 760 acres, group selection harvest (2 acre groups of trees) and re-planting with tree seedlings on about 40 acres. The volume of timber harvested will amount to about 9.0 million board feet. Within the thinning harvest areas we intend to remove the poorer growing, smaller trees. The healthiest, better growing, generally larger trees will be retained. Thinning areas will have a crown closure of about 40% after the harvest is completed, except within riparian reserve areas, where crown closure will be about 60%. After the harvest treatments, accumulations of excess down wood and slash will be either underburned or piled and burned.

—The project includes about 5 miles of road construction and about 3 miles of road reconstruction. About 4 miles of temporary roads constructed to

access the harvest areas will subsequently be closed.

Implementation of the proposed project is planned during the calendar years 2005–1010, and may involve multiple timber sale and service contracts. No permits or special authorizations will be required.

Lead and Cooperating Agencies

Lead Agency: USDA Forest Service.

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, California 96002.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need, or take no action.

Scoping

Information on the proposed action will be noticed in the Record Searchlight and the Trinity Journal. The proposed action will be listed in the Shasta-Trinity National Forest's quarterly schedule of proposed actions (SOPA). This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Comments submitted during this scoping process should be in writing and specific to the proposed action. Comments should clearly describe any issues you have with the proposed action. Issues are points of debate, dispute, concern, or disagreement about the environmental effects of the proposal. Issues identified as significant to the proposed action will be used in the environmental analysis.

The scoping process includes:

(a) Identifying potential issues.

(b) Identifying issues to be analyzed in depth.

(c) Eliminating non-significant issues or those previously covered by a relevant previous environmental analysis.

(d) Exploring additional alternatives.

(e) Identifying potential environmental effects of the proposed action and alternatives.

Preliminary Issues and Alternatives

Issues will be identified as a result of scoping. One alternative has been identified that builds fewer roads.

Early Notice of Importance of public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 3, 2005.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 05–2606 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals for Woody Biomass Utilization Grant—Hazardous Fuel Reduction on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Request for proposals.

SUMMARY: As part of implementing the Administration's Healthy Forest Restoration Initiative, the USDA Forest Service, Forest Products Laboratory, requests proposals for forest products projects that increase the use of woody biomass from national forest lands. The woody biomass utilization grant program is intended to help improve utilization of, and create markets for, small-diameter material and low-valued trees removed from hazardous fuel reduction activities. These funds are targeted to help communities, entrepreneurs, and others turn residues from hazardous fuel reduction projects into marketable forest products and/or energy products.

DATES: *Pre-application Deadline:* Close of business March 15, 2005.

Full application Deadline: Close of business May 16, 2005.

ADDRESSES: All pre- and full application packages must be sent to the following address: ATTN: Shawn Lacina, Grants and Agreements Specialist, Forest Products Laboratory, 507 Highland Ave., Madison, WI 53705–2398. More detailed information regarding what to include in the pre- and full application and definitions of terms are available electronically at *http://www.fpl.fs.fed.us/tmu* (under biomass grants). Paper copies of the information also are available by contacting the USDA Forest Service, Forest Products Laboratory.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Shawn Lacina, Grants and Agreements Specialist, via electronic mail at *slacina@fs.fed.us*, or via telephone at 608–231–9282. For technical questions, please contact Susan LeVan-Green, Program Manager, via electronic mail at *slevan@fs.fed.us*, or via telephone at 608–231–9504.

SUPPLEMENTARY INFORMATION: As authorized by Public Law 108–148, the

Healthy Forest Restoration Act of 2003, the agency is looking for creative solutions to address the nationwide challenge in dealing with low-valued material removed from hazardous fuel reduction efforts. The woody biomass utilization grant program has a pre-application submission process, and upon notification, selected pre-applicants will be asked to submit a full-application. Goals of the grant program are the following:

- Help reduce management costs by increasing value of biomass and other forest products generated by hazardous fuel treatments.
- Create incentives and/or reduce business risk for increased use of biomass from National Forest lands (must include National Forest System lands; however, may also include other lands such as, Bureau of Land Management, Tribal, State, local, and private).
- Institute projects that target and help remove economic and market barriers to using small-diameter trees and woody biomass.
- Require a Forest Service letter of support for the hazardous fuels projects on National Forest System lands.

Woody Biomass Grants Program

1. *Eligibility Information.* a. *Eligible Applicants.* Eligible applicants are State, local, and Tribal governments, school districts, communities, non-profit organizations, businesses, companies, corporations, or special purpose districts, *i.e.,* public utilities districts, fire districts, conservation districts, or ports.

b. *Cost Sharing (Matching Requirement).* Applicants must demonstrate a 20% match from non-Federal sources, which can include cash or in-kind contributions.

2. *Duns Number.* All applicants must include a Dun and Bradstreet (D&B), Data Universal Numbering System (DUNS) number in their full application. For the purpose of this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply for an award. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line (1–866–705–5711) or register on-line at *https://eupdate.dnb.com/requestoptions/government/ccrreg/.*

3. *Award Information.* Up to $4.4 million is available for granting under this program. Individual grants or awards will not be less than $50,000 or more than $250,000. Successful applicants will be announced by June 1, 2005. The maximum length of the award is 3 years from the date of award. Written, quarterly financial and semi-annual performance reports will be required.

4. *Application Review Process.* A two-step technical evaluation process will be used for applications submitted under this solicitation. The first step requires the applicant to submit a preliminary application (pre-application). Pre-applications will be evaluated on the criteria discussed in section 5.

A review panel, consisting of technical experts from Federal agencies, will judge the pre-applications. Panel members will independently review the pre-applications according to the criteria and weighting factors. A total of 100 points is possible. As a result of this preliminary review, successful applications will be invited to submit a full-application package or be removed from further consideration for funding under this solicitation. In either case, a letter of notification will be provided to each applicant.

The second step requires the applicant to submit a full-application package, which will be evaluated based on the same criteria as the preliminary application; namely, the criteria and point system listed on the Forest Products Laboratory's Web site at *http://www.fpl.fs.fed.us/tmu* (under biomass grants).

The full-application package will be evaluated using a two-tiered review system. The first tier involves technical reviews; the second tier involves financial review. Recommendations from the two-tier review will be discussed, ranked, and recommendations made to the Executive Steering Committee, consisting of Federal officials, for final selection.

5. *Evaluation Criteria and Point System*

a. Impact on National Forest System hazardous fuel reduction projects—Weight 40%.

- Condition Class, with higher condition classes receiving more points than the lower condition classes.
- Direct, tangible benefits with and without the grant (increased acres treated for hazardous fuel treatments, increased value of raw material removed from hazardous fuel treatments, cost per acre).
- Indirect, intangible benefit (such as air quality benefits, water quality benefits, socio-economic, wildlife habitat, and watershed improvements).

b. Technical Approach Work Plan—Weight 25%.

- Technical feasibility of the proposed work.
- Adequacy and completeness of the proposed tasks.
- Likelihood of meeting project objectives.
- Reasonableness of time schedule.
- Identified deliverables/tasks.
- Timeliness—timeframe of the project.
- Evaluation and monitoring.

c. Financial feasibility—Weight 25%.

- Realistic budget and timeframe.
- Thorough financial documentation.
- Level of match

d. Qualifications and experience of applicant—Weight 10%.

- Experience, capabilities (technical and managerial).
- Demonstrated capacity.

If there are no technical or financial problems for the project, full points will be given. If there are minor deficiencies, which could limit success, midway points will be given. If there are major deficiencies, which could render project unsuccessful, minimum points will be given.

6. *Pre-Application Information*

a. *Pre-Application Submission.* Pre-applications are required. Specific content and submission requirements for the pre-application are as follows: Each submittal must be composed of three (3) single-sided paper copies of the pre-application plus one (1) electronic copy on a CD or 3.5-inch diskette in Microsoft Word for PCs or pdf format. Paper copies of the pre-application must be on 8.5- by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters (¾) of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner. No other bindings will be accepted.

b. *Pre-Application Content.* Assemble information in the following order: Cover page, project summary, project narrative, statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on National Forest System lands on hazardous fuels treatments, evaluation and monitoring, budget justification, budget requirements, and appendices. The project narrative should provide a clear description of the work to be undertaken and how it will be accomplished. It should address the technical merit review criteria listed in section 5.

The discussion of the impact on National Forest System lands is a critical component because these proposals are aimed at helping the Forest Service increase the number of acres treated under hazardous fuel treatments (as defined under the Healthy Forest Restoration Act, Pub. L.

108–148). Specifically, applicants should address how and by how much the project would decrease Forest Service hazardous fuel removal costs and/or increase the price one might offer for the biomass. Specifically, proposals should address the following:

- Condition class description.
- What is currently being done with hazardous fuel removals.
- What would be done with removals if grant is awarded.
- Anticipated outcomes and measures of success.
- Documentation of tangible benefits of project as a result of the award. Documentation on intangible benefits. Examples of the information requested are listed on the Forest Products Laboratory's Web site at *http://www.fpl.fs.fed.us/tmu* (under biomass grants).
- Long-Term Benefits of Project: Applicant should address the length of time that benefits and impacts are anticipated, whether or not the project will have long-term consequences (equipment improvements for long-term capacity to handle woody biomass), or just a one-time benefit, such as a subsidy, where benefits end when subsidy ends.
- Expansion capability: Does the project have the potential to expand the application to more forest treatment areas or to use more of the wood from treatments for higher valued uses?

A full description of each content item can be obtained on the Forest Product Laboratory's Web site at *http://www.fpl.fs.fed.us/tmu* (under biomass grants), or by calling the telephone number in the **FOR FURTHER INFORMATION CONTACT** section, or by writing to the address in the **ADDRESSES** section of this notice.

c. *Pre-Application Delivery*. Pre-applications must be received at Forest Products Laboratory no later than 5 p.m. Central Standard time on March 15, 2005; no exceptions will be allowed. All applicants must use certified or express mail service that allows tracking and documentation (*e.g.*, Federal Express, U.S. Postal Service, United Parcel Service, or other) to submit their applications. Hand-delivered, e-mail, or fax applications will not be accepted. Please send pre-applications to the address listed in the **ADDRESSES** section of this notice.

7. *Full Application Information*. USDA Forest Service will request full applications only from those applicants selected in the pre-application process. Only full applications that have been requested by USDA Forest Service will be considered for funding under this solicitation.

a. *Full Application Submission*. Specific content and submission requirements for the full application are as follows: Each submittal must be composed of three (3) single-sided paper copies of the full application plus one (1) electronic copy on a CD or 3.5-inch diskette in Microsoft Word for PCs or pdf format. Paper copies of the full application must be on 8.5- by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters (¾) of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner. Other bindings will not be accepted.

Page limitations refer to all files and associated documents, including attachments, graphics, footnotes, endnotes, bibliography, and any other pertinent documents, when printed in their entirety (single sided), unless otherwise indicated in this solicitation.

The project narrative should provide a clear description of the work to be undertaken and how it will be accomplished. It should address the technical merit review criteria listed in section 5.

b. *Full Application Content*. Assemble information in the following order: cover page, project summary, project narrative, statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on National Forest System lands on hazardous fuels treatments, environmental documentation, project work plan and timeline, social impacts, evaluation and monitoring, equipment description, budget justification, budget requirements, financial feasibility, and appendices.

Detailed financial information is requested to assess the potential and the capability of the applicant. This information will remain confidential. Business consultants and small business development centers can help applicants compile this information. Small business development centers are one source of assistance; their Web site is *http://www.sba.gov/sbdc*. For-profit applicants are required to submit a business plan consisting of the following elements: Management Plan, Marketing Plan, Proforma Statement, Project Break-Even Analysis, and a Sources and Uses Table. Non-profit applicants are required to submit a strategic plan consisting of the following elements: Scope of Work, Capability Statement, Implementation plan, Project Break-Even Analysis, and a Sources and Uses Table. Local, State, and tribal governments and special purpose districts are required to submit the following: scope of work, project work plan, and cost/benefit analysis (examples can be found at *http://www.fpl.fs.fed/tmu* (under biomass grants).

c. *Full Application Delivery*. Full applications must be received at the Forest Products Laboratory no later than 5 p.m., Central Standard time on May 16, 2005; no exceptions will be allowed. All applicants must use certified or express mail service that allows tracking and documentation (*e.g.*, Federal Express, U.S. Postal Service, United Parcel Service, or other) to submit their applications. Hand-delivered, e-mail, or fax applications will not be accepted. Please send full applications to the address provided in the **ADDRESSES** section of this notice.

8. *Appendices*. The following information must be included in the appendix of the pre-application and the full-application package:

a. *Letter of support and biomass availability from local USDA Forest Service District Ranger or Forest Supervisor:* This letter must describe the status of NEPA, acres, timeframes, available volumes, and opportunities for applicant to access these volumes.

b. *Letters of Support from Partners, Individuals, or Organizations:* Letters of support should be included in an appendix and are intended to display the degree of collaboration occurring between the different entities engaged in the project. These letters must include commitments of cash or in-kind services from all partners and must support the amounts listed in the budget. Each letter of support should be limited to one (1) page in length.

c. *Key Personnel Qualifications:* Qualifications of the project manager should be included in an appendix. Qualifications are limited to two (2) pages in length and should contain the following: resume, biographical sketch, references, and demonstrated ability to manage the grant.

Dated: February 3, 2005.

Bov B. Eav,

Associate Deputy Chief for Reserach & Development.

[FR Doc. 05–2562 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, February 14, 2005. The Madera Resource Advisory Committee will meet at the Bass Lake Ranger District Office, North Fork, CA, 93643. The purpose of the meeting is: review the goals for FY 2005 RAC proposals and presentation of potential stewardship projects on the Sierra National Forest.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, February 14, 2005. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Bass Lake Ranger District Office, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643, (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review of goals for FY 2005 RAC proposals; (2) presentation of potential stewardship projects on the forest.

Dated: February 4, 2005.

David W. Martin,

District Ranger, Bass Lake Ranger District.

[FR Doc. 05–2566 Filed 2–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020705B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Habitat Committee (HC) will hold a working meeting which is open to the public.

DATES: The HC meeting will be held Thursday, March 3, 2005, from 10 a.m. until approximately 5 p.m.

ADDRESSES: The HC meeting will be held at the Hotel Vintage Plaza, Burgundy Room, 422 SW Broadway, Portland, OR 97205. Telephone: 800–263–2305.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Gilden, Associate Staff Officer; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the HC meeting is to review habitat-related issues on the agenda of the March 2005 Council meeting in Sacramento, California. Several of these agenda items relate to marine reserves. The HC will also discuss fish habitat issues associated with the Klamath River, and essential fish habitat issues associated with oyster culture.

No management actions will be decided by the HC. Although nonemergency issues not contained in the meeting agendas may come before the HC for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: February 7, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–573 Filed 2–10–05; 8:45 am]

BILLING CODE 3510–10–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.012805A]

Endangered Species; File No. 1516

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Thomas F. Savoy, CT Department of Environmental Protection, Marine Fisheries Division, P.O. Box 719, Old Lyme, Connecticut, 06371, has applied in due form for a permit to take shortnose sturgeon (Acipenser brevirostrum) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before March 14, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9328; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1516.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Mr. Savoy is seeking a permit to enable the Connecticut Department of Environmental Protection to conduct scientific research on shortnose sturgeon in the three major rivers in the state. Annually, 450 fish would be captured via gill net, trammel net, and trawl; measured; PIT tagged; and

released in the Connecticut River between river kilometers 0 and 140. A subset of 100 would also be gastric lavaged, a subset of 50 would also have a pectoral fin ray removed, and a subset of 25 would also have a sonic/radio tag attached. Annually, 300 eggs and larvae would be collected by D-net. Additionally, 50 fish annually would be captured via gill net, trammel net, and trawl; measured, PIT tagged; and released in either the Thames or Housatonic Rivers. Mr. Savoy is seeking authorization for these activities for five years from the date of permit issuance.

Dated: February 4, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2628 Filed 2–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020305A]

Marine Mammals; File No. 984–1587

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

ACTION: Addendum to amendment request.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has requested an addendum to an amendment request to scientific research Permit No. 984–1587–03.

DATES: Written or telefaxed comments must be received on or before March 14, 2005.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 984–1587–04.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: An addendum to the amendment to Permit No. 984–1587–03, published on December 28, 2004 (69 FR 77732), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 984–1587–03 authorizes the permit holder to examine the physiological responses of two adult male dolphins (*Tursiops truncatus*) and five adult female California sea lions (*Zalophus californianus*) during swimming and diving. Testing involves measuring locomotor, thermal, and maintenance costs using voluntary behaviors through training at Long Marine Laboratory. Research activities have been completed for the three adult California sea lions authorized under previous versions of this permit.

The original amendment request was to supplement the current research program on otariid reproductive energetics with two juvenile California sea lions born at Long Marine Laboratory. The addendum requests the addition of research activities on 30 male and 30 female juvenile California sea lions undergoing rehabilitation at The Marine Mammal Center. Measurements of morphology, blood panels, and blood volume will be compared between the animals at Long Marine Lab and the animals at The Marine Mammal Center to investigate growth trends.

The applicant is also requesting an amendment to investigate the formation of acoustically driven bubbles in critical tissues in bottlenose dolphins in relation to recent mass stranding events. This research will be accomplished by measuring nitrogen loading and off loading during exercise trials of the two dolphins in captivity at Long Marine Lab. An amended permit for both projects is requested for three years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 4, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2626 Filed 2–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012805B]

Marine Mammals; Photography Permit Application No. 1074–1779

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Cornell Laboratory of Ornithology (Marc Dantzker, Principal Investigator), Macaulay Library, 159 Sapsucker Woods Road, Ithaca, New York, 14850, has applied in due form for a permit to conduct commercial/educational photography of several species of non-listed marine mammals.

DATES: Written, telefaxed, or e-mail comments must be received on or before March 14, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a

hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1074–1779.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed marine mammals for educational purposes.

The purpose of the proposed project is to film several species of non-listed marine mammals for a multimedia educational outreach package called Sea of Sound. The objective of this project is to teach classrooms and homes around the world about the richness and importance of undersea sound. The closeness of filming would be considered Level B harrassment and therefore would require a permit under the MMPA. The photographers intend to attempt to document marine mammal movement and aggregation under varying conditions. Sea of Sound would be produced using high definition (HD) video and surround sound. The HD video system would be self contained and diver operated. The passive audio system would be deployed using a hydrophone array on short cables or in a self contained unit that is diver operated. The action area would include National Marine Sanctuaries throughout the United States. The Permit would expire five years after the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone(301) 713–2289; fax (301) 427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone(907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9328; fax (978) 281–9394; and,

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

Dated: February 4, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–2627 Filed 2–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Customer Transactional Survey.

Form Number(s): None. The Patent Customer Transactional Survey does not have a USPTO form number assigned to it. When they survey is approved, it will carry the OMB Control Number and the date on which OMB's approval of the information collection expires.

Agency Approval Number: 0651–00XX.

Type of Request: New collection.

Burden: 192 hours.

Number of Respondents: 2,400 responses.

Avg. Hours Per Response: 5 minutes. The USPTO estimates that it takes an average of 5 minutes (0.08 hours) to complete the survey, whether it is mailed to the USPTO or completed online. This includes the time to gather the necessary information, respond to the survey, and submit it to the USPTO.

Needs and Uses: The USPTO developed the Patent Customer Transactional Survey to obtain additional data concerning customer satisfaction in three key areas: the legal positions of the examiners, the search functions of the various Automated Information Systems, and problem resolution at the USPTO. During previous surveys, the USPTO determined that these areas are key drivers of overall customer satisfaction. The USPTO developed this survey to fulfill a key quality initiative in the USPTO's 21st Century Strategic Plan and to gather feedback from the applicant about their satisfaction with how the agency prosecuted their patent application. The USPTO plans to use this data in the development of efficient and cost-effective customer satisfaction improvement strategies and in reporting the agency's performance standards. This voluntary survey is primarily a mail survey, although respondents will be able to respond through the Internet using a web-based version of this survey.

Affected Public: Individuals or households; business or other for-profit; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include ''0651–00XX Patent Customer Transactional Survey copy request'' in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information

Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 14, 2005 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: February 3, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–2572 Filed 2–9–05; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 7, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Applications for Assistance (Sections 8002 and 8003) Impact Aid Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 1,061,320.

Burden Hours: 531,211.

Abstract: A local educational agency must submit an application to the Department to receive Impact Aid payments under sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2679. 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 05–2583 Filed 2–9–05; 8:45 am]

BILLING CODE 4000–01–P

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 14, 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 7, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: NAEP Inclusion/Exclusion Study and Inclusion/Exclusion Study in Trial Urban Districts.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 384.

Burden Hours: 160.

Abstract: The purpose of the two studies is to investigate the processes by which school personnel decide to include or exclude students from the National Assessment of Educational Progress (NAEP).

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 2680. 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 05–2584 Filed 2–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tech-Prep Demonstration Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed requirements and proposed selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education proposes requirements and selection criteria under the Tech-Prep Demonstration Program (TPDP), authorized by section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). The Assistant Secretary may use these requirements and selection criteria for a competition in fiscal year (FY) 2005 and later years. We take this action to clarify the Department's expectations regarding this program, so that TPDP-funded projects will help students, schools, and teachers in their efforts to improve student achievement, meet high standards for high school graduation, and increase enrollment and persistence rates in postsecondary education.

DATES: We must receive your comments on or before March 14, 2005.

ADDRESSES: Address all comments about these proposed requirements and selection criteria to Laura Karl Messenger and Gwen Washington, U.S. Department of Education, OVAE, 400 Maryland Avenue, SW., Potomac Center Plaza, room 11028, Washington DC 20202–7241. If you prefer to send your comments through the Internet, use the following addresses: *laura.messenger@ed.gov; gwen.washington@ed.gov.*

You must include the term ''TPDP Proposed Requirements'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Laura Karl Messenger or Gwen Washington. Telephone: (202) 245–7840 or (202) 245–7790 or via Internet at *laura.messenger@ed.gov* or *gwen.washington@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed requirements and selection criteria. To ensure that your comments have maximum effect in developing the notice of final requirements and selection criteria, we urge you to identify clearly the specific proposed requirement or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed requirements and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed requirements and selection criteria in room 11028, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed requirements and selection criteria. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final requirements and selection criteria in a notice in the **Federal Register**. We will determine the final requirements and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional requirements or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these proposed requirements and selection criteria, we invite applications through a notice in the **Federal Register**.

Discussion of Proposed Requirements and Selection Criteria

We propose to establish program requirements and selection criteria for the TPDP to clarify the Department's expectations regarding the program.

Through the TPDP, the Department funds consortia described in section 204(a) of Perkins III to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students.

To be eligible for funding under the TPDP, a consortium must include at least one member in each of the following three categories:

(1) A local educational agency, an intermediate educational agency, an area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs;

(2) (a) A nonprofit institution of higher education that offers a 2-year associate degree, 2-year certificate, or 2-year postsecondary apprenticeship program, or (b) a proprietary institution of higher education that offers a 2-year associate degree program; and

(3) A business (see section 207(b)(1)(B) of Perkins III).

Under the provisions of section 204(a)(1) of Perkins III, to be eligible for consortium membership both nonprofit and proprietary institutions of higher education, including institutions receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and tribally controlled postsecondary vocational and technical institutions, must be qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965 (HEA).

In addition, nonprofit institutions of higher education are eligible only if they are not prohibited from receiving assistance under HEA, title IV, part B (20 U.S.C. 1071 *et seq.*), pursuant to the provisions of section 435(a)(3) of HEA (20 U.S.C. 1083(a)). Proprietary institutions of higher education are eligible only if they are not subject to a default management plan required by the Secretary.

Under the provisions of section 204(a)(2) of Perkins III, consortia may also include one or more: (1) Institutions of higher education that award baccalaureate degrees; (2) employer organizations; or (3) labor organizations.

Proposed Requirements

To achieve the purposes of section 207 of Perkins III, we propose the following requirements. We may apply these requirements to any TPDP competition and to any projects funded in the future.

(1) Each applicant must submit a signed consortium agreement (Agreement), providing evidence that each of the categories of membership required under section 207 of Perkins III has been satisfied and that each of the required members is eligible for membership under the provisions of Perkins III. The Agreement must contain a signature of commitment from each participating secondary school, community college, and business member, affirming that those entities have formed a consortium to develop, implement, and sustain a TPDP project as described under section 207 of Perkins III. The Agreement also must describe the roles and responsibilities of each consortium member within the proposed TPDP project. The format for the Agreement will be included in the application package.

(2) Each applicant must submit a complete proposed project course sequence plan (Plan), for each program of study within the proposed TPDP project, to demonstrate how the proposed instructional program represents a sequential, four-year program of study that meets the specific criteria set forth in sections 202(a)(3) and 204(c) of Perkins III. The Plan must list the course sequence for each program of study within the proposed TPDP project, describing the specific academic and technical coursework required for all four years of the program. The Plan also must summarize program entrance requirements and specify the associate degree or postsecondary certificate to be earned upon completion of the program. The format for the Plan will be included in the application package.

(3) Each applicant must provide evidence that a secondary school will be physically located on the site of a community college and will provide a complete program of academic and technical coursework at the community college that, at a minimum, meets State requirements for high school graduation. Students must be enrolled full-time in the high school on the community college campus. However, enrolled students may participate in extracurricular activities at their original high school. Proposed projects that involve only the ''virtual'' location of a secondary school on the site of a community college, and projects that involve only satellite community college sites located on the premises of secondary schools, are not eligible for support under this program.

(4) Each applicant must provide an assurance that it will enroll its first student cohort and begin classes by September of the calendar year following the calendar year in which the grant award is made, and enroll its second, third, and fourth student cohorts by September of each subsequent year of the proposed TPDP project.

(5) Each applicant must submit enrollment goals for the number of students in each student cohort to be enrolled in each year of the proposed TPDP project.

(6) Each applicant must submit annual performance goals for each of the performance indicators discussed below. Successful applicants must reach agreement with us on their annual performance goals for each performance indicator. TPDP-funded projects will be required to use the following performance indicators to measure the progress of students in the TPDP-funded project—

(a) Retention of high school juniors for their senior year in the TPDP-funded program of study;

(b) Completion of one or more mathematics courses in addition to Algebra I, Algebra II, and Geometry by the time of high school graduation;

(c) Completion of one or more science courses in addition to high school Biology and Chemistry by the time of high school graduation;

(d) High school graduation;

(e) Attainment of nine or more postsecondary credits by the time of high school graduation;

(f) Enrollment in postsecondary education following high school graduation;

(g) Reduction in the need for remediation in postsecondary education following high school; and

(h) Attainment of a postsecondary degree or certificate.

(7) Each applicant must submit a plan for annual project evaluations. Each evaluation must be conducted by an independent evaluator and must provide information to the members of the consortium and project staff that will be useful in gauging progress and identifying areas for improvement, particularly with regard to the required performance indicators.

(8) Each applicant must provide an assurance that it will submit annual reports of anticipated enrollment that include the number of students in each cohort who will be enrolled for the subsequent year and, if that number differs from the enrollment goals for that year stated in the approved application, the reasons for such a difference. Each annual report of anticipated enrollment will be due at the end of April.

(9) Each applicant must provide an assurance that it will submit annual project performance reports and a final

project performance report, that: Summarize the TPDP project's progress and significant accomplishments and provide data on the agreed-upon performance indicators and goals; identify barriers to continued progress and outline solutions; include the annual evaluation report that was prepared by the independent evaluator; and review plans for or progress towards sustained operations after the cessation of Federal support. Each annual performance report will be due within 90 days of the end of each project year and the final performance report will be due 90 days after the end of the project.

Funded projects will be required to comply with all requirements adopted in the notice of final requirements and selection criteria to be published in the **Federal Register**. Failure to comply with any applicable program requirement may subject a grantee to special conditions, withholding, or termination.

Proposed Selection Criteria

We propose to use the following selection criteria to evaluate applications for new grants under this program. We may apply these selection criteria to any TPDP competition in the future.

Note: The maximum score for all of these criteria will be 100 points. We will inform applicants of the points or weights assigned to each criterion and sub-criterion for any future competition in a notice published in the **Federal Register.** In addition to the points to be awarded to applicants based on the selection criteria adopted in the notice of final requirements and selection criteria to be published in the **Federal Register,** we will award additional points to applications that satisfy the criteria for special consideration under section 207(d)(3) of Perkins III and will inform applicants of the points assigned to the special consideration under section 207(d)(3), in a notice published in the **Federal Register.**

(1) *Quality of the project design.* In determining the quality of the design of the proposed project, we consider the following factors:

(a) The extent to which the applicant demonstrates its readiness to implement a complete, career-oriented, four-year program of study, as evidenced by a formal articulation agreement concerning the structure, content, and sequence of all academic and technical courses to be offered in the proposed tech-prep program and, if applicable, the conditions under which dual credit will be awarded.

(b) The extent to which the applicant's proposed secondary academic and technical course offerings and graduation requirements prepare students to enter postsecondary education without the need for remediation and are aligned with the entrance requirements for postsecondary degree and certificate programs.

(c) The extent to which the proposed instructional program incorporates high academic standards that equal or exceed those established by the State and reflects industry-recognized skills and knowledge.

(d) The extent to which the applicant demonstrates that consortium efforts will align the ninth-grade and tenth-grade curricula with proposed TPDP program entrance requirements, to ensure a sizable, qualified applicant pool for the proposed TPDP program.

(e) The extent to which the applicant presents a detailed student recruitment plan that is likely to be effective in fulfilling the project's enrollment goals for each year of the project.

(f) The extent to which the applicant demonstrates that it has designed a comprehensive academic and career counseling program for participating students at both the secondary and postsecondary levels and will provide specific support services to ensure students' persistence in the program to the attainment of a postsecondary degree or certificate.

(g) The extent to which the applicant demonstrates that the business member(s) of the consortium and other area employers have agreed to provide structured work-based learning opportunities to TPDP students that are directly related to the proposed technical program(s) of study.

(h) The extent to which the proposed project will provide intensive professional development, specifically designed to help achieve the goals of the program, for secondary and postsecondary instructors, counselors, and administrators involved in the program.

(2) *Quality of the management plan.* In determining the quality of the management plan for the proposed project, we consider the following factors:

(a) The extent to which the management plan outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project.

(b) The extent to which the management plan assigns responsibility for the accomplishment of project tasks to specific project personnel and provides timelines for the accomplishment of project tasks.

(c) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to achieve the objectives of the proposed project.

(3) *Quality of project personnel.* In determining the quality of project personnel, we consider the following factors:

(a) The extent to which the applicant encourages applications for employment from members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The qualifications, including relevant training and experience, of the project director.

(c) The qualifications, including relevant training and experience, of key project personnel, including teachers, counselors, administrators, and project consultants.

(4) *Adequacy of resources.* In determining the adequacy of resources for the proposed project, we consider the following factors:

(a) The adequacy of support, including facilities, equipment, supplies, and other resources, from the participating institutions.

(b) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project.

(5) *Quality of the project evaluation.* In determining the quality of the evaluation, we consider the following factors:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate, will solicit input from all consortium members regarding program effectiveness, and will yield accurate and reliable data for each of the required performance indicators.

(b) The extent to which the evaluation will produce reports or other documents at appropriate intervals to enable consortium members to use the data for planning and decision making for continuous program improvement.

(c) The extent to which the independent evaluator possesses the necessary background and expertise to carry out the evaluation.

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed actions in this notice are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative ''of the actions proposed in this notice, we have determined that the benefits of the proposed requirements and selection criteria justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.353 Tech-Prep Demonstration Program)

Program Authority: 20 U.S.C. 2376.

Dated: February 4, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–2601 Filed 2–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of the Chief Financial Officer

Electronic Submission of Grant Applications Through Grants.Gov and e-Application

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Notice of new policies and procedural requirements for the electronic submission of grant applications.

SUMMARY: The Chief Financial Officer of the Department of Education (Department) announces new policies and procedural requirements for the electronic submission of grant applications through the governmentwide grants application site, Grants.gov, and the Department's grants application site, e-Application.

FOR FURTHER INFORMATION CONTACT: For information on Grants.gov, call the Grants.gov Help Desk at 1–800–518-Grants. For information regarding the Department's e-Application System, call the GAPS Help Desk at 1–888–336–8936. For general questions about the new policies and requirements announced in this notice, contact Blanca Rodriguez or Charlesetta Griffin, U.S. Department of Education, 550 12th Street, SW., room 7107, Potomac Center Plaza, Washington, DC 20202–4250. Telephone: Blanca Rodriguez at 202–245–6121 or Charlesetta Griffin at 202–245–6157 or by e-mail: *blanca.rodriguez@ed.gov* or *charlesetta.griffin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in this section.

SUPPLEMENTARY INFORMATION: This notice informs potential applicants for U.S. Department of Education grants of certain new policies and procedural requirements for the electronic submission of grant applications.

Transition to Grants.gov. For certain fiscal year (FY) 2005 grant competitions, the Department will require applicants to submit their applications electronically through Grants.gov instead of through the Department's e-Application system. Grants.gov is a unified Federal Web site that allows organizations (*e.g.*, local educational agencies, state educational agencies, institutions of higher education, non-profit entities) and individuals to electronically find grant opportunities and apply for grants from all Federal grant-making agencies.

As a partner agency working on the development of Grants.gov, the Department is committed to using Grants.gov in helping potential grantees find grant opportunities (*http://www.grants.gov/Find*) and apply for grants (*http://www.grants.gov/Apply*). Currently, the Department posts synopses of *all* its discretionary grant funding opportunity announcements in the FIND section of Grants.gov. This year, the Department will also provide for applicants to submit electronic applications through the APPLY section of Grants.gov for selected grant programs.

You can immediately start searching the FIND section of Grants.gov, at the above Web address, for Federal grant opportunities. You can also register at the Web site to receive automatic e-mail notifications of new grant opportunities as they are posted.

To prepare to use the APPLY function of Grants.gov, we strongly recommend that you immediately initiate and complete the ''Get Started'' steps to register with Grants.gov at *http://www.grants.gov/GetStarted*. Although the steps can be completed within a few days in many cases, we strongly advise against waiting until a specific grant opportunity is announced before initiating the Grants.gov registration process to avoid facing unexpected delays that could result in the rejection of your application.

The Department does not intend to use the Grants.gov system for all of the Department's grant competitions. You must consult the Department's official grant application notice to determine the application procedures for each program. For those competitions accepting electronic applications, the official grant application notice will specify whether electronic applications are to be submitted through Grants.gov or the Department's e-Application system. The grant application notice is the final authority for this determination. However, the Department's Forecast of Funding Opportunities includes information on grant competitions that *may* use the APPLY function of Grants.gov this year. The Forecast may be accessed at *http://www.ed.gov/fund/grant/find/edlite-forecast.html*. It is important to note that if a competition is using the APPLY function of Grants.gov, it will not be using e-Application, and vice versa. Over the next several years, the Department plans to use the APPLY function of Grants.gov as the primary

means for accepting electronic grant applications.

Exceptions to Mandatory Electronic Filing Requirement. We also announce a change in our policy and procedures for permitting applicants to submit paper applications in those competitions where the Department requires the electronic submission of applications through Grants.gov or e-Application. Under this new policy, when we require that applicants submit an application electronically through Grants.gov or e-Application, we will permit an exception to this requirement and will allow the submission of an application in paper format by mail or hand delivery *only* in two sets of circumstances. Specifically, an applicant will be permitted to submit an application in paper format by mail or hand delivery if the applicant—

(a) does not have access to the Internet; or

(b) does not have the capacity to upload large documents to the Department's e-Application system or the Grants.gov application system; and

(c) submits a written statement to the Department that the applicant qualifies for an exception under one of these grounds.

The written statement must be mailed or faxed to the program office (include the program name and CFDA number) no later than two weeks before the application deadline date (14 calendar days, or if the fourteenth calendar day falls on a Federal holiday, the next business day following the Federal holiday). A fax must be received by the Department on or before this date and an applicant should ensure that it retains a receipt of the faxed transmission. A mailed statement must be postmarked on or before this date and applicants should refer to the grant application notice for acceptable forms of proof of mailing. Unlike our prior policy, we will *not* accept requests for waiver of the electronic submission requirement up until the application deadline date.

If an applicant provides its statement on or before the two-week deadline, the Department will accept the statement and paper application and will not provide any response to the statement. If an applicant submits a paper application but fails to submit a statement or does not submit a statement in a timely manner, the Department will not accept the applicant's paper application. The Department will notify an applicant if it is not accepting the applicant's paper application.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: February 4, 2005.

Jack Martin,

Chief Financial Officer.

[FR Doc. 05–2600 Filed 2–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–61–000]

Algonquin Gas Transmission, LLC; Notice of Request Under Blanket Authorization

February 4, 2005.

Take notice that on January 28, 2005, Algonquin Gas Transmission, LLC (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP05–61–000, an application pursuant to sections 157.205, 157.208 and 157.216 of the Commission's Regulations implementing the Natural Gas Act (NGA) as amended, for authorization to abandon certain facilities, and to construct and operate replacement facilities on its J–1 System pipeline in the cities of Medford and Everett, in Middlesex County, Massachusetts. Algonquin further explains that it seeks to comply with Department of Transportation safety regulations, under Algonquin's blanket certificate issued in Docket No. CP87–317–000 pursuant to section 7 of the NGA. Any questions concerning this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, at (713) 627–5113.

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 Section 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 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–566 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11810–007]

City of Augusta, GA; Notice Dismissing Request for Rehearing

February 3, 2005.

By letter of May 5, 2004, Commission staff informed the City of Augusta, Georgia (Augusta), that it would be required to obtain water quality certification under section 401(a) of the Clean Water Act, 33 U.S.C. 1341(a), from the State of South Carolina in connection with Augusta's application for an original license for the Augusta Canal Project No. 11810, located on the Savannah River in Georgia and South Carolina. Section 313 of the Federal Power Act (FPA), 16 U.S.C. 825l, establishes the right of a party aggrieved by a Commission order to seek rehearing of that order within 30 days of its issuance. Augusta did not seek

rehearing but, on June 4, 2004, sought reconsideration of the letter, asking the Commission to vacate the letter on the ground that certification was not required. By order issued November 23, 2004, 109 FERC ¶ 61,210 (2004), the Commission denied reconsideration as to the need for certification but granted Augusta's request for an extension of time to obtain it.

On December 23, 2004, Augusta sought rehearing of the Commission's order. The order on reconsideration, which allowed the staff letter to remain effective, did not create a right to rehearing that had not been created by issuance of the staff letter itself. To the extent that Augusta was aggrieved by the staff letter, a request for rehearing of the letter would have been the appropriate remedy. As Augusta did not seek rehearing of the staff letter, a request for rehearing of the order on reconsideration is effectively an impermissibly late-filed request for rehearing of the letter. Accordingly, Augusta's December 23, 2004, request for rehearing in this proceeding does not lie and is dismissed.

Magalie R. Salas,

Secretary.

[FR Doc. E5–546 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

February 3, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 1490–039.

c. *Date Filed:* November 24, 2004.

d. *Applicant:* Brazos River Authority.

e. *Name of Project:* Morris Sheppard Project.

f. *Location:* The project is located on the Possum Kingdom Reservoir on the Brazos River in Palo Pinto County, Texas. This project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Phillip J. Ford, General Manager/CEO, Brazos River Authority, 4600 Cobbs Drive, PO Box 7555, Waco, TX, 76714–7555, (254) 761–3100.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. *Deadline for filing comments and or motions:* February 22, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–1490–039) on any comments or motions filed. 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 e-filings.

k. *Description of Request:* On January 7, 2005, Commission staff issued Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene and Protests Project No. 1490–038 & 039 which was stated that Brazos River Authority (Authority) was seeking Commission approval to permit the existing 120 slip facility and the addition of 76 boat slips at the Hill Country Harbor Marina (P–1490–039). The application in fact seeks approval for the addition of 182 boat slips.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnLineSupport@ferc.gov* or toll free (866) 208–3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–548 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–063]

Dominion Transmission, Inc.; Notice of Negotiated Rate

February 3, 2005.

Take notice that on January 31, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective February 1, 2005:

Eleventh Revised Sheet No. 1300 and Sixth Revised Sheet No. 1400

DTI states that the purpose of this filing is to extend a previously approved negotiated rate agreement between Sithe Energy Marketing, LP and DTI.

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. E5–556 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–015]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

February 3, 2005.

Take notice that, on January 31, 2005, East Tennessee Natural Gas, LLC (East Tennessee) submitted a compliance filing pursuant to the Commission's May 27, 2004, Order in Docket No. RP97–13–013.

East Tennessee states that copies of the filing were served on all customers and interested State commissions, as well as all parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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. E5–557 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–59–000]

El Paso Natural Gas Company; Notice of Application for Abandonment

February 4, 2005.

Take notice that on January 26, 2005, El Paso Natural Gas Company (El Paso), filed an application in Docket No. CP05–59–000, pursuant to section 7(b) of the Natural Gas Act (NGA) and section 157.5, et seq., of the Commission's Regulations, for permission and approval to abandon, in place, the compressor facilities, with appurtenances, located in Luna County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection. El Paso states that as a result of changes in the natural gas markets served by its interstate system in southwestern New Mexico and southeastern Arizona, El Paso's Compressor Station No. 4 has become functionally obsolete and is no longer required in natural gas service.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, El Paso Natural Gas Company, PO Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3788 or fax (719) 520–4318.

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 stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of 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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 (*www.ferc.gov*) under the ''e-Filing'' link.

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: February 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–568 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–069]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

February 3, 2005.

Take notice that on January 31, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Seventeenth Revised Sheet No. 15, to become effective February 1, 2005.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–542 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–169–000]

Gas Transmission Northwest Corporation; Notice of Refund Report

February 3, 2005.

Take notice that on January 31, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing a refund report which reports GTN's refund of revenues collected under its competitive equalization surchage mechanism, pursuant to section 35 of the General Terms & Conditions of GTN's FERC Gas Tariff, Third Revised Volume No. 1–A.

GTN states that a copy of this filing has been served on jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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.

Comment Date: 5 p.m. eastern time on February 10, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–554 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–618–015]

Gas Transmission Northwest Corporation; Notice of Annual Report

February 3, 2005.

Take notice that on January 31, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing in compliance with the Commission's Order of January 12, 1995, in Docket Nos. CP93–618 *et al.,* its ''Annual Report on Deferred Revenue Recovery Mechanism and Revenue Reconciliation for the Year Ending October 31, 2004'' for its Medford, Oregon Lateral.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies, as well as the official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on February 10, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–560 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-274-011]

Kern River Gas Transmission Company; Notice of Annual Threshold Report

February 3, 2005.

Take notice that on January 31, 2005, Kern River Gas Transmission Company (Kern River) tendered for filing its Annual Threshold Report.

Kern River states that the purpose of this filing is to comply with the terms of its Settlement in this proceeding to file an Annual Threshold Report, identifying the eligible firm shippers receiving revenue credits and the amounts received.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. 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.

Comment Date: 5 p.m. eastern time on February 10, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–559 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–604–003 and RP05–70–002 (not consolidated)]

LSP-Cottage Grove, L.P. and Whitewater Limited Partnership v. Northern Natural Gas Company; Notice of Compliance Filing

February 3, 2005.

Take notice that on January 31, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Eighth Revised Sheet No. 66C, with an effective date of January 31, 2005.

Northern states that it is filing the above-referenced tariff sheet and other information in compliance with the Commission's December 30, 2004, Order on Complaint, Rehearing, and Proposed Service Agreement Amendments. Northern further explains that in compliance with the Order, Northern has filed certain agreements with LSP-Cottage Grove, L.P. and LSP-Whitewater Limited Partnership as non-conforming agreements.

Northern states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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. E5–553 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–170–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 3, 2005.

Take notice that on January 31, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Seventy Third Revised Sheet No. 9, to become effective February 1, 2005.

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. E5–555 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–012]

Northern Natural Gas Company; Notice of Compliance Filing

February 3, 2005.

Take notice that on January 31, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets:

Ninth Revised Sheet No. 252
Fourth Revised Sheet No. 253
Second Revised Sheet No. 253A
Sixth Revised Sheet No. 297
Second Revised Sheet No. 309

Northern states that it is filing the above-referenced tariff sheets in compliance with the Commission's December 30, 2004 Order limiting right-of-first-refusal for interim shippers for entitlement associated with capacity that is already under contract for a future period.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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. E5–552 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–150–000]

Northern Natural Gas Company; Notice of Petition for a Limited Waiver

February 4, 2005.

Take notice that on January 10, 2005, Northern Natural Gas Company (Northern) tendered for filing a petition for a limited waiver of its FERC Gas Tariff in order to allow Northern to make available certain pre-built capacity associated with the Bluff Creek/Tomah expansion project on an interim basis without a right of first refusal (ROFR).

Northern states that the requested waiver will address the need to limit ROFR rights to interim shippers for capacity that is under contract in the future by Wisconsin Gas LLC until Northern files tariff language to permanently address this situation.

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.

Comment Date: 5 p.m. eastern time on February 11, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–565 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–063]

TransColorado Gas Transmission Company; Notice of Negotiated Rate

February 3, 2005.

Take notice that on January 31, 2005, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 21 and Fifth Revised Sheet No. 22A , to be effective February 1, 2005.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000. TransColorado further explains that the tendered tariff sheets propose to revise its tariff to reflect an amended negotiated-rate contract.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–558 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–61–000]

Con Edison Energy, Inc., Complainant v. ISO New England, Inc., and New England Power Pool, Respondents; Notice of Complaint Request for Fast Track

February 3, 2005.

Take notice that on February 3, 2005, Con Edison Energy, Inc. (CEE) filed a Complaint against ISO New England, Inc. (ISO–NE) and the New England Power Pool (NEPOOL). Complainant requests that the Commission: (1) Order Respondents to immediately modify Market Rule 1 and NEPOOL Manual 20 to provide that participation in ISO–NE's monthly Unforced Capacity (UCAP) deficiency auctions shall be voluntary, and that excess UCAP not bid by participants shall not be included in such auctions; (2) direct Respondents not to themselves submit bids or dictate permissible bid prices in such auctions; and (3) direct Respondents not to conduct further monthly UCAP deficiency auctions until the changes in (1) and (2) have been effected.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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: February 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–543 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–56–000]

Connecticut Department of Public Utility Control Complainant, v. ISO New England and New England Power Pool Respondent; Notice of Amended Complaint and Extension of Time

February 4, 2005.

On January 14, 2005, Connecticut Department of Public Utility Control (CT DPUC), submitted a petition to the Commission for an order directing the New England Power Pool (NEPOOL) and ISO New England (ISO–NE) to amend the currently effective NEPOOL Open Access transmission Tariff (OATT) and the superseding OATT of the Regional Transmission Organization for New England (RTO–NE), approved by the Commission in ISO New England, Inc.,106 FERC ¶ 61,280 (2004). The Commission issued a Notice of Complaint on January 18, 2005, and established February 7, 2005, as the date for comments and answers to the complaint. On February 2, 2005, CTDPUC filed an amendment to its original complaint.

The Commission is hereby extending the time to file answers to the complaint, as amended on February 2, 2005. Accordingly, responses to CTCPUC's complaint, as amended, are to be filed on or before February 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–567 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of New Docket Query Service in eLibrary

February 3, 2005.

Take notice that, effective January 24, 2005, the Commission added a New Docket Query service to its eLibrary system. This service is accessible from the Search New Docket Numbers (New Dockets) link on the eLibrary home page.

''New Dockets'' enables any interested person to determine the new docket or subdocket number for a new filing as soon as the docket or subdocket number is assigned. After a docket number is assigned to the new filing, Commission staff get the filing ready for eLibrary and issue a notice of filing.

''New Dockets'' works only for dockets or subdockets assigned on or after January 24, 2005. The query defaults to the current date, but users may enter any date range beginning on or after January 24, 2005, provided the range does not exceed 10 calendar days. The query returns a list of dockets and subdockets assigned up to the time of the query for the specified date or date range.

For each new docket/subdocket in the query results, the list displays the docket or subdocket creation date, the filed date, the docket description, and the applicant(s). If the associated document is in eLibrary at the time of the query, there is a link to the Docket or subdocket report.

The results page also provides a link to the Commission's eSubscription service so that users can subscribe to a docket of interest and receive e-mail notification when documents are added to eLibrary.

Questions about the ''New Dockets'' service may be directed to Brooks Carter at 202–502–8145 or *brooks.carter@ferc.gov.* If you need assistance or to report problems using ''New Dockets,'' e-mail *FERCOnlineSupport@ferc.gov* or call 1–866–208–3676 (toll free), or 202–502–6652 (local).

Magalie R. Salas,

Secretary.

[FR Doc. E5–544 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1807–016, et al.]

Carolina Power & Light Company, et al.; Electric Rate and Corporate Filings

February 3, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Carolina Power & Light Company, Florida Power Corporation

[Docket Nos. ER01–1807–016 and ER01–2020–013]

Take notice that on January 31, 2005, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (CP&L) submitted a refund report pursuant to the Commission's order issued May 21, 2003 in Docket Nos. ER01–1807–005, *et al.*, 103 FERC ¶ 61,209 (2003).

CP&L states that copies of the filing were served on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: 5 p.m. eastern time on February 22, 2005.

2. Allegheny Energy Supply Lincoln Generating Facility, LLC

[Docket No. ER01–2066–004]

Take notice that on January 31, 2004 Lincoln Generating Facility, LLC (Lincoln) formerly, Allegheny Energy Supply Lincoln Generating Facility, LLC, filed with the Commission a notice of change in status in connection with the transfer of the membership interests that were held by Allegheny Energy Supply Company, LLC in Lincoln, which owns and operates an approximately 672-megawatt generating facility located in Manhattan, Illinois, to the Grant Peaking Power Holdings, LLC and Colbath Peaking Power, LLC.

Comment Date: 5 p.m. eastern time on February 22, 2005.

3. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER03–86–008, ER03–83–007]

Take notice that on January 28, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), submitted proposed revisions to the Midwest ISO open access transmission tariff, regarding the removal of all TRANSLink references from the OATT in compliance with the Commission's order issued December 29, 2004 in Docket No. ER03–83–004, *et al.*, 109 FERC ¶ 61,374. Midwest ISO requests an effective date of October 30, 2004.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO members, member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all states commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org.* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on February 18, 2005.

4. Allegheny Power System Operating Companies: Monongahela Power Company; Potomac Edison Company; and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva; Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; UGI Utilities, Inc.

[Docket No. ER04–156–006]

Take notice that on January 31, 2005, Allegheny Power System Operating Companies, *et al.* (PJM Settling Transmission Owners) submitted a filing on intra-PJM rate design pursuant to the settlement agreement filed on May 26, 2004 in Docket No. ER04–156–000, *et al.*

Comment Date: 5 p.m. eastern time on February 22, 2005.

5. Diverse Power Incorporated

[Docket No. ER04–444–002]

Take notice that on January 31, 2005, Diverse Power Incorporated, an Electric Membership Corporation (Diverse Power) submitted for filing with the Commission its triennial updated market analysis in accordance with Appendix A of the Commission's letter order issued January 30, 2002 in Docket No. ER02–476–000.

Comment Date: 5 p.m. eastern time on February 22, 2005.

6. PJM Interconnection, L.L.C. Operating Companies, et al.

[Docket Nos. ER04–776–002 and ER04–776–004]

Take notice that on January 18, 2005, as amended on January 21, 2005, the Pennsylvania Public Utility Commission (PaPUC) filed a State Certification setting out certain representations and warranties with respect to the treatment of confidential information disclosed by PJM Interconnection, L.L.C. and/or PJM Market Monitor pursuant to section 18.17.4 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

Comment Date: 5 p.m. eastern time on February 11, 2005.

7. California Independent System Operator Corporation

[Docket No. ER05–149–002]

Take notice that on January 31, 2005, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's December 30, 2004 Order in Docket Nos. ER05–149–000 through ER05–155–000, 109 FERC ¶ 61,391, with regard to the compliance directives in Docket No. ER05–149–000.

The ISO states that this filing has been served on all parties on the official service list for the captioned docket. In addition, the ISO states it has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on February 22, 2005.

8. California Independent System Operator Corporation

[Docket No. ER05–151–002]

Take notice that on January 31, 2005, the California Independent System Operator Corporation (ISO submitted a filing in compliance with the Commission's December 30, 2004 Order in Docket Nos. ER05–149–000 through ER05–155–000, 109 FERC ¶ 61,391, with regard to the compliance directives in Docket No. ER05–151–000.

The ISO states that this filing has been served on all parties on the official service list and posted on the ISO Home Page.

Comment Date: 5 p.m. eastern time on February 22, 2005.

9. California Independent System Operator Corporation

[Docket No. ER05–155–002]

Take notice that on January 31, 2005, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's December 30, 2004 Order in Docket Nos. ER05–149–000 through ER05–155–000, 109 FERC ¶ 61,391, with regard to the compliance directives in Docket No. ER05–155–000.

The ISO states that this filing has been served upon all parties on the official service list for the captioned docket. In addition, the ISO states it has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on February 22, 2005.

10. Allegheny Power

[Docket No. ER05–512–000]

Take notice that on January 31, 2005 Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power, filed eight (8) First Revised Interconnection and Operating Agreements entered into with Allegheny Power's affiliate, Allegheny Energy Supply Company, LLC (AE Supply). Allegheny Power states that the purpose of the revisions is to add a monthly charge to compensate Allegheny Power for AE Supply's use of Allegheny Power's distribution system to deliver the output of the generating facilities to the Allegheny Power transmission system. Allegheny Power requests an effective date of April 1, 2005.

Comment Date: 5 p.m. eastern time on February 22, 2005.

11. PJM Interconnection, L.L.C.

[Docket No. ER05–513–000]

Take notice that on January 31, 2005, the PJM Transmission Owners, acting through the PJM and West Transmission Owners Agreement Administrative Committees, submitted revisions to Schedule 12 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff, to establish the procedures by which the PJM Transmission Owners may, if they so choose, recover the costs incurred in constructing new transmission facilities and to harmonize the rate treatment of new and existing facilities. The PJM Transmission Owners state that this filing is being made to satisfy the obligation regarding the harmonization of rate treatment for new and existing facilities undertaken by certain PJM Transmission Owners in the settlement agreement in Docket Nos. ER04–156–000, *et al.* (Settlement Agreement) approved by the Commission on August 9, 2004, *Allegheny Power System Operating Cos., et al.*, 108 FERC ¶ 61,167 (2004). The PJM Transmission Owners state that the tariff sheets have an effective date of June 1, 2005, in accordance with the Settlement Agreement.

The PJM Transmission Owners state that copies of the filing were served upon all PJM Members, the regulatory

commissions in the PJM Region and parties listed on the official service list in Docket Nos. ER04–156, et al.

Comment Date: 5 p.m. eastern time on February 22, 2005.

12. Avista Corporation

[Docket No. ER05–514–000]

Take notice that on January 31, 2005, Avista Corporation (Avista Corp) filed a Non-conforming Long-Term Firm Point-to-Point Service Agreement between Avista Corp and the Spokane Tribe of Indians under Avista Corp's FERC Electric Tariff Volume No. 8. Avista Corp requests an effective date of April 1, 2005.

Avista Corp states that copies of the filing were served on the Spokane Tribe of Indians.

Comment Date: 5 p.m. eastern time on February 22, 2005.

13. Baltimore Gas and Electric Company and Pepco Holdings, Inc. Operating Affiliates: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company

[Docket No. ER05–515–000]

Take notice that on January 31, 2005, Baltimore Gas and Electric Company (BGE) and the public utility operating affiliates of Pepco Holdings, Inc.: Potomac Electric Power Company, Delmarva Power and Light Company, and Atlantic City Electric Company (collectively, the Transmission Owners) tendered for filing revised sheets to the PJM Interconnection, L.L.C. Open Access Transmission Tariff to implement a transmission cost of service formula rate for the Transmission Owners. A June 1, 2005 effective date is requested.

BGE and the Transmission Owners state that a copy of the filing is being served on representatives of PJM, the public utility commissions of each state in which the Transmission Owners operate, and the PJM members (which includes all affected transmission customers), and is also available for inspection at the Transmission Owners' offices. BGE and the Transmission Owners further state that the filing is being posted on the ListServ compiled in Docket No. ER04–156, and on the PJM Web site, *http://www.PJM.com.*

Comment Date: 5 p.m. eastern time on February 22, 2005.

14. Pacific Gas and Electric Company

[Docket No. ER05–516–000]

Take notice that on January 28, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing two Large Facilities Agreements and nine Small Facilities Agreements, submitted pursuant to the Procedures for Implementation of section 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City) (Procedures) that were approved by this Commission in Docket No. ER99–2532–000 and recently updated in a negotiated clarifying supplement filed in the parties' settlement in Docket No. ER04–215–000. PG&E states that this is PG&E's eighth quarterly filing submitted pursuant to section 4 of the Procedures.

PG&E states that copies of this filing have been served upon City, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on February 22, 2005.

15. PJM Interconnection, L.L.C.

[Docket No. ER05–517–000]

Take notice that on January 31, 2005, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement among PJM, FirstEnergy Nuclear Operating Company, Duquesne Light Company, and American Transmission Systems, Inc. PJM requests an effective date of January 1, 2005.

PJM states that copies of this filing were served on the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on February 22, 2005.

16. Southern Company Services, Inc.

[Docket No. ER05–518–000]

Take notice that, on January 31, 2005, Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), filed a transmission service agreement designated as Third Revised Service Agreement No. 472 under the Open Access Transmission Tariff of Southern Companies, FERC Electric Tariff, Fourth Revised Volume No. 5.

Southern Companies state that a copy of the filing was forwarded to Morgan Stanley Capital Group, the counterparty to the agreement.

Comment Date: 5 p.m. eastern time on February 22, 2005.

17. Southwest Power Pool, Inc.

[Docket No. ER05–519–000]

Take notice that on January 31, 2005, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Network Integration Transmission Service (Service Agreement) between SPP and Tex-La Electric Cooperative of Texas, Inc. (Tex-La), as well as an unexecuted Network Operating Agreement (NOA) between SPP, Tex-La and American Electric Power Company (AEP). SPP seeks an effective date of January 1, 2005 for both the Service Agreement and the NOA.

SPP states that both Tex-La and AEP were served with a copy of this filing.

Comment Date: 5 p.m. eastern time on February 22, 2005.

18. Southwest Power Pool, Inc.

[Docket No. ER05–520–000]

Take notice that on January 31, 2005, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Network Integration Transmission Service (Service Agreement) between SPP and East Texas Electric Cooperative (ETEC), as well as an unexecuted Network Operating Agreement (NOA) between SPP, ETEC and American Electric Power Company. SPP seeks an effective date of January 1, 2004 for both the Service Agreement and the NOA.

SPP states that ETEC and American Electric Power Company were served with a copy of this filing.

Comment Date: 5 p.m. eastern time on February 22, 2005.

19. ISO New England Inc.

[Docket No. ER05–521–000]

Take notice that on January 31, 2005, ISO New England Inc. (the ISO) submitted an unexecuted market participant service agreement (MPSA) on behalf of certain entities, identified in the filing, that are currently New England Power Pool Participants. The ISO proposes to include the MPSA within Attachment E of the ISO's Transmission, Markets and Service Tariff, FERC Electric Tariff No. 3, as Service Agreement No. 1. The ISO states that MPSA sets the basic terms and conditions under which the ISO will provide services and a Market Participant may participate in the markets and programs administered by the ISO as a regional transmission organization.

The ISO also submitted an unexecuted Transmission Service Agreement for Regional Network Service (TSA–RNS) on behalf of the following entities: MassDevelopment; Miller Hydro Group; Princeton Municipal Light Department; and Town of Wolfeboro Municipal Electric Department. The ISO states that it proposes to include the TSA–RNS within Attachment E of the ISO's Transmission, Markets and Service

Tariff, FERC Electric Tariff No. 3, as Service Agreement No. 3. The ISO states that the ISA–RNS sets the basic terms and conditions under which the ISO will provide and a Transmission Customer will receive Regional Network Service.

The ISO also submitted a Service Agreement No. 3 within Attachment E of the ISO's Transmission, Markets and Service Tariff, FERC Electric Tariff No. 3, for future use in the event that unexecuted service agreements need to be filed for the provision of Through or Out Service to entities not required to execute the Market Participant Service Agreement.

The ISO states that copies of the filing were sent to the New England state governors and regulatory agencies and the Participants in NEPOOL.

Comment Date: 5 p.m. eastern time on February 22, 2005.

20. Bluegrass Generation Company, L.L.C.

[Docket No. ER05–522–000]

Take notice that on January 31, 2005, Bluegrass Generation Company, L.L.C. (Bluegrass) submitted for filing a rate schedule under which it specifies its revenue requirement for providing cost-based Reactive Support and Voltage Control from a natural gas-fired peaking generating facility located in Oldham, Kentucky, which is interconnected with the transmission system of Louisville Gas and Electric Company (LG&E), currently a participant in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Bluegrass requests an effective date of March 1, 2005.

Bluegrass states that it has provided copies of the filing to the designated corporate officials and or representatives of LG&E, the Midwest ISO, and the Kentucky Public Service Commission.

Comment Date: 5 p.m. eastern time on February 22, 2005.

21. Southwest Power Pool, Inc.

[Docket No. ER05–523–000]

Take notice that on January 31, 2005, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted service agreement for Network Integration Transmission Service (Service Agreement) between SPP and Northeast Texas Electric Cooperative (NTEC), as well as an unexecuted Network Operating Agreement (NOA) between SPP, NTEC and American Electric Power Company (AEP). SPP seeks an effective date of January 1, 2005 for both the Service Agreement and the NOA.

SPP states that both NTEC and AEP were served with a copy of this filing.

Comment Date: 5 p.m. eastern time on February 22, 2005.

22. Lincoln Generating Facility, LLC

[Docket No. ER05–524–000]

Take notice that on January 31, 2005, Lincoln Generating Facility, LLC (Lincoln) filed (1) a notice of succession to notify the Commission that, as a result of a name change, Lincoln has succeeded to the FERC Rate Schedule (rate schedule) of Allegheny Energy Supply Lincoln Generating Facility, LLC, and (2) amendments to the rate schedule to reflect the fact that Lincoln is no longer affiliated with Allegheny Energy, Inc. or any of its affiliates, or any other electric utility with a franchised service territory. Lincoln requests an effective date of December 31, 2004.

Comment Date: 5 p.m. eastern time on February 22, 2005.

23. Sun River Electric Cooperative, Inc.

[Docket Nos. ES05–16–000, ES05–16–001]

Take notice that on January 11, 2005, and as amended on January 28, 2005, Sun River Electric Cooperative, Inc. (Sun River) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to borrow money pursuant to a loan agreement with the National Rural Utilities Cooperative Finance Corporation (CFC) in an amount not to exceed $14,799,188. Sun River requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. eastern time on February 14, 2005.

24. ISO New England Inc. et al., Bangor Hydro-Electric Company, et al.

[Docket Nos. RT04–2–011, ER04–116–011, and ER04–432–004]

Take notice that on January 28, 2005, ISO New England Inc., (ISO–NE) and the New England transmission owners (consisting of Bangor Hydro-Electric Company; Central Maine Power Company; Fitchburg Gas and Electric Light Company; Maine Electric Power Company; New England Power Company; Northeast Utilities Service Company on behalf of its operating companies, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Pubic Service Company of New Hampshire, Holyoke Power and Electric Company and Holyoke Water Power Company; NSTAR Electric and Gas Corporation on behalf of its operating affiliates, Boston Edison Company, Commonwealth Electric Company and Cambridge Electric Light Company; The United Illuminating Company; Unitil Energy Systems, Inc.; and Vermont Electric Power Company), submitted large generator interconnection procedures and a large generator interconnection agreement and related changes to the ISO–New England Transmission, markets and services tariff in compliance with the orders issued by the Commission on March 24, 2004, 106 FERC ¶ 61,280 (2004) and November 8, 2004, 109 FERC ¶ 61,155 (2004).

ISO–NE states that copies of said filing have been served upon all parties to this proceeding, upon all NEPOOL Participants (electronically), non-Participant Transmission Customers, and the governors and regulatory agencies of the six New England states.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–564 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–052]

California Department of Water Resources; Notice of Application and Applicant Prepared Environmental Assessment Tendered for Filing With the Commission, and Establishing Procedural Schedule for Relicensing and Deadline for Submission of Final Amendments

February 3, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New—major license.

b. *Project No.:* 2100–52.

c. *Date Filed:* January 26, 2005.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Oroville Facilities.

f. *Location:* On the Feather River near Oroville, California. The project affects Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Henry M. ''Rick'' Ramirez, Program Manager, Oroville Facilities Relicensing Program, California Department of Water Resources, 1416 9th Street, Sacramento, California 95814. Phone: 916–657–4963. E-mail: *ramirez@water.ca.gov.*

i. *FERC Contact:* James Fargo at (202) 502–6211, or *james.fargo@ferc.gov.*

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below. Agencies granted cooperating status will be precluded from being an intervenor in this proceeding consistent with the Commission's regulations.

k. *Deadline for Requests for Cooperating Agency Status:* 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing and process. The Commission strongly encourages electronic filing.

l. *Status:* This application has not been accepted for filing. We are not soliciting motions to intervene, protests, or final terms and conditions at this time.

m. *Description of Project:* The Oroville Facilities are located on the Feather River in the foothills of the Sierra Nevada in Butte County, California. Oroville Dam is located 5 miles east of the City of Oroville and about 130 miles northeast of San Francisco. The Oroville Facilities are part of the State Water Project (SWP), a water storage and delivery system of reservoirs, aqueducts, power plants, and pumping plants. One of the two main purposes of the SWP is to store and distribute water to supplement the needs of urban and agricultural water users in Northern California, the San Francisco Bay Area, the San Joaquin Valley Central Coast, and Southern California. The Oroville Facilities are also operated for flood management, power generation, water quality improvement in the Sacramento-San Joaquin Delta (Delta), recreation, and fish and wildlife enhancement.

The existing facilities encompass 41,100 acres and include Oroville Dam, Lake Oroville, three power plants (Hyatt Pumping-Generating Plant, Thermalito Diversion Dam Powerplant, and Thermalito Pumping-Generating Plant), Thermalito Diversion Dam, the Feather River Fish Hatchery and Fish Barrier Dam, Thermalito Power Canal, the Oroville Wildlife Area, Thermalito Forebay, Thermalito Forebay Dam, Thermalito Afterbay, Thermalito Afterbay Dam, and transmission lines, as well as a number of recreational facilities.

Oroville Dam, along with two small saddle dams, impounds Lake Oroville, a 3.5 million acre-foot capacity storage reservoir with a surface area of 15,810 acres at its normal maximum operating level. The hydroelectric units at the Oroville Facilities have a combined licensed generating capacity of approximately 762 MW.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2100), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Milestone	Tentative date
Issue Acceptance/Deficiency Letter and request Additional Information, if needed.	Apr. 2005.
Notice asking for final terms and conditions.	Aug. 2005.
Notice of the availability of the draft EIS.	Apr. 2006.
Notice of the availability of the final EIS.	Oct. 2006.
Ready for Commission's decision on the application.	Jan. 2007.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting final terms and conditions.

Magalie R. Salas,

Secretary.

[FR Doc. E5–550 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12132–001]

Lake Altoona Water Power Company, Inc.; Notice of Surrender of Preliminary Permit

February 3, 2005.

Take notice that Lake Altoona Water Power Company, Inc., permittee for the proposed Lake Altoona Dam Project, has requested that its preliminary permit be terminated. The permit was issued on June 5, 2002, and would have expired on May 31, 2005.[1] The project would have been located at the existing county-owned dam on the Eau Claire River in Eau Claire County, Wisconsin.

The permittee filed the request on January 25, 2005, and the preliminary permit for Project No. 12132 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E5–547 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

[1] 99 FERC ¶ 62,161.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1864–036]

Upper Peninsula Power Company; Notice of Application for Temporary Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 3, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Request to temporarily amend the reservoir elevation requirements of article 401 and 402 of the project license.

b. *Project Number:* P–1864–036.

c. *Date Filed:* January 6, 2005.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Bond Falls Hydroelectric Project No. 1864.

f. *Location:* The project is located on the Ontonagon River in Ontonagon and Gogebic Counties, Michigan and Vilas County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a) 825(r) and 799 and 801.

h. *Applicant Contacts:* Terry P. Jensky, 700 N. Adams Street, P.O. Box 19001, Green Bay, WI 54307–9001. Phone: (920) 433–2277.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Fletcher at (202) 502–8901, or e-mail address: *robert.fletcher@ferc.gov.*

j. *Deadline for filing comments and or motions:* March 3, 2005.

k. *Description of Request:* The Bond Falls Project Implementation Team, which consists of the licensee, Michigan Department of Natural Resources, U.S. Fish and Wildlife Service, Keweenaw Bay Indian Community, Wisconsin Department of Natural Resources, and the U.S. Forest Service agreed to temporary modifications to the existing license requirements for articles 401 and 402 during the 2005 season. The licensee requests the following temporary modification to the reservoir elevation requirements in article 401: Change the June–September End of the Month Target levels to 1295.9 feet mean sea level (msl) for the month of June (0.2 feet higher than current requirement); 1295.7 feet msl for the month of July (same as current requirement); and 1295.5 feet msl for the period August–September (0.2 feet lower than current requirement). For article 402, the licensee proposes a change in the minimum flow trigger elevations to match the proposed target elevations: 1295.9 feet msl for the month of June (1295.4 in current license); 1295.7 feet msl for the month of July; and 1295.5 feet msl for August 1 through September 14. When the Bergland Development elevation is greater than the trigger elevation during the period June through September 14, the minimum flow requirement for the Bergland Dam is 50 cubic feet per second (cfs). When the Bergland Development is at or below the trigger elevations during the period June through September 14, the minimum flow requirement for Bergland Dam is 30 cfs. After the 2005 season, the licensee and other members of the Implementation Team will make a decision as to whether additional changes are needed for the following year.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–1864–036). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–549 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2738–054]

New York State Electric & Gas Corporation (NYSEG); Notice of Settlement Agreement and Soliciting Comments

January 5, 2005.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement.

b. *Project No.:* 2738–054.

c. *Date Filed:* January 3, 2003.

d. *Applicant:* New York State Electric & Gas Corporation (NYSEG).

e. *Name of Project:* Saranac River Hydroelectric Project.

f. *Location:* Located on the Saranac River, in Clinton County, New York. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Carol Howland, New York State Electric & Gas Corporation, James A. Carrigg Center, 18 Link Drive, PO Box 5224, Binghamton, NY 13902 (607) 762–8881.

i. *FERC Contact:* Tom Dean at (202) 502–6041.

j. *Deadline for Filing Comments:* 20 days from the issuance date of this notice; reply comments are due 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site *(http://www.ferc.gov)* under the ''e-filing'' link.

k. NYSEG filed a settlement agreement on the resolution of issues related to the relicensing proceeding for the Saranac River Project. NYSEG filed this settlement agreement on behalf of itself and 6 other stakeholders. The settlement agreement includes provisions for run-of-river operation, bypass flows, fish protection measures, fish habitat and stocking fund, flow and water level monitoring, and recreation enhancements.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–551 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Demonstration of Efiling Feature To Facilitate Electronic Service

February 3, 2005.

On Wednesday, February 9, 2005, at 1 p.m., in the Commission Meeting Room, the Commission's Staff will demonstrate a new feature of the Commission's eFiling system that will facilitate the electronic service initiative to be considered by the Commission in its February 9, 2005 open meeting. The new feature (eFiling version 6.0) will allow filers to enter all applicable party and contact names for a particular filing.

This demonstration will not be broadcast by Capitol Connection. It will last about 15 minutes and Commisssion staff be available for questions.

Magalie R. Salas,

Secretary.

[FR Doc. E5–545 Filed 2–9–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7871–8]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held February 22–24, 2005 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The Science and Regulatory Work Groups will meet Tuesday, February 22; Plenary sessions will take place Wednesday, February 23 and Thursday, February 24.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The Science and Regulatory Work Groups will meet Tuesday, February 22 from 9 a.m. to 5 p.m. The plenary CHPAC will meet on Wednesday, February 23 from 9 a.m. to 5 p.m., with a public comment period at 5:15 p.m., and on Thursday, February 24 from 8:45 a.m. to 12 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection

(OCHP) activities and a presentation on assessing cancer risks from early life exposure. Other potential agenda items include a panel discussion of the NAS review of EPA's Perchlorate Risk Assessment, and a presentation on PBDE.

Dated: February 2, 2005.

Elizabeth H. Blackburn,

Acting Designated Federal Official.

U.S. Environmental Protection Agency

Children's Health Protection Advisory Committee, Hotel Washington, 515 15th Street, NW., Washington, DC 20004–1099, February 22–24, 2005

Draft Agenda

Tuesday, February 22, 2005

Work Group Meetings

Wednesday, February 23, 2005

Plenary Session

9:00 *Welcome, Introductions, Review Meeting Agenda*
9:15 *Highlights of Recent OCHP Activities*
9:45 *Presentation: Cancer Guidelines Update*
10:15 Break
10:30 *Science and Regulatory Workgroup Reports*
12:00 Lunch (on your own)
1:30 *Panel Discussion: NAS Review of EPA's Perchlorate Risk Assessment*
3:00 Break
3:30 *Presentation and Discussion: OCHP Strategic Plan*
5:15 *Public Comment*

Thursday, February 24, 2005

8:45 *Discussion of Day One*
9:00 *Presentation: PBDE Update*
10:15 Break
10:45 *Presentation: Update on EPA's Response to CHPAC Mercury Comment Letters*
11:45 *Wrap Up/Next Steps*

[FR Doc. 05–2611 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0010; FRL–7695–9]

Alkyl Ether Amine Dicarboxyethyl Sodium Salts; Notice of Filing a Pesticide Petition to Establish a Tolerance Exemption for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0010, must be received on or before March 14, 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: Keri Grinstead, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address:*grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and

without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0010. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2005–0010. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0010.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0010. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2);

however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Tomah[3] Products, Inc. and represents the view of the petitioner. However, the summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Tomah[3] Products, Inc.

PP 4E6861

Summary of Petitions

EPA has received a pesticide petition 4E6861 from Tomah[3] Products, Inc., 337 Vincent Street (P.O. Box 388), Milton, Wisconsin 53563–0388 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the use of any member of the class of amphoteric surfactant inert ingredients described as [beta-alanine, *N*-(2-carboxyethyl)- *N*-[3-(polyoxaalkylalkoxy)propyl]-, (mono- or disodium salt) and polyalkoxy, a-[3-[bis(2-carboxyethyl)amino]propyl]-w-alkoxy, (mono- or disodium salt), containing 0 to 20 repeating alkoxy/polylalkoxy units (methoxy-, ethoxy-, propoxy-, butoxy-) and 6 to 21 carbons in an n-alkyloxy-, isoalkyloxy- or branched alkyloxy- chain; also known as alkyl ether amine dicarboxyethyl sodium salts, in or on all raw agricultural commodities and food. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Any residues are expected to be parent amphoteric amines as described above.

2. *Analytical method.* Since this petition is for an exemption from the requirement of a tolerance, an analytical method is not required.

3. *Magnitude of residues.* This application is designed to follow EPA's new methodology for the evaluation of low toxicity substances used in pesticide products. To develop exposure estimates, residue data for pesticide active ingredients were used as described below as surrogate data for the class of inert ingredients. Several complementary approaches were used.

Tier 1 Screening Level scenarios (i.e., bounding extreme worst-case) included the following exposure assumptions. Actual crop-specific residue data for active ingredients, including secondary residues were used as surrogates for the surfactants without adjustment for the percentage of inert in the formulation. Data were used for all herbicides used at >5 million pounds/year (lbs/yr) and all fungicides and insecticides used at >1 million lbs/yr, including all active ingredients used in significant amount on the top 25 crops consumed by children; Both acute and chronic exposure levels were determined; The assessment assumed that 100% of all crops are treated with pesticides containing the surfactants.

More sophisticated Tier 2 worst-case scenarios included the following exposure assumptions. For chronic exposure, actual crop-specific residue data are used as surrogates for the surfactants, with adjustment for percentage of the inert in the formulation using an upper-bound value of 17.1%; frequency of detection of pesticides was used as a method of ranking all pesticides monitored in the U.S. for residues. The top 30 pesticides were found to account for 99.9% of the total dietary intake of pesticide residues and were selected as the surrogates to use in estimating exposure. Exposure levels were determined using actual residue and frequency data for the 30 most frequently detected residues.

For acute exposures, EPA's Cumulative OP Acute Dietary Exposure Distribution estimated for children 1–2 years in Florida (EPA, 2002) was used as a surrogate. No adjustment was made to convert the active ingredient exposure for actual percentage of inert ingredient used in the formulation. The methamidophos-equivalent exposure estimates were used directly to approximate the magnitude of potential acute dietary exposures to the amphoteric surfactants. Exposure estimates were made for the 90th%, 95th% and 99.9th% consumption.

B. Toxicological Profile

1. *Acute toxicity.* Only a small amount of primary data are available on the acute toxicity of substances within the proposed class of amphoteric surfactants. These data have been supplemented in the assessment described below by using publicly available data on the toxicology of alkyl amines and related derivatives.

i. *Acute dermal toxicity and eye irritation.* Virtually all of the amines when administered directly or in concentrated solution are primary skin and eye irritants. Animals exposed to concentrated vapors exhibit signs and symptoms of mucous membrane and respiratory tract irritation. Direct skin contact with liquid amines can produce severe burns and necrosis. Little toxicity information is available on amines containing eight or more carbons. But, it is clear that these amines, either as the neat liquid, or in concentrated solution, would be strong local irritants for eyes, skin, and mucous membranes. The lowered vapor pressure for the higher alkyl amines would tend to reduce the hazard from vapor exposure.

ii. *Acute oral toxicity.* Estimated LD_{50} for amphoteric compounds 300 to 500 milligrams/Kilogram (mg/kg). The LD_{50s} for the shorter chain primary amines (C2–C8) are in the 300 to 500 mg/kg range. Secondary amines are slightly more toxic than the corresponding primary amines. As the chains increase in length beyond C12 to C16 there is an observable reduction in toxicity. For example, the acute oral LD_{50} for octadecylamine (C18H39N) in mice and rats is approximately 2–3 gram/kilogram (g/kg) compared to the 300 to 500 mg/kg range for the shorter chain amines. The addition of an alcohol group to the molecule reduces the toxicity significantly. The alkanolamines and the alkylalkanolamines are typically 3–5 times less toxic than their amine congeners. For this reason it is expected that the addition of propoxylate or ethoxylate groups will not confer additional toxicity beyond that of the amine itself, and is likely to tower toxicity substantially.

iii. *Alkyl amines vs alkanolamines.* The acute toxicity of the alkylamines are

reduced from 4 to 20–fold by the introduction of hydroxyl groups into the molecule. The toxicity of the alkyl amines is reduced approximately 5–fold as the molecular weight increases from C2 - C16 and higher.

iv. *Effect of carboxylic acid salts.* This trend of decreasing acute toxicity with the addition of polar groups persists when the added groups are acetate or propionate carboxylic acid salts. These are the groups found in the amphoteric surfactants which are the subject of this submission. The acute toxicity of the C10–C12 alkyl amines is reduced from 2 to 15–fold when the alkyl groups on the nitrogen atom are replaced by either propionate or acetate salts.

2. *Genotoxicity*. There is no indication that any alkyl amine is mutagenic. Zeiger et al. (Ref. 1) reported on the *Salmonella Mutagenicity* of 255 chemicals including 25 alkyl amines. Twenty three of the alkyl amines tested negative in the Ames test both with and without activation and only two substituted amines were weakly positive (*N*-hydroxyethylethylenediamine and monoisopropanolamine).

3. *Reproductive and developmental toxicity*. Genamin TA (CAS # 61790–33–8), a mixture consisting primarily of C16–C18 primary amines was given to both male and female rats 14 days prior to mating continually for 54 days thereafter (Ref. 2). The author noted that the NOAEL for parental toxicity and for effects on offspring was 12.5mg/kg. The reported NOAEL for fertility was 50 mg/kg.

4. *Subchronic toxicity*. *N*-methyl- *N*-octadecyl-1-octadecanamine was administered to rats for 90–days at doses of 1,500; 5,000; and 15,000 ppm in the diet. Doses were reduced after week 4 to 1,500; 4,000 and 10,000 ppm. The presence of histiocytosis in all groups precluded the establishment of a NOEL in this dose range. The LOAEL was 1,500 ppm or 75 mg/kg/day (Ref. 3). Subchronic studies have also been conducted on a few alkanolamines. Ethomeen T/12 (CAS # 61791–44–4) Ethanol,2,2-iminobis-, *N*-tallow alkyl derivatives at doses of 15, 50, 150, and 450 mg/kg were fed to rats in their diet for 90–days. Ethomeen T/12 is a mixture of polyoxyethylene tallow amines. Gross macroscopic effects were seen and body weight gain was reduced only at the 450 mg/kg level. Microscopic findings were seen in the intestine and regional mesenteric nodes levels of 150 mg/kg and greater. The no observed adverse effect level (NOAEL) was 50 mg/kg and the lowest observed adverse effect level (LOAEL) was 150 mg/kg. A similar study was conducted in dogs at doses of 13, 40, and 120 mg/kg. Vomiting occurred at doses of 40 mg and higher. No gross pathologic variations or lesions were observed in any dose group. Histological evaluation revealed an increase in the incidence of foamy macrophages in the small intestine and regional lymph nodes in the 40 mg/kg and 120 mg/kg dose groups. The NOAEL was 13 mg/kg/day and the LOAEL 50 mg/kg/day (Ref. 4).

5. *Chronic toxicity*. Octadecylamine [CH3(CH2)17 NH2] has been administered to rats in a 2–year rat feeding study (Ref. 5). The NOAEL was 500 parts per million (ppm) in the diet and 3,000 ppm was a LOAEL. Rats fed 3,000 ppm showed some weight loss, anorexia, and some histological changes in the gastrointestinal tract, mesenteric nodes, and liver. This NOAEL gives an ADI of 0.25 mg/kg body weight/day (bwt/day) using a 100–fold safety factor. (500 ppm in old rats corresponds to 25 mg/kg bw/day). An earlier 1–year oral study in dogs by Deichmann (Ref. 6), reported a slight weight decrement at the highest of three doses (0.6, 3.0, and 15 mg/kg bwt/day). The NOEL from this study was 3.0 mg/kg bwt/day. A corresponding ADI would be 0.03 mg/kg bwt/day, or about 8–fold lower than the study in rats.

Most of the amine repeat-dose toxicology studies yield NOAELs in the 3 to 50 mg/kg bwt/day range. The lowest repeated dose NOAEL in these reports is 3.0 mg/kg bwt/day (both rabbit developmental study with olelyamine and 1–year chronic dog study with octadecyl amine). The application of these data for amphoteric amines depends on the toxicity of other members of this surfactant family having the same or lesser order of toxicity as the long chain fatty amines.

The amphoterics in this submission differ from the simpler alkyl amines in two ways; first they are alkoxylated, which introduces polar ether linkages, second they additionally have two charged carboxyl groups on the end of the molecule. Both of these charges make the molecule more polar, and can decrease the systemic toxicity of the substance. The increased polarity canmake the substances easier to eliminate in the urine. The increased number of ether linkages can make the substance harder to absorb. For these reasons, we believe that the NOELS of the ether amines establish an upper bound to the toxicity of the amphoterics at approximately 10 mg/kg bw/day; the amphoterics themselves should be considerably less toxic. Given that there are norepeat-dose toxicity data in animals available on the amphoterics, we have endeavored, via a weight-of-evidence approach, to demonstrate that as the alkyl amine core of the molecule is modified by the introduction of polar constituents, the toxicity is decreased. Thus the toxicity of the amphoterics will be below that of the amines. In the discussion below, we show how the introduction of polar groups reduces the toxicity of several related classes of substances and how an average numerical bound might be placed on this effect.

With reference to the report of the American Chemistry Council's report of the Fatty Nitrogen Derivatives Panel Amines Task Group (Ref. 7), if alkyl (C10 - C16) dimethyl amine oxide is compared to the corresponding or similar alkyl amine it is seen that the toxicity drops by approximately 10-fold. The NOEL for alkyl (C10 - C16) dimethyl amine oxide in a chronic rat study is 42.3 mg/kg bw/day. The NOEL in a 90-day rat study was the same. The urine was the primary pathway for elimination and excretion was largely complete in 24 hours (Ref. 8). In contrast the maternal toxicity NOEL for Cis- 9-octadecenylamine was 10 mg/kg bw/day in rats and 3 mg/kg bw/day in rabbits. The NOEL for octadecylamine in a 1-year oral gavage study in rats was 3 mg/kg bw/day. It is seen that the conversion of the amine to the amine oxide tends to reduce the repeat-dose toxicity by approximately 3 to 10-fold. In a similar manner the acute toxicity of the alkylamines are reduced from 4 to 20-fold by the introduction of hydroxyl groups into the molecule, and the toxicity of the alkyl amines is reduced approximately 5-fold as the molecular weight increases from C2 to C16 and higher.

6. *Animal metabolism*. The aliphatic amines are well absorbed from the gut and respiratory tract. They are either excreted intact or in the form of metabolites, depending on the course of metabolism, which depends on their structure. Monamine oxidases are mitichondrial enzymes that catalyze the oxidation of many primary amines to the corresponding aldehyde and ammonia. The aldehydes are further oxidized to the correspondingcarboxylic acid and the ammonia to urea. In addition microsomal enzymes can metabolize amines not readily transformed by monoamine oxidases, through a variety of pathways. These include: deamination, methylation, *N*-dealkylation, *N*-oxidation, *N*-acetylation, cyclization, *N*-hydroxylation, and nitrosation.

7. *Metabolite toxicology*. Secondary amines are prone to react with nitrite, depending on the pH of the media, to form nitrosamines, some of which are potent animal carcinogens. Some

studies have suggested the possibility of *in vivo* formation of carcinogenic nitrosamines within the acidic environment of the stomach following ingestion of secondary amines. The major human intake of nitrates (~ 50 mg/day) comes from vegetables, water supplies, or additives in the meat and fish curing process (Ref. 9). Nitrates are converted to nitrites in the upper part of the gastrointestinal tract by nitroreductase bacteria normally present in the lower bowel.

Amines or amine precursors are present in vegetables, wine, spirits, beer, tea, fish, food flavoring agents, and some drugs. As indicated above, at least 10 mg of amine nitrogen is excreted per day; the intake of amines or their precursors is therefore probably in the 100 mg/day range. Thus there exists the required elements for the *in vivo* formation of carcinogenic nitrosamines from amine ingestion. Despite this theoretical possibility, epidemiologic studies have not provided evidence for a causal association between nitrite exposure and human cancer. Nor has a causal link been shown between *N*-nitroso compounds preformed in the diet or endogenously synthesized and the incidence of human cancer (Ref. 10). It has been demonstrated in animals that nitrosation of diethylamine and dimethyamine *in vivo* is a very slow process. When these substances were fed to rats together with nitrite for over two years no tumors typical of treatment of rats with nitrosodiethylamine were observed (Ref. 11). In any event, the addition to the diet of nanogram levels of amines from the proposed used of amine based surfactants is insignificant compared to normal endogenous levels and to those naturally occurring in food.

8. *Endocrine disruption*. There is no evidence to suggest that the alkyl amines have an effect on any endocrine system. In developmental and two-generation reproduction toxicity tests systemic toxicity was noted but no developmental or reproductive effects were found.

C. Aggregate Exposure

1. *Dietary exposure*. Exposure through both food and drinking water were estimated using data and methods more commonly applied to pesticide active ingredients. The methods for estimating dietary exposure are discussed above under residues. Drinking water exposures were estimated using EPA's combined Pesticide Root Zone Model/ Exposure Assessment Modeling System (PRZM/EXAMS) and the 1 hectare pond scenario.

i. *Food*. Both Tier 1 and Tier 2, acute and chronic dietary assessments were constructed in several different ways and in general MOEs >100 were found. Tier 1 acute assessments did yield MOEs <100, but the Tier 2 analysis gave an MOE = 1,500 for the lowest Tier 1 scenario.

ii. *Drinking water*. Using the average peak value fromPRZM/EXAMS modeling for acute exposure, the average 60-day concentration for chronic exposure and the standard estimates of water consumption, acute and chronic margins of exposure for drinking water all MOEs were greater than 360. In using the model, maximum application rates and number of applications were assumed and the amphoteric surfactants were assumed not to degrade in water or the environment. The modeling provides an extreme worst-case estimate of exposure in that the peak values simulated accumulation (i.e., no degradation) of the surfactants in water during a 30 years period of application.

2. *Non-dietary exposure*. For non-dietary exposure and risk analysis outdoor lawn care with broadcast application via hose-end sprayer was selected as the worst case. Dermal absorption was assumed to be 10%. Applicators were assumed to have dermal and inhalation exposures, while re-entry exposures were dermal and oral, the oral via hand-to-mouth activities by children. MOE's >100 were estimated by Tier 1 analyses, indicating reasonable certainty of no harm for the worst-case bounding scenario evaluated.

D. Cumulative Effects

Other amphoteric amine compounds may be used in pesticide formulations. However, the assessment of this class of compounds assumes 100% of the pesticide products applied to crops will use one member of this class of amphoteric amines. Therefore, the cumulative risk for this class of compound is covered by the assessments in this submission.

E. Safety Determination

1. *U.S. population*. As a general rule in any pesticide assessments, exposures of children are the highest of any subpopulation. This pattern was found to hold true for the amphoteric surfactants and lead to simplifications in the assessment procedure. When exposures to children were found to be acceptable, e.g., acute and chronic Tier 2 estimated dietary exposures to children yielded large MOEs, separate estimates for other subpopulations were not deemed necessary. In the risk assessment we ultimately have adopted the dietary exposures for children for all subpopulations. Exposures for females 13 to 49 were calculated in certain instances and found to be comparable to each other and less than for children. Hence, exposure estimates for the latter were not formally completed. Rather the exposure numbers for females were assumed for the full U.S. population.

2. *Infants and children*. Except when using acute Tier 1 dietary exposure estimates and the most conservative toxicity endpoint, 3 mg/kg-bw/day, all MOEs were found to be comfortably greater than 100. Given the worst-case conservatism built into all the analyses, the results support a conclusion that Tomah[3]'s amphoteric surfactants may be used safely in pesticide formulations without concerns for dietary and non-occupational exposures.

F. References

1. Zeiger, E., Anderson B., Haworth S., Lawlor T., Mortelmans K., and Speck, W. (1987) ''Salmonella Mutagenicity tests: III. Results from the testing of 255 chemicals.'' *Environmental Mutagenesis*, (1987) 3: Suppl (9)1–110.)

2. Bussi R (2000). ''Genamin TA100: Reproduction/Development toxicity Screening Test in rats by oral route.'' APAG, Instituto di Recerche Biomediche, 'Santoine Marxer' S.p.a.

3. Procter and Gamble, Ref. 3) EPA submission, No. 88—9200007039, microfiche No. 0T5537649.

4. Goater T.O., Griffiths D., McElliogott T.F., and AAB Swan, A.A.B, (1970), ''Summary of toxicology data - acute oral toxicity and short-term feeding studies on polyoxythylene tallow amines in rats and dogs,'' *Food and Cosmetics Toxicology* 8:249—252.

5. Deichmann, W.B., Radomski, J.I., MacDonald, W.E., Kascht, R.L., and Erdman, R.l., (1958), American Medical Association *Archives of Industrial Health*, 18:483.

6. Deichmann, W.B., et.al., (1957), Archives Of Industrial Health, 18:483–487.

7. Fatty Nitrogen Derivatives Panel Amines Task Group, 2002, Fatty Nitrogen Derived (FND) Amines Category High Production Volume (HPV) Chemicals Challenge, American Chemistry Council, Washington, D.C.

8. U.S. EPA. 1999. The Use of Structure-activity Relationships (SAR) in the High Production Volume Chemicals Challenge Program. http://www.epa.gov/ch emrtk/sarfinl1.htm.

9. Ellen et al. 1990. Food Additives Contaminants 7(2):207—221.

10. Gangilli., S.D., 1999, ''Nitrate, nitrite and *N*-nitroso compounds''in Ballintine, B., Marrs, T., and Turner, P., *General and Applied Toxicology*, Stockton Press, New York, p 2111, 2143.

11. Druckery et al, 1963 Cited by Benya et al., Patty's, 4th Ed. Vol II, Part B, page 1097.

[FR Doc. 05–2620 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7871–4]

Carolina Steel Drum Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement for the partial reimbursement of past response costs with fifty-four (54) de minimis parties pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Carolina Steel Drum Superfund Site (Site) located in Rock Hill, York County, South Carolina. EPA will consider public comments on the proposed settlement for March 14, 2005. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paul V. Batchelor, U.S. EPA, Region 4, (WMD–SEIMB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.Paula@EPA.Gov.*

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: January 26, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 05–2612 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7871–5]

Carolina Steel Drum Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement for the partial reimbursement of past response costs with the de minimis party Gresco Manufacturing, Inc. pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Carolina Steel Drug Superfund Site (Site) located in Rock Hill, York County, South Carolina. EPA will consider public comments on the proposed settlement for March 14, 2005. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–SEIMB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.Paula@EPA.gov.*

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: January 26, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 05–2613 Filed 2–9–05; 8:45 am]

BILLING CODE 6560–5O–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Thursday, February 10, 2005

February 3, 2005.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 10, 2005, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Media	*Title:* Carriage of Digital Television Broadcast Signals: Amendments to part 76 of the Commission's Rules (CS Docket No. 98–120). *Summary:* The Commission will consider a Second Report and Order and First Order on Reconsideration concerning the carriage obligations of cable operators with respect to digital broadcasters.
2	Media	*Title:* WRGT Licensee, LLC for Assignment of License of WRGT–TV, Dayton, Ohio, to WRGT Licensee, LLC (New Nevada, LLC); WVAH Licensee, LLC for Assignment of License of WVAH–TV, Charleston, West Virginia, to WVAH Licensee, LLC (New Nevada, LLC); WTAT Licensee, LLC for Assignment of License of WTAT–TV, Charleston, South Carolina, to WTAT Licensee, LLC (New Nevada, LLC); Cunningham Broadcasting Corp. (Transferor) and Sinclair Acquisition XIII, Inc. (Transferee) for consent to transfer of control of television station WTTE–TV, Columbus, Ohio; Cunningham Broadcasting Corp. (Transferor) and Sinclair Acquisition XIII, Inc. (Transferee) For consent to transfer of control of television station WNUV–TV, Baltimore, Maryland. *Summary:* The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by various licensee subsidiaries of Sinclair Broadcast Group, Inc. seeking review of a decision by the Media Bureau dismissing applications through which Sinclair sought to acquire television stations from the licensee subsidiaries of Cunningham Broadcasting Corporation.
3	Consumer & Governmental Affairs	*Title:* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02–278). *Summary:* The Commission will consider a Second Order on Reconsideration addressing petitions for reconsideration filed regarding the national do-not-call registry and other TCPA rules.
4	Consumer & Governmental Affairs	*Title:* Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CG Docket No. 02–386).

Item No.	Bureau	Subject
		Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking regarding the mandatory exchange of customer account information among all local and interexchange carriers.
5	International	*Title:* Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands (IB Docket No. 01–185). *Summary:* The Commission will consider a Memorandum Opinion and Order and Second Order on Reconsideration concerning the rules that permit the addition of ancillary terrestrial components (ATC) to the provision of Mobile-Satellite Service (MSS) communications.
6	Wireless-Tele-Communications	*Title:* Amendment of part 90 of the Communications Commission's Rules for Flexible Use of the 896–901 MHz and 935–940 MHz Bands Allotted to Business and Industrial Land Transportation Pool; Oppositions and Petitions for Reconsideration of 900 MHz Band Freeze Notice. *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning the use of ''white space'' in the 900 MHz Business and Industrial Land Transportation Pool.
7	Wireless Broadband Access Task Force	The Wireless Broadband Access Task Force will report on its findings and recommendations relating to the Commission's wireless broadband policies (GN Docket No. 04–163).
8	Wireline Competition	*Title:* Presubscribed Interexchange Carrier Charges Competition (CC Docket No. 02–53). *Summary:* The Commission will consider a Report and Order that will address the Commission's policies governing the federally-tariffed charges of incumbent LECs for changing the presubscribed interexchange carrier for end user subscribers (PIC change charges).
9	Wireline Competition	*Title:* Developing a Unified Intercarrier Compensation Regime; Sprint Petition for Declaratory Ruling Regarding Obligation of Incumbent LECs to Load Numbering Resources and Honor Routing and Rating Points; T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs (CC Docket No. 01–92). *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that resolves a number of issues regarding application of the Commission's intercarrier compensation rules and solicits comment on a number of reform proposals submitted by the industry as well as other issues related to intercarrier compensation reform.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Request other reasonable accommodations for people with disabilities as early as possible. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 05–2684 Filed 2–8–05; 11:59 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2005–5]

Price Index Increases for Expenditure and Contribution Limitations

AGENCY: Federal Election Commission.

ACTION: Notice of expenditure and contribution limitation increases.

SUMMARY: As mandated by provisions of the Bipartisan Campaign Reform Act of 2002 (''BCRA''), the Federal Election Commission (''FEC'' or ''the Commission'') is adjusting certain expenditure and contribution limitations set forth in the Federal Election Campaign Act of 1971, as amended (''FECA'' or ''the Act''), to account for increases in the consumer price index.

Additional details appear in the supplemental information that follows.

EFFECTIVE DATE: The effective date for the limits at 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B) and 441a(h) is November 3, 2004. The effective date for the limits at 2 U.S.C. 441a(a)(3) and 441a(d) is January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Scott, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (March 27, 2002), coordinated party expenditure limits (2 U.S.C. 441a(d)(3)(A) and (B)), and certain contribution limits (2 U.S.C. 441a(a)(1)(A) and (B), (a)(3), (d) and (h)),

are adjusted either annually or biennially by the consumer price index. *See* 2 U.S.C. 441a(c)(1). The Commission is publishing this notice to announce these limits for 2005 or the 2005–2006 election cycle.

Coordinated Party Expenditure Limits for 2005

Under 2 U.S.C. 441a(c), the Commission must adjust the expenditure limitations established by 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974).

1. Expenditure Limitation for House of Representatives

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives. The formula used to calculate the expenditure limitation in a state with more than one congressional district multiplies the base figure of $10,000 by the price index (3.831), rounding to the nearest $100. Based upon this formula, the expenditure limitation for 2005 House elections in those states is $38,300. The formula used to calculate the expenditure limitation in a state with only one congressional district multiplies the base figure of $20,000 by the price index (3.831), rounding to the nearest $100. Based upon this formula, the expenditure limitation for 2005 House elections in these states is $76,600.

2. Expenditure Limitation for Senate

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate. The formula used to calculate the Senate expenditure limitation considers not only the price index but also the voting age population (''VAP'') of the state. The expenditure limitation is the greater of: the base figure ($20,000) multiplied by the price index (which totals $76,600); or $0.02 multiplied by the VAP of the state, multiplied by the price index. Amounts are rounded to the nearest $100. The chart below provides the state-by-state breakdown of the 2005 expenditure limitations for Senate elections.

SENATE EXPENDITURE LIMITATIONS—2005 ELECTIONS

State	VAP (in thousands)	VAP × .02 multiplied by the price index (3.831)	Expenditure Limit (the greater of the amount in column 3 or $76,600)
Alabama	3,436	$263,300	$263,300
Alaska	467	35,800	76,600
Arizona	4,197	321,600	321,600
Arkansas	2,076	159,100	159,100
California	26,297	2,014,900	2,014,900
Colorado	3,423	262,300	262,300
Connecticut	2,665	204,200	204,200
Delaware	637	48,800	76,600
Florida	13,394	1,026,300	1,026,300
Georgia	6,497	497,800	497,800
Hawaii	964	73,900	76,600
Idaho	1021	78,200	78,200
Illinois	9,475	726,000	726,000
Indiana	4,637	355,300	355,300
Iowa	2,274	174,200	174,200
Kansas	2,052	157,200	157,200
Kentucky	3,166	242,600	242,600
Louisiana	3,351	256,800	256,800
Maine	1,035	79,300	79,300
Maryland	4,163	319,000	319,000
Massachusetts	4,952	379,400	379,400
Michigan	7,579	580,700	580,700
Minnesota	3,861	295,800	295,800
Mississippi	2,153	165,000	165,000
Missouri	4,370	334,800	334,800
Montana	719	55,100	76,600
Nebraska	1,313	100,600	100,600
Nevada	1,731	132,600	132,600
New Hampshire	995	76,200	76,600
New Jersey	6,543	501,300	501,300
New Mexico	1,411	108,100	108,100
New York	14,655	1,122,900	1,122,900
North Carolina	6,423	492,100	492,100
North Dakota	495	37,900	76,600
Ohio	8,680	665,100	665,100
Oklahoma	2,664	204,100	204,100
Oregon	2,742	210,100	210,100
Pennsylvania	9,569	733,200	733,200
Rhode Island	837	64,100	76,600
South Carolina	3,173	243,100	243,100
South Dakota	580	44,400	76,600
Tennessee	4,510	345,600	345,600

SENATE EXPENDITURE LIMITATIONS—2005 ELECTIONS—Continued

State	VAP (in thousands)	VAP × .02 multiplied by the price index (3.831)	Expenditure Limit (the greater of the amount in column 3 or $76,600)
Texas	16,223	1,243,000	1,243,000
Utah	1,649	126,300	126,300
Vermont	487	37,300	76,600
Virginia	5,655	433,300	433,300
Washington	4,718	361,500	361,500
West Virginia	1,431	109,600	109,600
Wisconsin	4,201	321,900	321,900
Wyoming	390	29,900	76,600

Contribution Limitation Increases for Individuals, Nonmulticandidate Committees and for Certain Political Party Committees Giving to U.S. Senate Candidates for 2005–2006 Election Cycle

BCRA amended the Act to extend inflation indexing to: (1) The limitations on contributions made by persons under 2 U.S.C. 441a(a)(1)(A) (contributions to candidates) and 441a(a)(1)(B) (contributions to national party committees); (2) the biennial aggregate contribution limits applicable to individuals under 2 U.S.C. 441a(a)(3); and (3) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c). These contribution limitations are increased by multiplying the respective statutory contribution amount by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2001). The resulting amount is rounded to the nearest multiple of $100. The Commission has calculated the applicable percent difference to be 6.7 percent.

Contribution limitations shall be adjusted accordingly:

Statutory provision	Statutory amount	2005–2006 limitation
2 U.S.C. 441a(a)(1)(A)	$2,000	$2,100.
2 U.S.C. 441a(a)(1)(B)	25,000	26,700.
2 U.S.C. 441a(a)(3)(A)	37,500	40,000.
2 U.S.C. 441a(a)(3)(B)	57,500 (of which not more than $37,500 may be attributable to contributions to political committees that are not political committees of national political parties).	61,400 (of which not more than $40,000 may be attributable to contributions to political committees that are not political committees of national political parties).
2 U.S.C. 441a(h)	35,000	37,300.

Under the Act, the inflationary adjustments are to be made only in odd-numbered years and the increased limitations at 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B) and 441a(h) are to be in effect for the 2-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled election. Thus the respective figures above are in effect from November 3, 2004 to November 7, 2006. The limitation under 2 U.S.C. 441a(a)(3)(A) and (B) shall be in effect beginning January 1st of the odd-numbered year and ending on December 31st of the next even-numbered year. Thus the new contribution limits under 2 U.S.C. 441a(a)(3)(A) and (B) are in effect from January 1, 2005 to December 31, 2006.

Dated: February 4, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–2598 Filed 2–9–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on March 3–4, 2005

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Leon R. Kass, M.D., Chairman) will hold its twentieth meeting, at which, among other things, it will continue its discussion of ethical issues relating to the treatment of the aged, and end-of-life care. Subjects discussed at past Council meetings (though not on the agenda for the present one) include: cloning, assisted reproduction, reproductive genetics, IVF, ICSI, PGD, sex selection, inheritable genetic modification, patentability of human organisms, neuroscience, aging retardation, lifespan-extension, and organ procurement for transplantation. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), and *Reproduction and Responsibility: The Regulation of New Biotechnologies* (March 2004).

DATES: The meeting will take place Thursday, March 3, 2005, from 9 a.m. to 4:30 p.m. ET; and Friday, March 4, 2005, from 8:30 a.m. to 12:30 p.m. ET.

ADDRESSES: The Sphinx Club, 1315 K Street, NW., Washington, DC 20005. Phone 202–898–1688.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov*.

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:30 a.m., on Friday, March 4. Comments are limited to no more than five minutes per speaker or organization. As a courtesy,

please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: (202) 296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

Dated: February 7, 2005.

Yuval Levin,

Acting Executive Director, The President's Council on Bioethics.

[FR Doc. 05–2543 Filed 2–9–05; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–04JY]

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 these requests, 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

Assessment of Occupational Exposures to Electric and Magnetic Fields (EMF)—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

This proposal is to conduct a validation study on an interview-based procedure for assessing occupational exposures to electric and magnetic fields (EMF) from AC electricity. Participants in the study will be asked to wear specially designed instruments to measure a range of EMF that employees encounter as part of their daily work practices. These devices have been field-tested and meet all safety requirements. This study will capture not only the magnetic field magnitude but also its frequencies, induced currents and contact currents. This study will provide important new information that will shed light on EMF and health effects on workers.

This study has the following objectives: (1) Validate an interview-based EMF exposure assessment algorithm against measurements of the time-weighted average (TWA) magnetic field magnitude used in previous epidemiologic studies, (2) calibrate the parameters in the algorithm in order to improve the exposure estimates, and (3) determine the correlation between the EMF exposures from the algorithm and biologically-based metrics measured by new instrumentation. These biologically-based metrics consist of either characteristics of the magnetic field that have produced biological effects in laboratory studies or currents in the body resulting from contact with charged surfaces. For the higher correlations with the TWA magnetic field magnitude, these data will be used to determine whether the exposure algorithm can be modified to accurately assess exposures to the biologically-based metrics.

This is a one-time study of workers of an electric utility in Canada and a Federal research laboratory in the U.S. There will be no cost to respondents except for their time.

Annualized Burden:

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Worker—recruitment	200	1	3/60
Worker—EMF monitoring	72	1	6
Worker—interviews	72	1	15/60

Dated: February 3, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–2573 Filed 2–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0572]

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 these requests, 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, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

CDC and ATSDR Health Message Testing System (0920–0572)—Revision—Office of the Director, Office of Communication (OD/OC), Centers for Disease Control and Prevention (CDC). The revision to this submission is the addition of a request for the program to use Web-enabled panels as an additional data collection tool that can be used for the projects within this clearance. The Centers for Disease Control and Prevention (CDC) protects people's health and safety by preventing and controlling diseases and injuries; promotes healthy living through strong partnerships with local, national and international organizations, and enhances health decisions by providing credible information on critical health issues.

Members of the public and health practitioners at all levels require up-to-date, credible information about health and safety in order to make rational decisions. Such information affects the health and well-being of people across

all stages of life by making our food supply safe, identifying harmful behaviors, and improving our environment.

CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) must fulfill their mission and mandate to frequently communicate urgent and sensitive health messages with the general public, members of the public with certain diseases or disabling conditions, and those at a greater risk of exposure to disease or injury causing agents. CDC/ATSDR makes this crucial health information available through many channels including books, periodicals, and monographs; internet Web sites; health and safety guidelines; reports from investigations and emergency responses; public health monitoring and statistics; travel advisories; answers to public inquiries; and health education campaigns.

In addition to serving the public, CDC/ATSDR delivers health information that enables health providers to make critical decisions. For instance, the practicing medical and dental communities and the nation's health care providers are target audiences for numerous official CDC recommendations concerning the diagnosis and treatment of disease, immunization schedules, infection control, and clinical prevention practices. CDC/ATSDR offers technical assistance and training to health professionals as well.

In order to ensure that the public and other key audiences, like health care providers, understand the information, are motivated to take action, and are not offended or react negatively to the messages, it is critical to test messages and materials prior to their production and release. Currently, each CDC program developing health messages is required to submit its message development and testing activities for individual OMB review. Many CDC programs have extremely short deadlines for developing and producing health messages. Some deadlines are imposed by Congress, and others are necessitated by the time-sensitive nature of the work. Many programs cannot accommodate the time required for OMB approval, and therefore skip the message testing step altogether, or resort to testing specific portions of messages with 9 or fewer individuals. The science of health communication does not support these programmatic practices. In fact, these undesirable alternatives weaken CDC/ATSDR position as a research-based public health agency providing credible health information that people can count on and use.

CDC may achieve a greater level of efficacy if it can use four routine health message development and testing methods: (1) Central Location Intercept Interviews (*i.e.,* ''shopping mall'' interviews); (2) Customer Satisfaction Phone Interviews; (3) Focus Groups; and (4) Web-enabled research. Virtually every Center, Institute, and Office (CIO) at CDC could achieve a higher level of confidence that health messages were understandable and would provoke no unintended consequences if they were empowered to use these methods efficiently. The CDC Office of Communication therefore requests approval for renewal of the Health Message Testing System that will conduct up to 64 message testing activities per year for each of three years. If all 64 testing activities are implemented, the total estimated annualized burden is 3,000 hours.

Annualized Burden Table:

Data collection	Number of activities per year	Number of respondents per activity	Number of responses per respondent	Average burden per response (in hours)
Intercept and touch screen interviews	64	1,600	1	30/60
Customer Satisfaction Phone Interviews	64	1,200	1	30/60
Focus Groups	64	1,200	1	30/60
Web-enabled research	64	2,400	1	30/60

Dated: February 3, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–2574 Filed 2–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Musculoskeletal Disorders, Request for Applications (RFA) OH–05–004

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Musculoskeletal Disorders, Request for Applications (RFA) OH–05–004.

Times and Dates: 8 a.m.–8:30 a.m., March 22, 2005 (Open). 8:30 a.m.–5 p.m., March 22, 2005 (Closed).

Place: Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 23114 telephone 703–684–5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH–05–004.

Contact Person for More Information: Joan F. Karr, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS–D72, Atlanta, GA 30333, Telephone 404–371–5261.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–2570 Filed 2–9–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Exposure Risk on Reproduction/ Development, Request for Applications (RFA) OH–05–003

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Exposure Risk on Reproduction/Development, Request for Applications (RFA) OH–05–003.

Times and Dates: 8 a.m.–8:30 a.m., March 23, 2005 (Open). 8:30 a.m.–5 p.m., March 23, 2005 (Closed).

Place: Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 23114 telephone 703–684–5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH–05–003.

Contact Person for More Information: Bernadine Kuchinski, Ph.D. Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, MS C7, Cincinnati, OH 45226, Telephone 513–533–8511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–2571 Filed 2–9–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., February 28, 2005. 8:30 a.m.–4 p.m., March 1, 2005.

Place: Westin Buckhead, 3391 Peachtree Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include influenza pandemic preparedness for healthcare facilities; proposed recommendations for prioritization of influenza vaccine; draft recommendations on tuberculosis infection control precautions for healthcare facilities; infection control issues in ambulatory care settings; strategies for surveillance of healthcare-associated infections and healthcare-associated adverse events; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Harriett Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE., M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 4, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2569 Filed 2–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Safety and Occupational Health Study Section

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5 p.m., February 22, 2005. 8 a.m.–5 p.m., February 23, 2005.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia, 22314, telephone 703–684–5900, fax 703–684–1403.

Status: Open 8 a.m.–8:15 a.m., February 22, 2005. Closed 8:15 a.m.–5 p.m., February 22, 2005. Closed 8 a.m.–5 p.m., February 23, 2005.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–8:15 a.m. on February 22, 2005, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the study section to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Price Connor, Ph.D., NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E–20, Atlanta, Georgia 30333, telephone 404–498–2511, fax 404–498–2569.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 4, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–2568 Filed 2–9–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–16860]

Gulf Landing LLC Liquefied Natural Gas Deepwater Port License Application; Final Environmental Impact Statement Supplementary Material

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce the availability of material supplementing the Final Environmental Impact Statement (FEIS) for the Gulf Landing LLC Liquefied Natural Gas Deepwater Port License Application. The supplementary material corrects errors that appear in the FEIS.

FOR FURTHER INFORMATION CONTACT: If you have questions about the supplementary material, you may contact Lieutenant Commander Derek Dostie, U.S. Coast Guard at 202–267–0662 or *ddostie@comdt.uscg.mil*. If you have questions about this FEIS or the NEPA process, please contact Joan Lang, U.S. Coast Guard at 202–267–2498 or *jlang@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: On December 3, 2004, the Coast Guard and MARAD notice of availability for the Gulf Landing LLC Liquefied Natural Gas Deepwater Port License FEIS appeared in the **Federal Register** (69 FR 70270). Subsequently, we discovered and corrected errors in the text and in Appendix G of the FEIS. These corrections appear in an errata sheet and revised Appendix G which, along with the FEIS itself, are now available in the docket on the Internet at *http://dms.dot.gov* under docket number USCG–2004–16860. You may also view these materials in person at the Docket Management Facility in 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.

The corrections relate to the ichthyoplankton impact assessments that were developed in coordination with the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA NMFS). Results of the assessment showed that the expected (average) red drum base-case potential loss was equivalent to 0.8% of the 2002 Gulf of Mexico commercial and recreational harvest (representing 28,335 age-1 equivalent red drum fish, or an equivalent yield of 100,985 pounds). The agreed upon range for the highest and lowest probable impacts were between 3.8% and 0.1% of the 2002 Gulf of Mexico commercial and recreational harvest (representing 137,334 and 2,353 age-1 equivalent red drum fish, or an equivalent yield of 489,148 and 8,381 pounds, respectively). Calculated potential impacts on all other species of concern analyzed were at least an order of magnitude lower than for red drum and can be found in detail in the correction documents.

Please note that the percentages are in comparison to the total Gulf of Mexico landings, and not to the entire fish stock of the species of concern. Equivalent yield is in no way intended to, or capable of predicting direct losses to fish landings or harvest. For example: an equivalent yield that represents .8% of the red drum fishing harvest is equivalent to an additional .8% fishing stress on the population, when compared to that harvest, and not a .8% loss of that harvest.

Dated: February 4, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation Specialist, Deepwater Ports Program Manager, U.S. Maritime Administration.

[FR Doc. 05–2596 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; TSA Customer Comment Card

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of emergency clearance request.

SUMMARY: The U.S. Department of Homeland Security, Transportation Security Administration, has submitted a request for emergency processing of a new public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collection and its expected burden.

DATES: Send your comments by March 14, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1995; facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Customer Comment Card.

Type of Request: Emergency processing request of new collection.

OMB Control Number: Not yet assigned.

Forms(s): TSA Customer Comment Card.

Affected Public: Airport passengers.

Abstract: This collection establishes a voluntary program for airport passengers to provide feedback to the TSA regarding their experiences with TSA security procedures. The collection of information allows the TSA to determine customer concerns about security procedures and policies. TSA intends to make available to airports a Customer Comment Card, which will collect feedback and, if the passenger desires, contact information so that TSA staff can respond to the passenger's comment. For passengers who deposit their cards in the designated drop-boxes, TSA airport staff will collect the cards, categorize comments, enter the results into an online system for reporting, and respond to passengers as necessary. Passengers also have the option to mail the cards directly to TSA. TSA also will continue to provide the TSA Contact Center for passengers to make comments independently of airport involvement. The TSA is requesting emergency clearance so that it can immediately collect and respond in a timely manner to comprehensive

feedback, which serves as critical input when the TSA must modify its screening procedures.

Number of Respondents: 1,783,800.

Estimated Annual Burden Hours: An estimated 150,880 hours.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on February 7, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–2631 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held March 10, 2005, in Miles City, MT beginning at 8 a.m. When determined, the meeting place will be announced in a News Release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301. Telephone: (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics to discuss include:

Field Manager Updates; The Miles City Field Office Resource Management Plan Updates; Energy subcommittee update; RMP subcommittee update; Public Access subcommittee update—and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: February 2, 2005.

David McIlnay,

Field Manager.

[FR Doc. 05–2549 Filed 2–9–05; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW149228]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW149228 for lands in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Theresa M. Stevens, Chief, Fluid Minerals Adjudication, at (307) 775–6167.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW149228 effective December 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Theresa M. Stevens,

Land Law Examiner.

[FR Doc. 05–2539 Filed 2–9–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–01; NMNM111069]

Notice of Realty Action; Direct Sale of Public Land, Rio Arriba County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to dispose of 22.07 acres of Federal land in Rio Arriba County, New Mexico by direct sale to the existing tenant in possession of the land.

DATES: Submit comments regarding the proposed sale to BLM on or before March 28, 2005.

ADDRESSES: Comments should be mailed or delivered to: Field Manager, Farmington Field Office, Bureau of Land Management, 1235 La Plata Highway, Farmington, NM 87401.

The BLM Field Manager, Farmington Field Office, will review any adverse comments and may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and will take effective on April 11, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Jo Albin, Realty Specialist, at the BLM, Farmington Field Office, at (505) 599–6332. Information related to this action, including the environmental assessment, Environmental Site Assessment and appraisal, are available for review at the BLM, Farmington Field Office at the address stated above.

SUPPLEMENTARY INFORMATION: The BLM proposes to dispose of the following described lands in Rio Arriba County, New Mexico by direct sale pursuant to section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713): New Mexico Principal Meridian, T. 23 N., R. 6 W., Sec. 18: Lots 8, 11, Containing 22.07 acres.

The fair market value (FMV) for the lands, exclusive of improvements, is $26,484.00 as determined by a current appraisal conducted in accordance with Department of the Interior policies and guidelines. Disposal of the land conforms to the BLM land use plan for the area.

The proposed purchaser is Merrion Oil & Gas Corporation (Merrion) of Farmington, New Mexico. For many years, Merrion has occupied the above described lands as the tenant under a lease for an oil and gas field storage yard and operating center. The parcel of Federal land proposed for sale has been surveyed and reduced to the 22.07 acres occupied by the storage yard and operating center. The proposed direct sale recognizes the current authorized uses of the Federal land by Merrion and the substantial economic loss that could occur to Merrion if the land was purchased by another party, consistent with the provisions of 43 CFR 2711.3–3(a)(3). These uses over time may have also resulted in the release or disposal of hazardous substances onto the leased land under Merrion's possession and control, thus, if such is the case, subjecting the United States, as owner of the land, to compliance with the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9620(h). Merrion is aware of its CERCLA responsibilities as a potential responsible party (PRP) and proposes to continue to use the lands as a storage yard and operation center with related buildings and facilities. Because Merrion is a PRP as to the leased land, Interior is not required to provide the covenants specified in section 120(h)(3)(A)(ii) of CERCLA., when and if it sells the land to Merrion.

The sale, will contain and be subject to the following:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.
2. Reservation to the United States of all minerals.
3. Valid existing rights, including but not limited to easements, licenses, permits or leases, whether or not of record.
4. The information required by CERCLA section 120(h)(3)(A)(i) to be set forth in the deed.
5. The indemnity provisions set forth as a separate paragraph immediately below in this Notice.

By accepting title, Merrion, for itself, its successors, assigns and grantees, agrees to indemnify the United States against any liability arising from the release or threatened release of hazardous waste on this property. This agreement applies without regard to whether a release is caused by the proponent, their agent, or unrelated third parties.

The proposed sale and conveyance of the above described lands will be in the public interest, because it will enhance economic development by allowing Merrion to further develop and improve the lands free of existing lease restrictions and it will relieve the United States of any requirement it may be subject to under section 120(h)(3)(A)(ii) of CERCLA.

Publication of this notice temporarily segregates the public land described above from all forms of appropriation under the public land laws, including the general mining laws, except for sale under Section 203 of the Federal Land Policy and Management Act of 1976.

Dated: September 1, 2004.

Ray Sanchez,

Supervisor for Lands & Realty.

[FR Doc. 05–2538 Filed 2–9–05; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–072–1220–EB]

Notice of Final Supplementary Rules for Developed Recreation Sites Within the Area Managed by the Butte Field Office; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Butte Field Office, is implementing supplementary rules. These supplementary rules will apply to the public lands within developed recreation sites managed by the Butte Field Office. The BLM has determined these supplementary rules are necessary to: Protect natural resources in the areas; protect public health; enhance the safety of area visitors and neighboring residents; and provide a more equitable means for visitors to obtain overnight camping units within developed recreation sites where demand is the highest.

EFFECTIVE DATE: The rules are effective February 10, 2005.

ADDRESSES: Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, Montana 59701, *MT_Butte_FO@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Brad Rixford, Outdoor Recreation Planner, 106 N. Parkmont, Butte, Montana 59701; at telephone number 406–533–7600.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM is establishing these supplementary rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations. Upon completion, the rules will be available for inspection in the Butte Field Office; the rules will be posted at the sites, and will be published in a newspaper of general circulation in the affected vicinity.

The overall program authority for the operation of these developed recreation sites is found in sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740).

The developed recreation sites where fees are charged are managed under the Recreation Fee Demonstration Project, which allows the BLM to collect fees and use the revenues for the management of recreation sites within the state where the fees are collected. BLM published these rules on September 15, 2004 (69 FR 55651).

II. Areas Covered by the Supplementary Rules

The supplementary rules containing rules of conduct apply to all developed recreation sites within the area managed by the Butte Field Office. A second set of the supplementary rules relating to permits and camp unit administration apply to all recreation fee sites managed by the Butte Field Office.

III. Discussion of the Supplementary Rules

The following provides a summary background of the rules of conduct in section 1 of the supplementary rules and the administrative rules in section 2 may need a background summary.

a. We require that you pay for boat ramp and other day-use facilities before you launch or otherwise use them, rather than waiting for the end of the

day when you may be in a hurry to return home. For those camping in recreation fee sites, BLM personnel will advise you what units are available. Once you select a camp unit, you must return to the entrance station to make payment and complete your registration.

b. Each camp unit has a wooden post to which you must attach your payment receipt. This way, we can see that you are properly registered without searching around your vehicle or otherwise bothering you during your visit.

c. We have had problems with people claiming or holding camp units for friends arriving later by placing coolers, deck chairs, vehicles, or other equipment on the units. This is unfair to other visitors. Our camp units are available on a first-come, first-served basis.

d. Because of increased demand for camping units within our developed recreation sites, we have reduced the length-of-stay rule from 14 days to seven days for some recreation sites, as listed.

e. With respect to visitors' claiming extra boat dock slips, the reasoning applied to the claiming of extra camp units in paragraph c., discussed above, applies equally to extra boat dock slips.

f. We have had problems with vandalism and after-dark keg parties getting out of hand at the Clark's Bay day-use recreation site, so we close the site temporarily each day to vehicles and social gatherings from dusk to 9 a.m., from May through September, and for the entire day from October through April. Individuals wishing to hike, jog, walk their dogs, or otherwise make pedestrian use of the site during the closure periods are welcome to do so.

IV. Discussion of Public Comments

No comments were received and, consequently, no discussion is needed.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational sites. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) or management agreement and has found that the supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Montana. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, the BLM has determined, under the RFA, that these supplementary rules will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that these supplementary rules do not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

Executive Order 13132, Federalism

These supplementary rules do not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules affect land in only one state, Montana, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these supplementary rules do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Supplementary Rules

Section 1: Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rules for developed recreation sites within the area managed by the Butte Field Office, Montana.

a. You may not engage in any activities that disturb other campers between 10 p.m. and 7 a.m.

b. Your pets must be controlled on leashes and their droppings picked up and disposed of.

c. You must not swim outside of designated, roped-off areas.

d. You may not bring livestock into a developed recreation site.

e. You may not claim or hold extra camp units for yourself or others.

f. You may only use day-use docks for short term (10 minutes) loading and unloading.

g. You must not leave your camp unit or any property unattended for more than a period of 24 consecutive hours.

Section 2: In addition to the rules in Section 1 of these supplementary rules, the following additional rules apply to all recreation fee sites managed by the Butte Field Office.

a. You must pay established fees, and fill out all registration material, in advance of using a boat ramp or other day-use facility, or immediately upon selecting a camp unit.

b. You must display your receipt of payment at your camp unit post for overnight camping or, for day-use facilities, on the dashboard of your vehicle in a clearly visible manner.

c. You must not camp or hold any camp unit longer than seven (7) consecutive days. This rule is limited to Holter Lake, Log Gulch, and Departure Point Recreation Sites.

d. You may not use overnight dock slips unless you are a paid, overnight camper.

e. You may not claim or hold extra boat dock slips for yourself or others.

f. You must not drive a motor vehicle into the Clark's Bay day-use site, or use the day-use site for social gatherings, after dusk until 9 a.m. the following day during the months of May through September, nor shall you conduct these uses in the site at any time during the months of October through April. Individuals wishing to make pedestrian use of the site during the closure periods are welcome to do so.

Penalties: On public lands, under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 any person who violates any of these supplementary rules within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: December 28, 2004.

Martin C. Ott,

State Director.

[FR Doc. 05–2540 Filed 2–9–05; 8:45 am]

BILLING CODE 4310–$$–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold an open meeting on Saturday, February 12, 2005, from 1 p.m. to 3 p.m. The meeting will be held in the Judicial Conference Center of the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE.

[The meeting will follow the Saturday, February 12, 2005, public hearing which will begin at 8:30 a.m., and end at 12 noon. Original notice of the February 12, 2005, public hearing appeared in the **Federal Register** of February 1, 2005.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 3, 2005

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–2599 Filed 2–9–05; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Stipulation Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on January 28, 2005, a proposed Settlement Agreement in *In re Armstrong World Industries, Inc., et al.* Case No. 00–4471 (Bankr. D. Del.), was lodged with the United States Bankruptcy Court for the District of Delaware. In this action, the United States filed a proof of claim on behalf of the U.S. Environmental Protection Agency (''EPA''), against Armstrong World Industries, Inc. (''AWI''), seeking the recovery of response costs incurred at seven sites under section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9604(a).

Under the proposed Settlement Agreement, the claims of the United States regarding 19 ''Liquidated Sites'' will be resolved for a total of $8,727,738.80. In addition, the proposed Settlement Agreement will permit EPA to resolve in due course any alleged liabilities of AWI at any ''Additional Sites'' (*e.g.*, presently unknown sites), whether prior to or following the effective date of a confirmed reorganization plan. Any settlements reached or judgments obtained regarding such Sites will be paid at the rate at which general unsecured claims against AWI will be paid. Under AWI's proposed Fourth Amended Plan of Reorganization (the ''Plan''), which has been approved by the United States Bankruptcy Court for the District of Delaware and is pending before the District Court, that rate is 59.5%. In addition, the United States has agreed that any claims which EPA may have at 18 identified sites, where EPA upon investigation does not believe it has claims, will be discharged upon confirmation of the Plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Armstrong World Industries, Inc.*, DJ No. 90–11–3–07780.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, District of Delaware, 1007 N. Orange Street, Suite 700, Wilmington, Delaware 19801, and at the Office of the Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, Pennsylvania 19103. During the comment period, the Stipulation and Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Stipulation and Agreement may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*). fax no. (202) 514–0097, phone

confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In all correspondence, please refer to the case by its title and DOJ Ref. #90–11–3–07780.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–2550 Filed 2–9–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on January 27, 2005, a Consent Decree in *United States, et al.* v. *ConocoPhillips Company*, Civil Action No. H–05–0258, was lodged with the United States District Court for the Southern District of Texas.

In a complaint that was filed simultaneously with the Consent Decree, the United States, the State of Illinois, the State of Louisiana, the State of New Jersey, the Commonwealth of Pennsylvania, and the Northwest Clean Air Agency in the State of Washington sought injunctive relief and penalties against ConocoPhillips Company (''COPC''), pursuant to sections 113(b) and 304(a) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b), 7604(a), for alleged CAA violations and violations of the corollary provisions in State laws occurring at the following refineries owned and operated by COPC: Roxanna/Hartford, Illinois; Belle Chasse, Louisiana; Linden, New Jersey; Trainer, Pennsylvania; Ferndale, Washington; Carson/Wilmington, California; Rodeo/Santa Maria, California; Borger, Texas; and Sweeny, Texas.

Under the settlement, COPC will implement innovative pollution control technologies to reduce emissions of nitrogen oxides, sulfur dioxide, and particulate matter from refinery process units. COPC also will adopt facility-wide enhanced benzene waste monitoring and fugitive emission controls programs. In addition, COPC will pay a civil penalty of $4.525 million for settlement of the claims in the complaint. Finally, COPC will undertake both Federal and State environmentally-beneficial projects worth more than $10 million including covering and oil/water separator at its New Jersey refinery; purchasing a foam aerial apparatus for mutual, emergency response aid in and around its Illinois refinery; donating $400,000 to a local emergency planning committee to fund radio systems and an emergency broadcast radio system in the area of COPC's Pennsylvania refinery; donating $400,000 to the Louisiana Department of Environmental Quality to support collection and recycling of household hazardous waste; purchasing a fire truck for mutual aid response in and around COPC's Washington refinery; replacing old fireplaces and wood stoves with new clean-burning fireplaces or certified wood stoves for low income households in the vicinity of the Washington refinery; and developing emissions inventories and targets for air pollution reduction by participating cities and towns in the vicinity of the Washington refinery.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *ConocoPhillips Company*, D.J. Ref. No. 90–5–2–1–06722/1.

The Consent Decree may be examined at the Office of the United States Attorney, 910 Travis St., Suite 1500, Houston, Texas 77208, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwoodusdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $73.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–2551 Filed 2–9–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Eastern Mushroom Marketing Cooperative, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States* v. *Eastern Mushroom Marketing Cooperative, Inc.*, Civil Case No. 04 CV 5829. The proposed Final Judgment is subject to approval by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), including expiration of the statutory 60-day public comment period.

On December 16, 2004, The United States filed a Complaint alleging that the Eastern Mushroom Marketing Cooperative, Inc., in order to support its price increases, acquired certain mushroom farms, then filed deed restrictions on the properties as part of an agreement among the cooperative members to restrict, forestall, and exclude competition from nonmember farmers in an unreasonable restraint of trade in violation of Section 1 of the Sherman Act. The Eastern Mushroom Marketing Cooperative, whose members grow, sell, and ship mushrooms to retail and food service outlets, is the largest mushroom cooperative in the United States. During the 2001–2002 growing season, the cooperative had approximately 19 members with control of more than 500 million pounds of mushrooms valued in excess of $425 million. The cooperative controlled over 60 percent of all agaricus mushrooms grown in the United States during the 2001–2002 growing season and approximately 90 percent of all agaricus mushrooms grown in the eastern United States during the same growing season.

To restore competition, the proposed Final Judgment filed with the Complaint will require the cooperative to remove the deed restrictions already filed and will enjoin and restrain the cooperative from creating, filing, or enforcing any mushroom deed restrictions with respect to any real property in which the cooperative has an ownership or leasehold interest of any kind. A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and the remedies available to

private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW. 20530 (telephone: 202–514–2692) and at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, Pennsylvania 19106–1797.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (Telephone (202) 307–6351).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the Eastern District of Pennsylvania

United States of America, Plaintiff, v. *Eastern Mushroom Marketing Cooperative, Inc., Defendant; Competitive Impact Statement*

Civil Case No.: 2:04–CV–5829.
Judge: Thomas N. O'Neill, Jr.
Date Stamp: 12/16/2004.

The United States of America, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On December 16, 2004, the United States filed a civil antitrust Complaint alleging that the Eastern Mushroom Marketing Cooperative, Inc. (''EMMC'') had violated section 1 of the Sherman Act, 15 U.S.C. 1. The EMMC is made up of entities that grow, buy, package, and ship mushrooms to retail and food service outlets across the United States. EMMC began operations in January 2001 and presently has 15 members. EMMC sets the minimum prices at which its members sell their mushrooms to customers in various geographic regions throughout the United States and publishes those prices regularly.

The Complaint alleges that, in order to support its price increases, the EMMC collectively purchased or entered lease options on mushroom farms and thereafter shut them down, adding deed restrictions that permanently removed significant production capacity from the market. With the Complaint, the United States and the EMMC filed an agreed-upon proposed Final Judgment that requires the EMMC to eliminate the deed restrictions from all the properties it shut down.

Under the proposed Final Judgment, the EMMC is required to file nullifying documents in each jurisdiction where it has filed any ''Mushroom Deed Restrictions,'' as defined in the Final Judgment and discussed below in section III(A). The EMMC is also prohibited from creating, filing, or enforcing any Mushroom Deed Restrictions with respect to any real property in which the cooperative has an ownership or leasehold interest of any kind.

The United States and the EMMC have agreed that the proposed Final Judgment may be entered after compliance with the APPA, provided that the United States has not withdrawn its consent. Entry of the Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the Final Judgment's provisions and to punish violations thereof.

II. Description of Practices Giving Rise to the Alleged Violations of the Antitrust Laws

A. Description of the Defendant and its Activities

The EMMC is organized pursuant to the Capper-Volstead Act, 7 U.S.C. 291 *et seq.*, which gives its members a limited immunity under the antitrust laws to act together voluntarily in ''collectively processing, preparing for market, handling, and marketing'' their products, and allows them to ''make the necessary contracts and agreements to effect such purposes.'' The Capper-Volstead Act does not give farmers the right to engage in exclusionary practices, monopolize trade, or suppress competition with the cooperative. The Supreme Court has stated that the legislative history of the Act shows a congressional intent:

> * * * to make it possible for farmer-producers to organize together, set association policy, fix prices at which their cooperative will sell their produce * * *. It does not suggest a congressional desire to vest cooperatives with unrestricted power to restrain trade or to achieve monopoly by preying on independent producers * * * or dealers intent on carrying on their own businesses in their own legitimate way.[1]

[1] *Maryland and Va. Milk Producers Assn.* v. *United States,* 362 U.S. 458, 466–467 (1960).

The EMMC, headquartered in Kennett Square, Pennsylvania, began operations in January 2001 and now is the largest mushroom cooperative in the United States. With control over combined production of more than 500 million pounds of mushrooms, the EMMC accounted for over 60 percent of agaricus mushroom sales during 2001–2002. EMMC also sets the minimum prices at which its members can sell their mushrooms to customers in various geographic regions and publishes those prices regularly.

B. Effects of the Cooperative's Activities

One of the first acts of EMMC members after forming the cooperative was to agree to increase prices in each of the geographic regions where its members sell mushrooms. The agreed-upon price increases averaged about 8 percent nationwide.

Less than four months after instituting the price increases, the EMMC began acquiring mushroom farms through a ''Supply Control'' campaign. Through membership dues and a so-called ''Supply Control Assessment,'' the EMMC collected approximately six million dollars from its members between 2001 and 2003. Approximately four million dollars of that money was used in its plan to control the supply of mushrooms grown by nonmembers of the cooperative. Between May 2001 and March 2002, the EMMC acquired one mushroom farm in Dublin, Georgia, and three in Pennsylvania. All four farms had mushroom-growing equipment and together had the capacity to grow approximately 29 million pounds of fresh mushrooms annually in competition with EMMC members' farms. The EMMC sold these properties, all at a loss, almost immediately after purchasing them. The net loss for the four properties combined was more than $1.2 million. The EMMC placed the deed restrictions prohibiting the conduct of any business related to mushroom growing on all the properties at the time of each resale. For example, one of the deed restrictions reads:

> This property shall never be used for the cultivation, growing, marketing, sale or distribution of fresh mushrooms, canned and/or processed mushrooms or related endeavors.

In addition to the farm purchases and sales, the EMMC entered into lease option agreements during 2002 for two more mushroom farms, one in Ohio and the other in Pennsylvania, at a total cost of another $1.2 million. The EMMC never actually entered into leases for these properties, but the agreements gave it the right to file deed restrictions

prohibiting the production of mushrooms on the properties for ten years, and the EMMC exercised that right.

The purpose of these real estate transactions was to prevent nonmember mushroom farmers from competing with EMMC and its members.

As a result of the deed restrictions filed by the EMMC upon the resale or lease of these mushroom growing properties in the eastern United States, the EMMC was able to boast to its members that it had ''[a]nnually taken over 50 million pounds out of production from facilities which could have easily been purchased and remained in production.'' EMMC's actions artificially reduced the acreage and facilities available to produce mushrooms for American consumers, and consumers were deprived of the benefits of competition.

III. Explanation of the Proposed Final Judgment

A. Prohibited Conduct

Pursuant to the Final Judgment, EMMC will be enjoined and restrained from creating, filing, or enforcing any Mushroom Deed Restrictions with respect to any real property in which the cooperative has an ownership or leasehold interest of any kind. As defined in the proposed Final Judgment, Mushroom Deed Restrictions means any restriction or limitation contained in any document filed in the land records of any jurisdiction that, with respect to any real property, limits the (1) commercial growing or cultivation of any types, varieties or species of mushrooms, mushroom spawn or other fungi; (2) packaging, processing, freezing, storing, handling, selling, or marketing of any types, varieties or species of mushrooms, mushrooms spawn or other fungi; (3) production of Phase I, Phase II or Phase III mushroom compost for on-site or off-site use; or (4) any other activity related to the production, processing or sale of mushrooms, mushroom spawn or other fungi, whether such production, processing or sales shall occur on or off such real property.

B. Effect of the Final Judgment

The EMMC is required, within thirty (30) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to file Nullifying Documents in each jurisdiction where the Defendant has filed any Mushroom Deed Restrictions. Nullifying Documents are defined in the proposed Final Judgment as documents that are necessary to nullify the legal effect of any Mushroom Deed Restrictions filed by the EMMC previously on (1) the properties the Defendant purchased in the name of the EMMC and thereafter resold; or (2) properties in which the EMMC purchased a leasehold interest. The Final Judgment requires the Defendant to use its best efforts to file the required Nullifying Documents as expeditiously as possible. Accordingly, the restrictions on competition caused by the deed restrictions will be eliminated.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring in Federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the Defendant.

V. Procedures Available for Modifications of the Proposed Final Judgment

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW.; Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. The United States could have entered into litigation and sought an injunction forcing the Defendant to void the deed restrictions. The United States is satisfied, however, that the Defendant's agreement to void the restrictions described in the proposed Final Judgment will preserve competition for the growth of agaricus mushrooms in the United States.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) and (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v.

Microsoft Corp., 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[2] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of ensuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citation omitted).[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint; the APPA does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 16, 2004.

Respectfully submitted,

C. Alexander Hewes, Tracey D. Chambers, David McDowell,
Trial Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section.
325 7th Street, NW., Suite 500, Washington, DC 20530, Telephone: (202) 305–8519.

Laura Heiser, Anne Spiegelman,
Trial Attorneys, Antitrust Division, Philadelphia Field Office.

United States District Court for the Eastern District of Pennsylvania

United States of America, Plaintiff, v. *Eastern Mushroom Marketing Cooperative, Inc., Defendant; Final Judgment*

Civil Case No.: 2:04–CV–5829.
Judge: Thomas N. O'Neill, Jr.
Date Stamp: 12/16/2004.

Whereas, Plaintiff, United States of America, filed its Complaint on December 16, 2004, the Plaintiff and the Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trail or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, the Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain nullification of certain deed restrictions that limit mushroom production;

And Whereas, Plaintiff requires the Defendant to nullify the deed restrictions for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, the Defendant has represented to the United States that it will file expeditiously the documents necessary to nullify the legal effect of the deed restrictions in each jurisdiction where the Defendant has filed any such deed restrictions previously and that the Defendant will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the requirements set forth below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the Defendant under section 1 of the Sherman Act, as amended (15 U.S.C. 1).

II. Definitions

As used in this Final Judgment:

A ''EMMC'' means the Eastern Mushroom Marketing Cooperative, Inc.,

[2] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

the Defendant in this case, a Pennsylvania corporation with its headquarters in Kennett Square, Pennsylvania, its successors and assigns, and its subsidiaries, affiliates, members, divisions, groups, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Mushroom Deed Restrictions'' means any restriction or limitation contained in any document filed in the land records of any jurisdiction that, with respect to any real property, limits the (1) commercial growing or cultivation of any types, varieties or species of mushrooms, mushroom spawn or other fungi; (2) packaging, processing, freezing, storing, handling, selling, or marketing of any types, varieties or species of mushrooms, mushroom spawn or other fungi; (3) production of Phase I, Phase II or Phase III mushroom compost for on-site or off-site, use; or (4) any other activity related to the production, processing or sale of mushrooms, mushroom spawn or other fungi, whether such production, processing or sales shall occur on or off such real property.

C. ''Nullifying Documents'' means such documents as are necessary to nullify the legal effect of any Mushroom Deed Restrictions filed by the EMMC previously on (1) the properties the Defendant purchased in the name of the EMMC and thereafter resold; or (2) properties in which the EMMC purchased a leasehold interest.

III. Applicability

This Final Judgment applies to the EMMC, as defined above, and all other persons in active concert or participation with the EMMC who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Nullification of Mushroom Deed Restrictions

A. The Defendant is ordered and directed, within thirty (30) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to file Nullifying Documents in each jurisdiction where the Defendant has filed any Mushroom Deed Restrictions. The Defendant shall use its best efforts to file the required Nullifying Documents as expeditiously as possible.

V. Prohibited Activity

The Defendant is enjoined and restrained from creating, filing, or enforcing any Mushroom Deed Restrictions with respect to any real property in which the Defendant has an ownership or leasehold interest of any kind.

VI. Affidavit and Copies

A. Within ten (10) calendar days of the filing of all Nullifying Documents required by this Final Judgment, the Defendant shall provide to the United States and the Court, an Affidavit providing affirmative notice that all the required Nullifying Documents have been filed in all required jurisdictions in full compliance with the terms of this Final Judgment.

B. Within ten (10) calendar days after any Nullifying Documents have been filed in each jurisdiction, the Defendant shall provide to the United States a copy of all Nullifying Documents filed in such jurisdiction.

VII. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant, be permitted:

1. Access during the defendant's office hours to inspect and copy, or at the United States' option, to require the Defendant to provide copies of all books, ledgers, accounts, records, and documents in the possession, custody, or control of the Defendant, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendant.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the Defendant shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendant to the United States, the Defendant represents and identifies in writing the material in any such information nor documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give the Defendant ten (10 calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest.

This Final Judgment shall expire ten years from the date of its entry.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

United States District Court for the Eastern District of Pennsylvania

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, Plaintiff, v. Eastern Mushroom Marketing Cooperative, Inc., 649 West South Street, Kennett Square, Pennsylvania 19348, Defendant; Complaint

Civil Case No.: 2:04–CV–5829.
Judge: Thomas N. O'Neill, Jr.
Date Stamp: 12/16/2004.

The United States of America, acting under the direction of the Attorney General, brings this antitrust action against Eastern Mushroom Marketing Cooperative, Inc. (''EMMC''), the

nation's largest mushroom cooperative, to enjoin it and its members from purchasing or leasing mushroom farms and shutting them down.

I. Summary of Claims

1. Each year, American consumers spend over $800 million on mushrooms. EMMC members accounted for over 60 percent of those sales during the 2001–2002 growing season.

2. The EMMC is organized pursuant to the Capper-Volstead Act (''Capper-Volstead''), 7 U.S.C. 29] *et seq.* Under Capper-Volstead, farmers have a limited immunity from the antitrust laws to act together voluntarily in ''collectively processing, preparing for market, handling, and marketing'' their products, and ''may make the necessary contracts and agreements to effect such purposes.'' Capper-Volstead provides no immunity, however, for cooperative members to conspire to prevent independent, nonmember farmers from competing with the cooperative or its members.

3. Between May 2001 and August 2002, the EMMC conducted a ''Supply Control'' campaign to prevent nonmember farmers from buying or leasing certain of the very few available mushroom farms. The purpose of this campaign was to prevent nonmember farmers from competing with EMMC and its members.

4. Staring in May 2001, the EMMC bought four mushroom farms in the eastern United States with annual combined growing capacity of approximately 29 million pounds. The EMMC then resold the four properties at a combined total loss of over $1.2 million and placed permanent deed restrictions on the properties at the time of each resale. The deed restrictions all prohibited the conduct of any business related to the growing of mushrooms. For example, one deed restriction reads:

> This property shall never be used for the cultivation, growing, marketing, sale or distribution of fresh mushrooms, canned and/or processed mushrooms or related endeavors.

No mushrooms have been grown on these properties since they were resold by the EMMC.

5. In February and August 2002, the EMMC purchased lease options, at a cost of over one million dollars, on two additional mushroom farms with a combined annual growing capacity of approximately 14 million pounds. The lease options allowed the EMMC to file deed restrictions on the two properties prohibiting the use of the properties for any business related to growing mushrooms for a period of ten years. The EMMC never entered into leases on these farms, but did file the deed restrictions. No mushrooms have been grown on these properties since the deed restrictions were filed by the EMMC.

6. The EMMC touted the success of the Supply Control campaign to its membership, claiming it had ''[a]nnually taken over 50 million pounds out of production from facilities which could have easily been purchased and remained in production.''

7. The agreement among the EMMC members to restrict, forestall, and exclude competition from nonmember farmers is an unreasonable restraint of trade in violation of section 1 of the Sherman Act. As a result of the EMMC's violations, the acreage and facilities available to produce mushrooms for American consumers was artificially reduced, and consumers were deprived of the benefits of competition.

II. Jurisdiction and Venue

8. This Complaint is filed and this action is instituted under section 15 of the Clayton Act, 15 U.S.C. 25, in order to prevent and restrain the defendant from violating section 1 of the Sherman Act, 15 U.S.C. 1.

9. The Defendant is an agricultural cooperative whose members are engaged in the production and sale of fresh market mushrooms in interstate commerce. The Defendant's members' activities in the production and sale of mushrooms substantially affect interstate commerce. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1331, 1337(a) and 1345.

10. The Defendant has consented to personal jurisdiction and venue in this judicial district.

III. The Defendant

11. The EMMC began operations in January 2001, and is the largest mushroom cooperative in the United States. The EMMC is incorporated in the Commonwealth of Pennsylvania and is headquarters in Kennett Square, Pennsylvania. The members of the EMMC grow, sell, and ship mushrooms to retail and food service outlets across the United States. During the 2001–2002 growing season, the EMMC had approximately 19 members with control of more than 500 million pounds of mushrooms valued in excess of $425 million.

IV. Trade and Commerce

12. Agaricus mushrooms are the common table variety, accounting for the vast majority of mushrooms grown and sold in the United States. In 2002, domestic sales of all mushrooms were over $800 million.

13. Mushrooms are grown on farms, usually in one-story windowless cinder block buildings called ''doubles.'' Doubles are kept cool and dark at an optimum ground temperature of 64 degrees year round. Mushrooms are grown in stacks of beds, usually six beds to a stack and 24 beds to a double. The growing process takes approximately eight weeks to harvest from the introduction of mushroom seed, or ''spawn'' into the growing medium, usually compost. Once harvested, mushrooms are usually kept in refrigerated storage on the farms until packaged and shipped in refrigerated trucks to customers.

14. Agaricus mushrooms of better quality are sold to fresh market retailers such as grocery store chains and food distributors. Lesser quality agaricus mushrooms are often sold to canneries. The majority of the agaricus mushrooms grown by EMMC members are sold to the fresh market.

15. According to the U.S. Department of Agriculture, approximately 66 percent of the domestic agaricus mushrooms grown in the United States are grown in the eastern United States, with 55 percent grown in Pennsylvania. Fresh market mushroom prices historically have been lowest in the east, and some fresh mushrooms grown in the eastern United States are shipped west.

V. Anticompetitive Effects

16. In January 2001, shortly after its formation, the EMMC and its members agreed to set increased minimum prices at which they would sell fresh mushrooms in six different geographic regions, covering the entire continental United States. The minimum prices they agreed to were higher, on average, than the prices prevailing in those regions prior to the EMMC's formation. The price increases averaged about 8 percent nationwide.

17. The EMMC controlled over 60 percent of all agaricus mushrooms grown in the United States during the 2001–2002 growing season and approximately 90 percent of all agaricus mushrooms grown in the eastern United States during the same growing season.

18. Within three months of instituting its price increases, the EMMC launched a campaign to control the mushroom supply by acquiring and subsequently dismantling non-EEMC mushroom growing operations in the eastern United States. The campaign was planned to include the purchase of mushroom farms in other regions of the country as well. The EMMC's objective

was to reduce overall mushroom supply as a means to support its price increases of early 2001.

19. Through membership dues and a ''Supply Control Assessment'' the EMMC collected approximately six million dollars from its members during 2001–2002. EMMC then spent approximately three million dollars to purchase four mushroom farms and to acquire lease options on two additional mushroom farms in the eastern United States for the purpose of shutting them down and reducing the mushroom production capacity available for nonmembers to grow mushrooms in competition with the EMMC.

20. In May 2001, the EMMC purchased a farm in Dublin, Georgia at a bankruptcy auction. The Dublin farm had an annual mushroom production capacity of approximately eight million pounds. At the auction, the EMMC outbid a nonmember mushroom grower based in Colorado that was attempting to enter mushroom farming in the eastern United States in competition with EMMC. Three months later, the EMMC entered into a land exchange with a land developer not connected to the mushroom industry, in which the EMMC exchanged the Dublin farm for another mushroom farm consisting of two parcels in Evansville, Pennsylvania, plus cash. As part of the exchange, the EMMC placed a permanent deed restriction on the Dublin farm prohibiting the conduct of any business related to the growing of mushrooms. The EMMC lost approximately $525,000 on the Dublin farm purchase and exchange transactions.

21. Within three months of the Dublin farm/Evansville land exchange, the EMMC sold the largest parcel of the Evansville, Pennsylvania farm to a third party, with a permanent deed restriction prohibiting the conduct of any business related to the growing of mushrooms. Less than a year later, the EMMC sold the second parcel with the same permanent deed restriction. The two parcels making up the Evansville, Pennsylvania farm, with an annual mushroom growing capacity of 15 million pounds, were sold at a collective loss of $137,000.

22. In January 2002, the EMMC purchased Gallo's Mushroom Farm (''Gallo's''), in Berks County, Pennsylvania. Gallos' had an annual mushroom growing capacity of two million pounds. Less than four months later, the EMMC sold Gallos' at a loss of $77,500 with a permanent deed restriction prohibiting the conduct of any business related to the growing of mushrooms.

23. In February 2002, the EMMC agreed to pay one million dollars to the owners of Ohio Valley Mushroom Farms for, among other things, a non-complete agreement, a right of first refusal to lease the mushroom growing operations, a right of first refusal to purchase the properties, and the right to record a deed restriction prohibiting the conduct of any business related to mushroom growing on the property for ten years. The EMMC did not lease or purchase the property, but filed the deed restriction on the Ohio Valley Farm, which had recently been operated as a mushroom growing concern with annual capacity of nine million pounds.

24. In March, 2002, the EMMC purchased the La Conca D'Oro mushroom farm in Berks County, Pennsylvania. The La Conca D'Oro farm had an annual production capacity of approximately five million pounds. The EMMC sold the farm and the mushroom-growing equipment on the farm approximately three months later at a loss of $500,000. Like the other EMMC-acquired properties, this land was sold with a deed restriction prohibiting anyone from conducting any business related to the growing of mushrooms on the property.

25. In August 2002, the EMMC purchased a ten-year lease option on the Amadio Farm in Berks County, Pennsylvania for $230,000. The Amadio Farm had an annual mushroom production capacity of approximately five million pounds. The owner of the property agreed with the EMMC to the filing of a deed restriction on the property prohibiting anyone other than the EMMC from conducting any business related to the growing of mushrooms for ten years. EMMC never entered into a lease on the property.

26. As a result of the deed restrictions placed by the EMMC on these six mushroom farms in the eastern United States, the EMMC removed more than 42 million pounds of annual growing capacity from that region, or approximately 8 percent of the total capacity in the eastern United States.

27. The EMMC purpose in entering into the purchase and lease transactions was to reduce or eliminate the agaricus mushroom growing capacity available to potential independent competitors in the eastern United States, thereby improving the ability of its members to maintain the price increases to which they had agreed.

28. Depending on the size and location, building a new mushroom growing and production facility costs millions of dollars and generally requires zoning approval. Building a new facility takes much longer to generate any revenue than purchasing or leasing an existing growing operation. By eliminating the existing available productive capacity, the EMMC effectively forestalled competitive entry by at least 18 months.

VI. Capper-Volstead

29. The EMMC was formed pursuant to the Capper-Volstead Act. Congress enacted the Capper-Volstead Act to improve the bargaining power of individual farmers when dealing with the corporate purchasers of their products by allowing farmers to act collectively without violating the antitrust laws. Under the Capper-Volstead Act, farmers, in a cooperative may collectively market their crops, including jointly setting prices, but they may not engage in exclusionary practices, monopolize trade or suppress competition with the cooperative.

VII. Violations Alleged

30. Fresh agaricus mushrooms is a relevant product market within the meaning of Section 1 of the Sherman Act, 15 U.S.C. 1. The eastern United States is a relevant geographic market within the meaning of section 1 of the Sherman Act.

31. The Supply Control campaign adopted and implemented by the EMMC constitutes a conspiracy in unreasonable restraint of trade to prevent, forestall and restrict competition from independent mushroom producers of section 1 of the Sherman Act, 15 U.S.C. 1.

32. To form and effectuate this conspiracy, EMMC and its members did the following things, among others:

a. Collectively funded the Supply Control campaign:

b. Sold four properties with permanent deed restrictions forbidding the conduct of any business related to the production of mushrooms;

c. Entered agreements with nonmembers to place deed restrictions on two properties for which the cooperative purchased lease options; and

d. Filed deed restrictions on the two lease-optioned properties prohibiting the conduct of any business related to the production of mushrooms for ten years.

33. The Supply Control campaign is not a joint activity protected by the exemption from the antitrust laws created by the Capper Volstead Act, 7 U.S.C. 291, *et seq*.

34. Unless the deed restrictions are voided and similar transactions are restrained in the future, the EMMC's violations likely will have the following effects, among others:

a. Competition generally in fresh market agaricus mushrooms in the eastern United States will be restrained.

b. Actual and potential competition between the cooperative's members and other mushroom farmers will be prevented, forestalled and restricted;

c. Acreage and facilities available to produce mushrooms in the eastern United States will be artificially reduced; and

d. Consumers will be deprived of the benefits of competition.

VIII. Requested Relief

Wherefore, Plaintiff requests:

1. That the deed restrictions the EMMC placed on the six properties identified above be adjudged and decreed to be unlawful and in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

2. That the Defendant and all persons acting on its behalf be permanently enjoined and restrained from enforcing the deed restrictions on the above-mentioned properties and from entering into or carrying out any contract, agreement, understanding, or plan, the effect of which would be to limit, forestall or prohibit the conduct of any business related to the growing of mushrooms on any property in the United States;

3. That the Defendant be ordered to file appropriate documents in the land records of each jurisdiction in Georgia, Pennsylvania and Ohio where the EMMC previously filed deed restrictions, to nullify the recorded deed restrictions that had the effect of prohibiting the conduct of business related to the cultivation, growing, production or marketing of mushrooms; and

4. That Plaintiff have such other relief as the Court may deem just and proper.

Respectfully submitted,

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Assistant Attorney General.

J. Bruce McDonald,
Deputy Assistant Attorney General.

Dorothy B. Fountain,
Deputy Director of Operations and Civil Enforcement.

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Laura Heiser.

Anne Spiegelman,
Trial Attorneys, Antitrust Division, Philadelphia Field Office.

December 16, 2004.

United States District Court for the Eastern District of Pennsylvania

United States of America, Plaintiff, v. *Eastern Mushroom Marketing Cooperative, Inc., Defendant; Stipulation*

Civil Case No.: 2:04–CV–5829.
Judge Thomas N. O'Neill, Jr.
Date Stamp: 12/16/2004.

It is stipulated by and between the undersigned parties by their respective attorneys that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Eastern District of Pennsylvania.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent.

3. The defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the event the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 16, 2004.

Eastern Mushroom Marketing Cooperative

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Counsel for the United States.

[FR Doc. 05–2495 Filed 2–9–05; 8:45 am]

BILLING CODE 4410–11–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML; ASLBP No. 95–706–01–ML]

Hydro Resources, Inc.; Notice of Reconstitution

Pursuant to 10 CFR 2.1207, in the above captioned *Hydro Resources, Inc.* proceeding, Administrative Judge E. Roy Hawkens is hereby appointed to serve as Presiding Officer in place of Administrative Judge Thomas S. Moore.

In accordance with 10 CFR 2.1203, all correspondence, documents, and other material relating to any matter in this proceeding should be served on Administrative Judge Hawkens as follows: Administrative Judge E. Roy Hawkens, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland this, 4th day of February 2005.

G. Paul Bollwerk, III,
Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 05–2565 Filed 2–9–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–4; SEC File No. 270–198; OMB Control No. 3235–0279.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

Rule 17a–4 requires approximately 6,900 active, registered exchange members, brokers and dealers (''broker-dealers'') to preserve for prescribed periods of time certain records required to be made by Rule 17a–3 and other Commission rules, and other kinds of records which firms make or receive in the ordinary course of business. Rule 17a–4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain these required records. The records required to be maintained under Rule 17a–4 are used by examiners and other representatives of the Commission to determine whether broker-dealers are in compliance with, and to enforce their compliance with, the Commission's rules.

The staff estimates that the average number of hours necessary for each broker-dealer to comply with Rule 17a–4 is 254 hours annually. Thus, the total burden for broker-dealers is 1,752,600 hours annually. The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a–4. The staff estimates that the hourly salary of a compliance manager is $50 per hour.[1] Based upon these numbers, the total cost of compliance for 6,900 respondents is approximately $87.63 million (1,752,600 yearly hours x $50). The total burden hour decrease of 128,661 results from the decrease in the number of respondents from 7,217 to 6,900.

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 control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within thirty days of this notice.

February 4, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–569 Filed 2–9–05; 8:45 am]

BILLING CODE 8010–01–P

[1] This figure is based on the SIA Report on Office Salaries In the Securities Industry 2003 (Compliance Manager) and includes 35% for overhead charges.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extensions: Schedule TO OMB Control No. 3235–0515; SEC File No. 270–456.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Schedule TO must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. This information is made available to the public. Information provided on Schedule TO is mandatory. Approximately 2,500 issuers annually file Schedule TO and it takes 43.5 hours to prepare for a total of 108,750 annual burden hours. It is estimated that 50% of the 108,750 total burden hours (54,375 burden hours) is prepared by the company.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 4, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–572 Filed 2–9–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12451]

Issuer Delisting; Notice of Application of New York Health Care, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Boston Stock Exchange, Inc.

February 4, 2005.

On January 21, 2005, New York Health Care, Inc., a New York corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

On January 19, 2005, the Board of Directors (''Board'') of the Issuer approved resolutions to withdraw the Issuer's Security from listing and registration on the BSE. In making the decision to delist the Security from the BSE, the Issuer stated various factors, including: (i) That the original listing of the Security on the Exchange was required by the underwriter of the Issuer's initial public offering—a contractual obligation that has expired; (ii) that the Security has not traded on the Exchange from at least January 2002 to the time of the application; (iii) the expense involved in responding to the Exchange's request[3] to make any

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] By letter dated December 3, 2004, the Exchange requested that the Issuer file a listing of additional shares form with the Exchange and pay any fees associated therewith, and provide information regarding: (i) The Issuer's previously reported delisting of its common stock from Nasdaq and the investigation resulting from the resignation of a former director; (ii) the business purpose of the resignations of the Issuer's Chief Executive Officer and Chief Financial Officer, which are anticipated to occur upon the completion of the Issuer's private placement of securities; (iii) the current number of beneficial holders of the Issuer, and (iv) a potential rescission right on certain shares issued to holders of BioBalance stock. On December 20, 2004, the Issuer requested an extension of the December 22, 2004 deadline to have more time to decide whether to expend the time and resources necessary to respond to the Exchange or to voluntarily delist. On

necessary filings and paying any associated fees to continue listing the Security on the Exchange; and (iv) that the Security currently trades on the Over-the-Counter Market on the Pink Sheets.

The Issuer stated in its application that it has complied with BSE procedures for delisting by filing the required documents governing the withdrawal of securities from listing and registration on the BSE.

The Issuer's application relates solely to withdrawal of the Security from listing on the BSE and from registration under Section 12(b) of the Act,[4] and shall not affect its obligation to be registered under Section 12(g) of the Act.[5]

Any interested person may, on or before March 1, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the BSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–12451 or;

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–12451. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–563 Filed 2–9–05; 8:45 am]

BILLING CODE 8010–01–P

December 20, 2004, the Exchange granted the request and extended the Issuer's time to either respond or voluntarily delist until January 14, 2005.

[4] 15 U.S.C. 78*l*(b).

[5] 15 U.S.C. 78*l*(g).

[6] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51133; File No. SR–Amex–2004–101]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Dow Jones Industrial Average

February 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Section 107A of the Amex Company Guide (''Company Guide''), notes linked to the performance of the Dow Jones Industrial Average (''DJIA'' or ''Index'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide notes issued by Citigroup, linked to the performance of the DJIA (the ''DJIA Notes'' or ''Notes'').[4] The DJIA is determined, calculated and maintained solely by Dow Jones.[5] The Notes will provide for a multiplier of 300% (''Upside Participation Rate'') of any positive performance of the DJIA during such term subject to a maximum payment amount or ceiling expected to be 5.7%, which will be determined at the time of issuance (''Capped Value'').[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Citigroup Global Markets Holdings, Inc. (''Citigroup'') and Dow Jones & Co. (''Dow Jones'') have entered into a non-exclusive license agreement providing for the use of the DJIA by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. Dow Jones is not responsible and will not participate in the issuance and creation of the Notes.

[5] The DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the Wall Street Journal (''WSJ'') as representative of the broad market of U.S. industry. A price-weighted index refers to an index that assigns weights to component stocks based on the price per share rather than total market capitalization of such component stock. The corporations represented in the DJIA tend to be leaders within their respective industries and their stocks are typically widely held by individuals and institutional investors. Changes in the composition of the DJIA are made solely by the editors of the WSJ. In addition, changes to the common stocks included in the DJIA tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. However, over time, changes are made to more accurately represent the broad market of U.S. industry. In choosing a new corporation for the DJIA, the editors of the WSJ focus on the leading industrial companies with a successful history of growth and wide interest among investors. Dow Jones, publisher of the WSJ, is not affiliated with Citigroup and has not participated in any way in the creation of the Notes. The number of common stocks in the DJIA has remained at 30 since 1928, and, in an effort to maintain continuity, the constituent corporations represented in the DJIA have been changed on a relatively infrequent basis.

[6] Telephone conversation between Jeff Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), SEC, dated January 31, 2005 (as to expected amount payable at maturity under various scenarios).

The Capped Value limits the portion of any appreciation in the value of the DJIA in which an investor can participate to approximately 17.1% of the principal amount of the Notes (*e.g.,* a multiplier of 300% of the positive performance of the Index subject to the Capped Value of 5.7%). If the ending value of the DJIA exceeds the starting value by more than the expected Capped Value of 5.7%, then the return on the Notes will be limited to 17.1%; thus, if the DJIA appreciates more that 17.1%, the return on the Notes will be less than an investment in the underlying stocks of the DJIA or a similar security that was directly linked to the DJIA but not subject to an appreciation cap. However, for increases in the value of the Index equal to or greater than 5.7% and less than 17.1%, the appreciation on the Notes will be 17.1%; thus, the Notes provide more appreciation than an investment in an instrument directly linked to the Index. If the DJIA increases by less than 5.7%, the appreciation on the Notes will equal three (3) times the appreciation of an investment in an instrument directly linked to the Index; thus, the Notes will again provide more appreciation than an investment in an instrument directly linked to the Index. If the DJIA decreases during this period, however, the value of the Notes will decline on a one-to-one basis with the Index and there is no floor on the depreciation.

The Notes will conform to the initial listing guidelines under Section 107A [7] and continued listing guidelines under Sections 1001–1003 [8] of the Company Guide. The Notes are senior non-convertible debt securities of Citigroup. The Notes will have a term of at least one but no more than ten years.[9] The original public offering price will be $10 per Note. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the DJIA. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes.[10] The Notes are also not callable by the issuer, Citigroup, or redeemable by the holder.

The payment that a holder or investor of a Note will be entitled to receive (the ''Redemption Amount'') will depend on the relation of the level of the DJIA at the close of the market on a single business day (the ''Valuation Date'') shortly prior to maturity of the Notes (the ''Final Index Level'') and the closing value of the Index on the date the Notes are priced for initial sale to the public (the ''Initial Index Level''). If there is a ''market disruption event'' [11] when determining the Final Index Level, the Final Index Level maybe deferred up to two (2) business days if deemed appropriate by the calculation agent.

If the percentage change of the Index is positive (*i.e.*, the Final Index Level is greater than the Initial Index Level), the Redemption Amount per Note will equal:

$$\$10+\left[\$10\times\left(\frac{\text{Final Index Level}-\text{Initial Index Level}}{\text{Initial Index Level}}\right)\times\text{Upside Partcipation Rate}\right],\ \text{not to exceed the Capped Value.}$$

The Upside Participation Rate, determined at the time of issuance, is expected to be approximately 300%.

If the percentage change of the Index is zero or negative (*i.e.,* the Final Index Level is less than or equal to the Initial Index Level), the Redemption Amount per Note will equal:

$$\$10+\$10\times\left(\frac{\text{Final Index Level}-\text{Initial Index Level}}{\text{Initial Index Level}}\right)$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the DJIA. The Notes are designed for investors who want to participate in or gain enhanced upside exposure to the DJIA, subject to a cap, and who are willing to forego principal protection and market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and related options linked to the performance of the DJIA.[12]

[7] Section 107A of the Amex Company Guide requires: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders because the Notes are issued in $10 denominations; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[8] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[9] The term of the Notes is expected to be 21 months and will be disclosed in the pricing supplement.

[10] A negative return of the DJIA will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

[11] A ''market disruption event'' is defined as (i) the occurrence of a suspension, absence or material limitation of trading of 20% or more of the component stocks of the Index on the primary market for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such primary market; (ii) a breakdown or failure in the price and trade reporting systems of any primary market as a result of which the reported trading prices for 20% or more of the component stocks of the Index during the last one-half hour preceding the close of the principal trading session on such primary market are materially inaccurate; and (iii) the suspension, material limitation, or absence of trading on any major securities market for trading in options contracts, future contracts, or any options on such futures contracts related to the Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market.

[12] *See* Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (approving the listing and trading of options on the DJIA); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (approving the listing and trading of DIAMONDS SM Trust Units, portfolio

As of November 30, 2004, the market capitalization of the securities included in the DJIA ranged from a high of $373 billion to a low of $17.9 million.[13] The average daily trading volume for these same securities for the last six months ranged from a high of 67.123 million shares to a low of 1.861 million shares. The Index value will be widely disseminated at least once every fifteen seconds throughout the trading day.

Because the Notes are issued in $10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations, and employees thereof recommending a transaction in the Notes: (i) To determine that such transaction is suitable for the customer, and (ii) to have a reasonable basis for believing that the customer can evaluate the special characteristics of and is able to bear the financial risks of such transaction. In addition, Citigroup will deliver a prospectus in connection with initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[16] in general and furthers the objectives of Section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

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 SR–Amex–2004–101 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 SR–Amex–2004–101. 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 on the Exchange's Web site at *http://www.amex.com* and for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–Amex–2004–101 and should be submitted on or before March 3, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[18] The Commission has approved the listing of securities similar to that of the Notes.[19] Accordingly, the Commission finds that the listing and trading of the Notes based on the DJIA is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[20]

The requirements in Section 107A in the Company Guide were designed to

depositary receipts based on the DJIA); 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes on the DJIA) and 49453 (March 19, 2004), 69 FR 15913 (March 26, 2004) (approving the listing and Trading of Contingent Principal Protection Notes Linked to the Performance of the DJIA).

[13] As reported by Dow Jones & Company at *http://www.averages.dowjones.com.*

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[15] *See* Amex Rule 462 and Section 107B of the Company Guide.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(5).

[19] *See e.g.*, Securities Exchange Act Release No. 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (order approving File No. SR–Amex–2003–62); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (order approving File No. SR–Amex–2003–74).

[20] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

address the special concerns attendant to the trading of hybrid securities like the Notes. For example, Section 107A of the Company Guide provides that the only issuers satisfying substantial asset and equity requirements may issue securities, such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[21] By imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

In approving the products, the Commission recognizes that the DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the WSJ as representative of the broad market of U.S. industry, with each stock affecting the DJIA in proportion to its market price. Given the large trading volume and capitalization of compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the DJIA should not unduly impact the market for the underlying securities comprising the DJIA or raise manipulative concerns.

Moreover, the issuers of the underlying securities comprising the DJIA, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as Citigroup, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Citigroup.[22]

Finally, the Commission notes that the value of the DJIA will be disseminated at least once every fifteen seconds throughout the trading day. The Exchange represents that the DJIA will be determined, calculated, and maintained by the editors of the WSJ.

The Exchange has requested and the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.[23] Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[24] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–Amex–2004–101) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–571 Filed 2–9–05; 8:45 am]

BILLING CODE 8010–01–P

[21] The Commission also notes that the 30 component stocks that comprise the DJIA are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[22] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[23] *See supra* note 22.

[24] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4990]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Power of Conversation: Jewish Women and Their Salons''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Power of Conversation: Jewish Women and their Salons,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Jewish Museum, New York, NY, from on or about March 4, 2005, to on or about July 10, 2005; the McMullen Museum, Boston College, Boston, MA, from on or about August 22, 2005, to on or about December 4, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 4, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–2623 Filed 2–9–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4989]

Culturally Significant Objects Imported for Exhibition Determinations: ''Thomas Demand''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Thomas Demand,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I

also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY, from on or about March 1, 2005, to on or about May 30, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202–453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 4, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–2622 Filed 2–9–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4988]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Partnerships for Learning Youth Exchange and Study (P4L–YES) Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–05–26.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: April 4, 2005.

Executive Summary: The Youth Programs Division, Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for grants to support exchanges and relationship building between high school students from countries with significant Muslim populations and people of the United States. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) and public institutions may submit proposals to recruit and select students and to carry out projects for an academic year or semester of study in the United States, incorporating themes promoting civil society and mutual understanding.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose:

Overview: The Partnerships for Learning (P4L) initiative encompasses cultural and civic exchanges as vehicles through which the successor generation can engage in a dialogue for greater understanding.

The P4L–YES program is designed to foster a community of shared interests and values developed through better mutual understanding via first-hand participation of high school students, aged 15–17, from countries with significant Muslim populations, in academic semester and year exchanges to the United States. The program seeks to select students with leadership potential and to develop their leadership skills while in the U.S. and when they return home.

The overarching goals are to:

1. Promote better understanding by youth from selected countries about American society, people, institutions, values and culture;
2. Foster lasting personal ties;
3. Enhance Americans' understanding of the foreign students' countries and cultures;
4. Promote awareness of and involvement in civic and democratic processes among participants and their peers;
5. Increase the capacity of organizations in participating countries to engage youth in activities that advance mutual understanding and civil society through alumni activities.

This initiative is intended to build on a solid foundation of exchanges laid in past years by grantees selected in a competition conducted in 2002 and subsequently renewed in 2003 and 2004, while encouraging new applicants with the ability to assist ECA in expanding the breadth of the program. Funding will support academic year exchanges and continue to incorporate lessons learned and best practices into perfecting the model for conducting future programs. Proposals for single semester exchanges may be accepted for partner countries where the academic year is not compatible with the U.S. academic calendar. Bureau seeks to award grants to further efforts in participant countries where exchange programs have existed previously but also to encourage the establishment of academic year exchanges with countries where minimal or inadequate capability has existed previously. Grants will be awarded both to organizations that have the necessary infrastructure and experience conducting academic high school exchange programs with the partner countries, as well as to those that seek to collaborate with the Bureau in building the necessary infrastructure for exchanges with the partner countries where this does not currently exist. It is anticipated that initial funding for ''start-up costs'' for recruitment and selection associated with this program will be provided in FY–2005. The balance will be provided in FY–2006, pending availability of funds.

ECA will accept proposals for either multiple-country or single-country projects. It will also accept grants from single applicants or from those that have formed partnerships with qualified partners to implement specified tasks to complete the project. YES is a program for all students from countries with significant Muslim populations, not just for Muslim students. It is ECA's expectation that, overall, across all regions, the majority of participants will be Muslim but that we will see ample religious, ethnic, socio-economic and geographic diversity within any country.

Most student participants will arrive in their host communities during the month of August 2006 and remain for 10 or 11 months until their departure during the period mid-May to early July 2007. For countries where the standard of English instruction does not provide an adequate qualifying applicant pool, selected students requiring additional language instruction may arrive in July if additional preparation in the U.S. is necessitated; alternatively applicants may propose in-country language preparation prior to the students' departure from their home countries. As an alternative to the full-year-program, grant recipients may bring a contingent of students to the U.S. for the spring 2007 semester from countries where the academic year is not compatible with the U.S. academic year. During the exchange period, students will participate in activities designed to teach them about community life, citizen participation in a democracy, and U.S. culture. Participants will have

opportunities to give presentations on their countries and cultures in community forums.

Guidelines: The partner countries for this program will be selected based on a number of factors: (1) Foreign policy considerations, (2) a favorable climate for exchange, and (3) the ability of the private sector to administer exchange programs, as demonstrated by the response to this RFGP. The tentative list includes but is not limited to the following countries: Afghanistan, Algeria, Bahrain, Bangladesh, Brunei, Cambodia, Chad, Egypt, India, Indonesia, Israel (Arab Communities), Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mali, Mauritania, Morocco, Niger, Nigeria, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Senegal, Syria, Tanzania, Thailand, Tunisia, Turkey, United Arab Emirates, West Bank/Gaza, and Yemen. *The Bureau reserves the right to amend this list at any time as conditions change.* Should an applicant have questions in regards to countries on this list or an interest in proposing an exchange with additional countries not on this list, please contact the Bureau. (*See* Section IV.1 for contact information.)

Responsibilities:

- To recruit, select and place approximately 1,000 high school students from countries with significant Muslim populations in qualified, well-motivated host families.
- To place students in schools that have been accredited by the respective state departments of education.
- To expose program participants to American culture and civil society through homestay experiences and enhancement activities that will enable them to attain a broad view of the society and culture of the U.S.
- To expose YES program participants to opportunities for volunteerism and community service.
- To encourage YES program participants to share their culture, lifestyle and traditions with U.S. citizens throughout their stay and including International Education Week.
- To provide YES students with leadership opportunities that will foster skills they can take back with them and use in their home countries.
- To provide activities that will increase and enhance students' understanding of the importance of tolerance and respect for the views and beliefs of others in a civil society.
- To develop alumni databases and create alumni programs giving opportunities for returning students to incorporate their knowledge and skills into service in their home countries.

Through participation in the YES program, students should:

1. Acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens can and do act at the grassroots level to deal with societal problems, and an awareness of and respect for the rule of law.
2. Acquire an understanding of a free market economy and private enterprise. This includes awareness of privatization and an appreciation of the role of entrepreneurs in economic growth.
3. Develop an appreciation for American culture, an understanding of the diversity of American society and increased tolerance and respect for others with differing views and beliefs.
4. Interact with Americans and generate enduring ties.
5. Teach Americans about the cultures of their home countries.
6. Gain leadership capacity that will enable them to initiate and support activities in their home countries that focus on development and community service in their role as YES alumni.

Further Considerations:

1. There is no minimum or maximum number of students who may be selected and placed by one organization however cost effectiveness will be a review criterion in all applications. It is anticipated that approximately 5–7 grants will be awarded for the YES program. Placements may be in any region in the U.S. Strong preference will be given to organizations that choose to place participants in clusters of at least three students. Applicants must demonstrate that training of local staff ensures their competence in providing culture and YES-specific orientation programs, appropriate enhancement activities, and quality supervision and counseling of students from participating countries. Please refer to the Solicitation Package, available on request from the address listed below, for details on essential program elements, permissible costs, and criteria used to select students.
2. We anticipate grants beginning no later than June 2005.
3. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.
4. Applicants should submit the health and accident insurance plans they intend to use for students on this program. If use of a private plan is proposed, the State Department will compare that plan with the Bureau plan and make a determination of which will be applicable.
5. All grantees are required to include people with physical disabilities in the exchange.
6. All exchange participants must travel on J–1 visas using DS–2019s issued by the ECA program office under its program designation.
7. Applicants should reflect an understanding of the related youth work of various international agencies in the proposed country(s), such as the U.S. Agency for International Development, World Bank, non-governmental organizations (NGOs) working with youth, and development foundations as a way to enhance alumni programming and provide participants with resources and support when they return home.
8. Projects should promote youth awareness of and involvement in civic and democratic processes, including tolerance of diversity, accountability of government, human rights, and inclusiveness of women, people with disabilities and minorities. Proposals may include small grants to encourage alumni to utilize what they have learned in their home countries to promote civic education projects and community development initiatives.
9. Applicants should identify local partners (organizations or individuals) in the countries with which they are proposing to collaborate and provide information regarding their activities and accomplishments in the proposal. Proposals must contain letters of commitment or support from the foreign country partner(s), and these letters should be tailored to the activities being proposed.

Please refer to the Solicitation Package for further information, especially the Project Objectives, Goals and Implementation (POGI) and the Proposal Submission Instructions (PSI).

Proposal Contents:

In a 20-page, one-sided, double-spaced narrative, please describe the proposed project in detail, including the themes, guidelines, responsibilities and considerations outlined above. A recommended outline to help with the organization of your narrative is found in the POGI.

Please include any attachments in Tab E of your proposal. Limit the attachments to those essential for understanding the proposal.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY 2005 and FY–2006 (pending availability of funds).

Approximate Total Funding: $10,000,000.

Approximate Number of Awards: 5–7.

Approximate Average Award: $2,000,000.

Floor of Award Range: There is no minimum award.

Ceiling of Award Range: There is no maximum award.

Anticipated Award Date: Pending availability of funds, *June 1, 2005.*

Anticipated Project Completion Date: September 30, 2007

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew grants awarded in this competition for up to two additional fiscal years, before openly competing the program again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs, which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: (a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

(b) Technical Eligibility: Funding will be awarded to organizations that:

1. As a single organization, have in place the existing infrastructure in the U.S. and in the participating countries and have a recent track record of successfully conducting educational exchanges with those countries and can demonstrate their ability to comply with all requirements for administering federal grants, including standards of the Department of State as a secondary school student exchange visitor sponsor with experience in J–1 visa requirements; or

2. As a lead organization, proposes to form partnerships, consortia, and other arrangements with other organizations to pool resources that will result in implementing a program with the required quality features, as outlined in this RFGP and supplementary documents. To be eligible for this latter structure, the grantee organizations must be already familiar with the Department of State's standards and expectations for secondary school student exchange visitor sponsors and have a thorough knowledge of J–1 visa requirements. Though not a requirement for all other members of the group, a thorough understanding of the secondary school student exchange visitor regulations is essential for other organizations involved in the selection, travel and placement of students.

Note: All accepted proposals must demonstrate a sufficient infrastructure within each participating country that is satisfactory to ECA and the U.S. Embassy and will ensure successful implementation of the program.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact Kevin Baker at the Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–203–7517 (t), 202–203–7529 (f), *BakerKM1@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–05–26) located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Kevin Baker and refer to the Funding Opportunity Number (ECA/PE/C/PY–05–26) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424, which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the

Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

IV.3d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Grantees will be required to participate in an independent evaluation being conducted through ECA for the first four years of the P4L YES program. The role of the grantees includes administering and submitting three surveys for each participant. The survey forms will be provided to the grantee's recruiting component office along with instructions by the Bureau's evaluation consultant, InterMedia. As has happened in the past, the grantee will receive a payment per participant from the consultant to defray costs incurred in this task. The first survey should be administered at the participants' pre-departure orientations, preferably as early as possible. (Under no circumstance may it be administered after the students have come to the US.) The second survey will be completed on-line by students, and the grantees' placement offices must ensure that all students complete it near the end of the academic year before leaving the US. The final survey will be administered and submitted to InterMedia by the grantees' recruitment offices in the partner country with the students one year after they return home.

Through these surveys InterMedia will evaluate the project's success through key evaluation questions, including students' satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan will include indicators that measure gains in mutual understanding as well as substantive knowledge.

A successful evaluation depends heavily on grantees setting clear goals and outcomes at the outset of a program. Although InterMedia will conduct an independent evaluation of the program, your proposal should express clearly your project goals, project's objectives, anticipated project outcomes, and how you will plan appropriate and focused activities and to monitor students' progress throughout the year. Also, proposals should explain alumni activities and individual tracking in order to monitor results realized post-exchange. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring plan should clearly distinguish between desired program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. InterMedia's surveys will collect information on both outputs and outcomes, but the focus will be on outcomes.

The second and final InterMedia surveys will assess the following four levels of outcomes—both during the exchange and in the first year after their return home—as they relate to the program goals set out in the RFGP (listed here in increasing order of importance). Grantees should demonstrate in their proposals their strategy for planning appropriate activities and monitoring that will ensure participant success in these areas:

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new

programming, and organizational improvements.

Overall, the quality of your monitoring and performance evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how and when each outcome will be measured and reported; (3) clearly explains how progress will be reported to ECA through the quarterly and final reports.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including monitoring tools and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. The essential components for all academic study projects undertaken with Bureau grant funding include collaboration with American embassies overseas in planning and implementing the exchange; the applicant should meet with the embassy's Public Affairs Office or Cultural Affairs Office to discuss the role and interests of the embassy in the implementation of the project and in alumni activities.

Wherever possible program planning should take into consideration and include other U.S. Government funded programs. This is especially relevant for countries that receive ECA funding for Global Connections and Exchange programs. Collaboration with these Internet-based programs should help YES students, families and alumni maintain contact through online portals of communication. These programs may also offer YES alumni with platforms for practical and meaningful Internet-based activities that serve schools and communities.

IV.3e. Budget Guidelines: Please take the following information into consideration when preparing your budget.

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should provide detailed separate sub-budgets for each program component, country, or activity. For multi-country programs, applicants should also include a budget summary with an estimate of the total request for each country considering all components from recruitment to placement to alumni support. This will allow reviewers to consider partial funding alternatives if necessary.

IV.3e.2. Allowable costs for the program include the following: Please refer to the Solicitation Package for allowable costs complete budget guidelines and formatting instructions.

IV.3e.3. Grant funding will be available to pay for a percentage of the students to participate in a pre-academic English enhancement and cultural adjustment program, on an as-needed basis.

IV.3f. Submission Dates and Times: Application Deadline Date: April 4, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than Monday, April 4, 2005. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM.''

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–05–26, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in Word format and budgets in Excel version on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy (ies) for its (their) review.

V. Application Review Information

V.1. Review Process: The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea and planning: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and the purposes outlined in the solicitation. Detailed agenda and relevant work plan should demonstrate the ability to ensure that the proposed project accomplishes the stated objectives in the desired time frame. Proposals should demonstrate how students will be recruited, selected, monitored, trained and prepared for their role as YES alumni. The level of creativity, resources, and effectiveness will be primary factors for review. Proposals should be clearly and accurately written, with sufficient, relevant detail. The Narrative should address all of the items in the Statement of Work and Guidelines described above.

2. Multiplier effect/Follow-on activities: Proposed programs should strengthen long-term mutual

understanding, including maximum sharing of information and establishment of long-term institutional and individual ties both during the exchange and after the participants return home. Proposals should provide a plan for continued contact with returnees to ensure that they are tracked over time, utilized and/or organized as alumni, and provided opportunities to reinforce the knowledge and skills they acquired on the exchange and share them with others.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity in all program aspects including participants (exchange students and hosts), sending and hosting communities, orientation, and program activities. Proposals should articulate a diversity plan, not just a statement of compliance.

4. Institutional Record/Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. Proposals for infrastructure building should convincingly describe the need and the plan to address that need in specific terms (*e.g.*, staffing, staff training, equipping and maintaining an office). The plan should demonstrate a thorough understanding of local requirements for establishing and registering an NGO. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. Project Evaluation: The Bureau will provide baseline data and standard questionnaires for use in surveying participants and returnees to ensure that data is comparable from one program to another and will facilitate the demonstration of results. The proposal should indicate concurrence with this plan and explain how it will facilitate the completion and submission of participant surveys. Applicants may describe any experience conducting results-oriented evaluations. Successful applicants will demonstrate clear program goals and objectives as well as strategies for monitoring student and alumni progress. Grantees are also expected to submit quarterly reports that include student and alumni activities and progress.

6. Cost-effectiveness/Cost-Sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through institutional direct funding contributions, as well as other private sector support. Preference will be given to organizations whose proposals demonstrate a quality, cost-effective program.

7. Value to U.S.-Partner Country Relations: Proposals should indicate how the program is of value to U.S. and partner countries' interests and receive positive assessments by the U.S. Department of State's geographic area desks and overseas officers of program need, potential impact, and significance in the partner countries.

VI. Award Administration Information

VI.1. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports, which should follow guidelines to be distributed after the awarding of the grant. Reports should include planned objectives and goals for the period, actual accomplishments, and explanations of differences from planned timeline. Reports are due on the last day of each March, June, September and December throughout the project period.

Grantees will be required to work with the organization contracted by the Bureau to manage the evaluation of the program. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Kevin Baker, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, ECA/PE/C/PY–05–26, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–203–7517 (t) and 202–203–7529 (f), *BakerKM1@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–05–26.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not

constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 1, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–2621 Filed 2–9–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAS), 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 extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 10, 2004, page 54840.

DATES: Comments must be submitted on or before March 14, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: General Operating and Flight Rules—FAR 91.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0005.

Forms(s): NA.

Affected Public: A total of 21,197 respondents.

Abstract: Part A of Subtitle VII of the Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR part 91 prescribes regulations governing the general operation and flight of aircraft. Information is collected to determine compliance. Respondents are individual airmen, state or local governments, and businesses.

Estimated Annual Burden Hours: An estimated 235,164 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20505, Attention FAA 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 estimates 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 techniquest or other forms of information technology.

Issued in Washington, DC, on February 2, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 05–2555 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of two vacancies on the NPOAG (now the NPOAG Aviation Rulemaking Committee) for members representing environmental interests and invites interested persons to apply to fill the vacancies.

DATES: Persons interested in serving on the advisory group should contact Mr. Brayer or Ms. Trevino on or before March 3, 2005.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, e-mail: *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, e-mail: *Karen_Trevino@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government service.

By FAA Order No. 1110–138, signed by the FAA Administrator on October 10, 2003, the NPOAG became an Aviation Rulemaking Committee (ARC).

The current NPOAG ARC is made up of four members representing the air tour industry, two members representing environmental interests, and two members representing Native American interests. Current members of the NPOAG ARC are: Heidi Williams, Aircraft Owners and Pilots Association;

Alan Stephen, Twin Otter/Grand Canyon Airlines; Elling Halverson, Papillon Airways, Inc.; Richard Larew, Era Aviation, Inc.; Chip Dennerlein, State of Alaska Fish and Game; Charles Maynard, formerly with Great Smoky Mountain National Park; and Germaine White and Richard Deertrack, representing Native American tribes.

Public Participation in the Advisory Group

In order to retain balance within the NPOAG ARC, the FAA and NPS invite persons interested in serving on the ARC to represent environmental interests to contact either of the persons listed in **FOR FURTHER INFORMATION CONTACT**. Requests to serve on the ARC should be made in writing and postmarked on or before March 3, 2005. The request should indicate whether or not you are a member of an association representing environmental interests or have another affiliation with environmental interests in issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to environmental interests. The term of service for NPOAG ARC members is 3 years.

Issued in Washington, DC on February 2, 2005.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 05–2593 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–04–C–00–GLH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mid Delta Regional Airport, Greenville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to, impose and use the revenue from a PFC at Mid Delta Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 14, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 100 West Cross St., Suite B, Jackson, Mississippi 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Cooper, Airport Director of the City of Greenville at the following address: 166 Fifth Ave., Suite 300, Greenville, Mississippi 38703–9737.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Greenville under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Program Manager, 100 West Cross St., Suite B, Jackson, Mississippi 39208–2307, (601) 664–9900. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose an use the revenue from a PFC at Mid Delta Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 2, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Greenville was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 11, 2005.

The following is a brief overview of the application.

Proposed charge effective date: April 1, 2005.

Proposed charge expiration date: October 1, 2007.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $213,735.

Brief description of proposed project(s):

1. Rehabilitate and Convert Runway 9/27 to a Taxiway, Phase I.
2. Terminal Building Fire Escape Stairwell Project.
3. Terminal Area Drainage and Parking Lot Relocation.
4. Commerical Terminal Building Renovations, Phase 2.
5. Airfield Guidance Signage Improvement.
6. Airfield Pavement Marking Improvements.
7. Terminal Area Apron Lighting Replacement.
8. Airfield Electrical Vault Emergency Generator Replacement.
9. Preparation of PFC Application.
10. Partial Parallel Taxiway ''B'' Extension, Phase I.
11. Rehabilitate and Convert Runway 9/27 to a Taxiway, Phase II.
12. Commercial Terminal Building Renovations, Phase 3.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO—Air Taxi/Commercial Operators filing Form 1800–31.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Greeville, Mississippi.

Issued in Jackson, Mississippi on February 2, 2005.

Keafur Grimes,

Acting Manager, Jackson Airports District Office.

[FR Doc. 05–2556 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clark County, Nevada

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed freeway corridor improvement project in the City of Las Vegas, Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Bendure, Environmental Program Manager, Federal Highway Administration, 705 N. Plaza, Suite 220, Carson City, NV 89701; Telephone: 775–687–5322, E-mail: *ted.bendure@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nevada Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve a portion of the Interstate 15 Corridor near the downtown area in the City of Las Vegas, Clark County, Nevada. The proposed project would involve improvements to the I–15 Corridor and major street connections beginning south of the I–15/Sahara Avenue Interchange at Milepost 39.15 and continue to the I–15/US 95 Interchange (Milepost 42.85) on the north end. The project covers a total distance of approximately 3.7 miles on I–15.

The project (known as Project NEON) analyzes transportation needs and improvement opportunities in the I–15 freeway corridor section south of the I–

15/US System Interchange. The I–15 Corridor serves the Western United States by linking southern California and Salt Lake City, and points to the north. The I–15 Corridor also serves the Las Vegas Valley as a primary transportation link through central Las Vegas. Significant population growth in the Las Vegas Valley, projected to increase by approximately 60 percent from 2003 to 2030, will increase traffic volumes and local commuter traffic passing through this corridor. The projected population growth, associated development, and increasing tourism and gaming will place significant demand on the I–15 Corridor and connections to US 95. The purpose of this project is to meet the short- and long-term transportation needs of Las Vegas and motorists traveling through Las Vegas, specifically to provide improved transportation in response to regional growth, decrease congestion, enhance mobility, and provide access to the downtown area. Both existing congestion and projected increases in traffic necessitate consideration of the proposed improvements.

The envisioned project includes several major components, including: adding lanes and improving freeway and mass transit operations between Sahara Avenue and the I–15/US 95 Interchange; reconstructing the I–15/Charleston Boulevard Interchange; providing new I–15 freeway access to the City of Las Vegas's Downtown Redevelopment Area; extending Martin Luther King Boulevard over I–15 and Charleston Boulevard to connect with Industrial Road; and potential grade separation improvements to Oakey Boulevard east of the I–15 Corridor. The EIS will consider the effects of the proposed project, the No Action alternative, and other alternatives to the proposed project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. A project scoping meeting will be held in Las Vegas, Nevada on February 23, 2005 with the appropriate agencies and the general public. In addition, public information meetings will be held throughout the duration of the project and a public hearing will be held for the draft EIS. Public notices will be given announcing the time and place of the public meetings and the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123

Issued on: February 4, 2005.

Greg Novak,

Acting Assistant Division Administrator, FHWA, Nevada Division.

[FR Doc. 05–2567 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD 2005 20317]

Application of Foreign Underwriters to Write Marine Hull Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Request for comments.

SUMMARY: The Maritime Administration (MARAD) has received applications under 46 CFR part 249 from Axis Specialty Limited and Gard Marine and Energy Limited, both Bermuda based underwriters, to write marine hull insurance on Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

All comment submissions must include the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* All comments received will be available for examination at the above address between 10 a.m. and 5p.m., Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

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.*

Dated: February 3, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–2558 Filed 2–9–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34648]

Minnesota Commercial Railway Company—Trackage Rights Exemption—BNSF Railway Company [1]

BNSF Railway Company (BNSF) has agreed to a modified trackage rights agreement governing Minnesota Commercial Railway Company's (MNNR) overhead trackage rights over a BNSF line of railroad between MNNR's connecting trackage at Union Yard, Minneapolis, MN, and trackage located east of 15th Avenue SE., in Minneapolis, MN, comprising the Southeast Minneapolis Switching District (SEMSD), a total of distance of approximately 777 feet. The modified agreement will change the maintenance obligations to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.[2]

The transaction was scheduled to be consummated on January 28, 2005.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

[1] Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

[2] The trackage rights were originally granted as incidental trackage rights, as part of MNNR's acquisition of approximately 5 miles of rail line located in Minneapolis, MN, known as the SEMSD. *See Minnesota Commercial Railway Company-Acquisition and Operation Exemption-Certain Lines of The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33606 (STB served June 19, 1998).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34648, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 1, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–2490 Filed 2–9–05; 8:45 am]

BILLING CODE 4915–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact to Construct a Group-Site Campground in Diamond Fork Canyon, UT

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability.

SUMMARY: The Utah Reclamation Mitigation and Conservation Commission has issued a Final Environmental Assessment and Finding of No Significant Impact to construct a group-site campground in Diamond Fork Canyon in Utah County, Utah.

The new campground will have a capacity of approximately 475 people at one time and will replace group camp sites removed from the Diamond and Palmyra Campgrounds, which were reconstructed in the year 2000. The project will also provide additional group-site camping as a feature of the Diamond Fork System of the Central Utah Project.

A 1998 environmental assessment and associated decision documents prepared by the Mitigation Commission indicated that the group-site facilities removed from the Diamond and Palmyra Campgrounds would be replaced in a more favorable location and that the size and location would be analyzed in a separate analysis. This environmental analysis is a fulfillment of that 1998 commitment.

ADDRESSES: Copies of the Final Environmental Assessment and Finding of No Significant Impact can be obtained at the Utah Reclamation Mitigation and Conservation Commission, 102 W 500 S, Suite 315, Salt Lake City, Utah, 84101. They may also be viewed on the internet via the following Web address: *http://www.mitigationcommission.gov/news.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Mingo (801) 524–3146.

Dated: January 31, 2005.

Michael C. Weland,

Executive Director.

[FR Doc. 05–2547 Filed 2–9–05; 8:45 am]

BILLING CODE 4310–05–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Record of Decision on the Utah Lake Drainage Basin Water Delivery System, Central Utah Project

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability of the Record of Decision (ROD).

SUMMARY: On January 27, 2005, Jody L. Williams, Chairman of the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) signed the Record of Decision (ROD) which documents selection of the Proposed Action as presented in the 2004 Utah Lake Drainage Basin Water Delivery System Final Environmental Impact Statement (INT FES 04–41) (2004 ULS FEIS) filed with the U.S. Environmental Protection Agency on September 30, 2004. The Mitigation Commission, Central Utah Water Conservancy District and Department of the Interior served as joint lead agencies in preparing the 2004 ULS FEIS. The Proposed Action, called the Spanish Fork Canyon–Provo Reservoir Canal Alternative, one other action alternative called the Bonneville Unit Water Alternative, and a No Action alternative are described and evaluated in the 2004 ULS FEIS, upon which the ROD is based.

The Spanish Fork Canyon–Provo Reservoir Canal Pipeline Alternative will deliver an average annual transbasin diversion of 101,900 acre-feet from the Colorado River Basin to the Bonneville Basin, which consists of a delivery of: 30,000 acre-feet of Municipal and Industrial (M&I) water for secondary use to southern Utah County and 30,000 acre-feet of M&I water to Salt Lake County water treatment plants; 1,590 acre-feet of M&I water already contracted to southern Utah County cities; and 40,310 acre-feet of M&I water to Utah Lake for exchange to Jordanelle Reservoir. A portion of the 40,310 acre-feet delivered to Utah Lake would be delivered via lower Hobble Creek to provide spawning habitat for the endangered June sucker, and via lower Provo River where it would help maintain minimum instream flows for June sucker spawning and other fishery and aquatic benefits. The 30,000 acre-feet (less the water returned to Interior under the Section 207 Program) of M&I water utilized in southern Utah County would be used in the cities' secondary water systems. Use of this water as a potable supply in the future would require additional NEPA compliance. Under the Proposed Action, Interior would acquire all of the District's secondary water rights in Utah Lake. These rights would amount to a maximum of 57,073 acre-feet. The acquired water rights would be used to exchange project water to Jordanelle Reservoir. All remaining environmental commitments associated with the Bonneville Unit would be completed and previously committed in-stream flows within the Bonneville Unit area and statutorily mandated in-stream flows would be provided.

The Acting Assistant Secretary for Water and Science, Department of the Interior issued a separate ROD for the ULS on December 22, 2004, also selecting the Proposed Action for implementation. The Assistant Secretary's separate decision is necessitated by the responsibility and authority of the Department of the Interior for other aspects of the project beyond the scope of the Mitigation Commission to mitigate for reclamation projects.

ADDRESSES: Copies of the ROD and/or FEIS can be obtained at the Utah Reclamation Mitigation and Conservation Commission, 102 W 500 S, Suite 315, Salt Lake City, Utah, 84101. They may also be viewed on the internet via the following Web address: *http://www.mitigationcommission.gov/news.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Holden, Projects Manager (801) 524–3146.

Dated: January 31, 2005.

Michael C. Weland,

Executive Director.

[FR Doc. 05–2548 Filed 2–9–05; 8:45 am]

BILLING CODE 4310–05–P

Corrections

Federal Register

Vol. 70, No. 27

Thursday, February 10, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

Correction

In notice document 05–1731 beginning on page 4818 in the issue of Monday, January 31, 2005, make the following correction:

On page 4819, the table is corrected in part to read as follows:

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina: Honey, A–357–812	12/01/03–11/30/04
Asociacion de Cooperativas Argentinas	
Centauro S.A.	
Comexter Robinson S.A.	
Compa Inversora Platense S.A.	
Compania Apicola Argentina SA	
Compania Europea Americana S.A.	
ConAgra Argentina S.A.	
Coope-Riel Ltda.	
Cooperativa DeAgua Potable y Otros	
El Mana, S.A.	
Establecimiento Don Angel S.r.L.	
Food Way, S.A.	

[FR Doc. C5–1731 Filed 2–9–05; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51085; File No. SR–NYSE–2005–10]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Voluntary Supplemental Procedures for Selecting Arbitrators

January 27, 2005.

Correction

In notice document E5–405 beginning on page 5716 in the issue of Thursday, February 3, 2005 make the following correction:

On page 5718, in the second column, in the sixth and seventh lines, ''March 10, 2005'' should read ''February 24, 2005''.

[FR Doc. Z5–405 Filed 2–9–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
February 10, 2005

Part II

Department of Labor

Office of Disability Employment Policy

Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award; Notice

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–0002]

Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award

The Secretary of Labor's New Freedom Initiative Award presented by Secretary Elaine L. Chao, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210:

1. *Subject:* The Secretary of Labor's New Freedom Initiative Award.

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the New Freedom Initiative Award, and to solicit the Secretary of Labor's New Freedom Initiative Award nominations.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Background:* To encourage the use of public-private partnerships, the Secretary of Labor will present the Secretary of Labor's New Freedom Initiative Award. Initiated in 2002, this award is made annually to individual(s), non-profit organization(s), or business(es), including small businesses, that have, through programs or activities, demonstrated exemplary and innovative efforts in furthering the employment objectives of President George W. Bush's New Freedom Initiative. *See http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.* By increasing access to assistive technologies, and by utilizing innovative training, hiring, and retention strategies, the recipient(s) will have established and instituted comprehensive strategies to enhance the ability of Americans with disabilities to enter and advance within the 21st Century workforce and to participate in daily community life.

5. *Eligibility Criteria:* The following criteria apply to the New Freedom Initiative Award Nominees:

A. The nominees must be individuals, businesses, or non-profit organizations whose activities exemplify the goals of President George W. Bush's New Freedom Initiative, which include the Office of Disability Employment Policy's mission of increasing employment opportunities for youth and adults with disabilities. Nominations may be submitted by other persons and entities with the knowledge and permission of the nominee. Self-nomination is also encouraged.

B. Nominees must have developed and implemented a multi-faceted program directed toward increasing employment opportunities for people with disabilities through increased access to assistive technologies, and use of innovative training, hiring, and retention techniques.

C. Federal, State and local government organizations are not eligible for this award.

6. *Nomination Submission Requirements:*

A. The single program or multiple programs for which the individual or company is being nominated must demonstrate a commitment to people with disabilities, and clearly show measurable results in terms of significantly enhancing employment opportunities for people with disabilities. The programs or activities may also address such issues as the widening skills gap among persons with disabilities, a diversified 21st Century workforce, and discrimination based on disability.

B. The nomination packages should be limited to only that information relevant to the nominee's program(s). Nomination packages should be no longer than twenty (20) typed pages double-spaced. A page is 8.5″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. An executive summary prepared by or on behalf of the nominee, which clearly identifies the specific activities, program(s), or establishment under nomination and fully describes the results achieved.

2. A full description of the specific activities, program(s), or establishment for which the nomination is being submitted.

3. Specific data on training, placements, resources expended and other relevant information that will facilitate evaluation of the nominee's submission.

4. A description of how the program(s) and/or activities that are the subject of the nomination have had a positive and measurable impact on the employment of people with disabilities.

5. A data summary on the nominee. *See* Section 6(D).

6. A report detailing any unresolved violations of State or Federal law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must report any pending Federal or State enforcement actions, and any corrective actions or consent decrees that have resulted from litigation under the Americans with Disabilities Act (ADA) or the laws enforced by the Department of Labor (DOL).

D. A data summary on the Nominee will include the following:

1. Name(s) of the individual, organization or business being nominated.

2. Full street address, telephone number and e-mail address where applicable.

3. Name of highest ranking official(s) (where appropriate).

4. Name of executive(s) responsible for human resources, equal employment opportunity, and/or disability awareness at nominee's establishment and/or corporate office (where appropriate).

5. Name of parent company (where appropriate).

6. Name, street address, telephone number and email address of CEO or President of parent company (where appropriate).

7. Name, title, street address, telephone number and e-mail address of a contact person.

8. Number of employees at the establishment or business being nominated (where appropriate).

9. Name and description of principal program(s) or service(s).

E. Timing and Acceptable Methods of Submission of Nominations:

Nomination packages must be submitted to Secretary of Labor's New Freedom Initiative Award, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210 by May 27, 2005. Any application received after 4:45 p.m. EDT on May 27, 2005, will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than May 22, 2005.

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing, May 25, 2005.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an

employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, e-mail, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

Confirmation of receipt of your application can be made by contacting Dina Dorich of the Office of Disability Employment Policy, telephone (202) 693–7880, (866) ODEP–DOL, TTY (202) 693–7881, prior to the closing deadline.

7. *The Administrative Review Process:*

A. The ODEP Steering Committee will perform preliminary administrative review to determine the sufficiency of all submitted application packages.

B. An Executive Evaluation Committee made up of representatives appointed by the Assistant Secretary of Labor, Office of Disability Employment Policy, from Department of Labor employees will perform secondary review.

C. The Secretary of Labor will conduct the final review and selections.

8. *Other Factors to be Considered During the Administrative Review Process:*

A. If a nominee merges with another company during the evaluation process, only that information relative to the nominated company will be evaluated, and the award, if any, will be limited to the nominated company.

B. Prior receipt of this award will not preclude a nominee from being considered for the New Freedom Initiative Award in subsequent years. Programs and activities serving as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

9. *Procedures Following Selection:*

A. Awardees will be notified of their selection via the contact person identified in the application package at least six weeks prior to the awards ceremony. Non-selected nominees will also be notified within 45 days of the selection of the awardees.

B. As a precondition to acceptance of the award, the nominee agrees to:

1. Submit to ODEP for review a two-minute video of the program(s) or activity(ies) for which it is being recognized within 30 days of notification of award selection;

2. Participate in any New Freedom Initiative workshops hosted by ODEP in conjunction with or within 12 months following the awards ceremony.

C. The awardee may also display an exhibit or showcase of the program(s)/activity(ies) for which it is being recognized at the awards ceremony, with contents of the display submitted to ODEP for review within 30 days of notification of award selection.

D. Materials developed by the awardees in conjunction with Section 11(B) and (C) will be subject to legal review at the Department of Labor to ensure compliance with applicable ethics standards.

10. *Location:* The awards ceremony will generally be held during the month of October at a location to be determined by the Secretary of Labor.

Paperwork Reduction Act Notice (Pub. L. 104–13): Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB Number 1230–0002 (Expiration Date: 12/31/05). The obligation to respond to this information collection is voluntary; however, only nominations that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information of collection is estimated to be 10 hours per response; including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Department of Labor, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington DC 20210. Please reference OMB Number 1230–0002.

We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Secretary of Labor's New Freedom Initiative Award. Your comments will be very useful to the Office of Disability Employment Policy in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example, whether you thought the instructions were sufficiently clear; what you liked or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you. Please send any comments you have to Dina Dorich at *dorich.dina@dol.gov* or via mail to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW, Washington, DC 20210.

Thank you.

Signed at Washington, DC, the 1st of February, 2005.

W. Roy Grizzard, Jr.,

Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 05–2498 Filed 2–9–05; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Thursday,
February 10, 2005

Part III

Department of Homeland Security

Transportation Security Administration

49 CFR Part 1562

Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1562

[Docket No. TSA–2005–20118]

RIN 1652–AA39

Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security.

ACTION: Interim final rule; request for comments.

SUMMARY: This action transfers responsibility for ground security requirements and procedures at three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone, and for individuals operating aircraft to and from these airports, from the Federal Aviation Administration (FAA) to TSA. These requirements and procedures were previously issued by the FAA, in coordination with TSA, in Special Federal Aviation Regulation (SFAR) 94. TSA is assuming responsibility for these requirements and procedures because TSA and FAA agree that they are best handled under TSA's authority over transportation security. These requirements and procedures will continue to enhance the security of the critical infrastructure and Federal government assets in the Washington, DC, Metropolitan Area.

DATES: *Effective Date:* This rule is effective February 13, 2005.

Comment Date: Comments must be received by April 11, 2005.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov*. Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual(s) listed in **FOR FURTHER INFORMATION CONTACT**.

Reviewing Comments in the Docket: You may review the public docket containing comments on this interim final rule in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is located on the plaza level of the NASSIF Building at the Department of Transportation address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: *For policy questions:* Robert Rottman, Office of Aviation Security Policy, Transportation Security Administration Headquarters, East Building, Floor 11, 601 South 12th Street, Arlington, VA 22202; telephone: 571–227–2289; e-mail: *Robert.Rottman@dhs.gov*.

For technical questions: Dirk Ahle, Aviation Operations, Transportation Security Administration Headquarters, East Building, Floor 9, 601 South 12th Street, Arlington, VA 22202; telephone: 571–227–1504; e-mail: *Dirk.Ahle@dhs.gov*.

For legal questions: Dion Casey, Office of Chief Counsel, Transportation Security Administration Headquarters, East Building, Floor 12, TSA–2, 601 South 12th Street, Arlington, VA 22202; telephone: 571–227–2663; e-mail: *Dion.Casey@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim final rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, operating administrations within DHS will provide an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking. *See* **ADDRESSES** above for information on where to submit comments.

Comments that include trade secrets, confidential commercial or financial information, or SSI should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked and submitted by mail to the individual(s) listed in **FOR FURTHER INFORMATION CONTACT** section. Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's FOIA regulation found in 6 CFR part 5.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want the TSA to acknowledge receipt of your comments on this rulemaking, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Except for comments containing confidential information and SSI, we will file in the public docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket

is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable. We may change this rule in light of the comments we receive.

Availability of Rulemaking Document

You may obtain an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Law and Policy Web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling any of the individuals in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

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

Good Cause for Immediate Adoption

TSA is issuing this interim final rule without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes the agency to issue a rule without notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' TSA finds that notice and public comment to this interim final rule are impracticable, unnecessary, and contrary to the public interest for the following reasons.

First, after the September 11, 2001 attacks, three airports in Maryland—College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field (the Maryland Three Airports)—were closed for a sustained period because of their proximity to important National Capitol Region assets and because of the restrictions on aircraft operations in the airspace that overlies those airports. The airports were not permitted to reopen until the FAA, in coordination with TSA, issued SFAR 94 on February 19, 2002 (67 FR 7538). According to comments that the FAA received, this sustained closure placed significant financial burdens on the Maryland Three Airports. SFAR 94 is set to expire on February 13, 2005. If TSA does not issue this IFR immediately, the Maryland Three Airports may be required to close again until TSA completes this rulemaking. Such a closure could cause the Maryland Three Airports significant financial burdens that are not necessary from a security perspective.

Second, in this interim final rule TSA is largely adopting the security measures and procedures that were required under SFAR 94. The Maryland Three Airport operators, and pilots who operate to and from those airports, have been operating under the SFAR 94 requirements since February 19, 2002. In addition, because TSA is largely adopting the SFAR 94 requirements, the airport security procedures that were approved under SFAR 94 for each of the Maryland Three Airports will be approved by TSA under this interim final rule. Thus, TSA believes that the interim final rule will not present any surprises or impose any additional burdens on the Maryland Three Airport operators or the pilots who operate to and from those airports. In fact, in response to comments on SFAR 94 and FAA Notice to Airmen (NOTAM) 3/0853, this interim final rule relaxes one of the major burdens imposed under NOTAM 3/0853—the requirement that aircraft approved to operate to or from any of the Maryland Three Airports be based at one of those airports—without relaxing security. Under this interim final rule, TSA may permit transient aircraft to operate to or from any of the Maryland Three Airports if the pilot complies with the requirements of the interim final rule. This change will reduce costs without relaxing security.

Finally, TSA notes that the FAA first issued these requirements as SFAR 94 on February 19, 2002. SFAR 94 was set to expire one year from that date. The FAA requested and received public comments on SFAR 94. On February 14, 2003, the FAA published a final rule extending the expiration date of SFAR 94 for an additional two years (68 FR 7684). In the 2003 final rule, the FAA, in coordination with TSA, responded to the public comments that it received after the publication of SFAR 94 in 2002. The FAA did not receive any additional comments after publishing the final rule extending the expiration date of SFAR 94 in 2003. Consequently, TSA believes that the issues involved in this rulemaking have already been addressed through the prior FAA rulemakings.

For these reasons, TSA finds that notice and public comment to this interim final rule are impracticable, unnecessary, and contrary to the public interest. However, TSA is inviting public comments on all aspects of the interim final rule. If, based upon information provided in public comments, TSA determines that changes to the interim final rule are necessary to address transportation security more effectively, or in a less burdensome but equally effective manner, the agency will not hesitate to make such changes.

Abbreviations and Terms Used in This Document

ADIZ—Air Defense Identification Zone
ATC—Air Traffic Control
ATSA—Aviation and Transportation Security Act
CFR—Code of Federal Regulations
CHRC—Criminal History Records Check
CIA—Central Intelligence Agency
DHS—Department of Homeland Security
DOD—Department of Defense
DOT—Department of Transportation
FAA—Federal Aviation Administration
FBI—Federal Bureau of Investigation
FRZ—Flight Restricted Zone
GA—General Aviation
IFR—Instrument Flight Rules
NM—Nautical Mile
NOTAM—Notice to Airmen
PIN—Personal Identification Number
SFAR—Special Federal Aviation Regulation
TFR—Temporary Flight Restriction
TSA—Transportation Security Administration
VFR—Visual Flight Rules
VOR/DME—Very High Frequency Omnidirectional Range/Distance Measuring Equipment

Background

After the September 11, 2001, terrorist attacks against four U.S. commercial aircraft resulting in the tragic loss of human life at the World Trade Center, the Pentagon, and in southwest Pennsylvania, the FAA immediately prohibited all aircraft operations within the territorial airspace of the U.S., with the exception of certain military, law enforcement, and emergency related aircraft operations. This general prohibition was lifted in part on September 13, 2001. In the Washington,

DC, Metropolitan Area, however, aircraft operations remained prohibited at all civil airports within a 25 nautical mile (NM) radius of the Washington Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action was accomplished via the U.S. NOTAM system. The FAA issued several NOTAMs under 14 CFR 91.139, Emergency Air Traffic Rules, and implemented temporary flight restrictions (TFRs) under 14 CFR 91.137, Temporary Flight Restrictions in the Vicinity of Disaster/Hazard Areas.

On October 4, 2001, limited air carrier operations were permitted to resume at Ronald Reagan Washington National Airport (DCA).

On October 5, 2001, the FAA issued NOTAM 1/0989, which authorized instrument flight rules (IFR) operations and limited visual flight rules (VFR) operations within an 18 to 25 NM radius from the DCA VOR/DME in accordance with emergency air traffic rules issued under 14 CFR 91.139. Exception to the restrictions affecting aircraft operations under 14 CFR part 91 (part 91 operations) in the Washington, DC, area issued since September 11, 2001, were made to permit the repositioning of aircraft from airports within the area of the TFR and to permit certain operations conducted under waivers issued by the FAA.

On December 19, 2001, the FAA cancelled NOTAM 1/0989 and issued NOTAM 1/3354 that, in part, set forth special security instructions under 14 CFR 99.7 and created a new TFR for the Washington, DC, area. NOTAM 1/3354 also created TFRs in the Boston and New York City areas. That action significantly decreased the size of the area subject to the earlier prohibitions on part 91 operations in the Washington, DC, area and permitted operations at Freeway (W00), Maryland (2W5), and Suburban (W18) airports.

As security concerns were resolved, most general aviation (GA) operations resumed with varying degrees of restriction. However, due to their proximity to important National Capitol Region assets, the Maryland Three Airports remained closed for a sustained period following the September 11 attacks because of the restrictions on aircraft operations in the airspace that overlies those airports. In addition, most part 91 operations in the airspace that overlies the Maryland Three Airports remained prohibited under NOTAM 1/3354.

On February 14, 2002, the FAA cancelled NOTAM 1/3354 and issued NOTAM 2/1257, which provided flight plan filing procedures and air traffic control (ATC) arrival and departure procedures for pilots operating from the Maryland Three Airports in accordance with SFAR 94. The FAA updated and reissued NOTAM 2/1257 as NOTAM 2/2720 on December 10, 2002. NOTAM 2/2720 permitted pilots vetted at any one of the Maryland Three Airports to fly into any of the Maryland Three Airports. NOTAM 3/0853 replaced NOTAM 2/2720 on February 1, 2003. NOTAM 3/0853 remains in effect as of the date of this interim final rule.

Aviation and Transportation Security Act

The events of September 11, 2001, led Congress to enact the Aviation and Transportation Security Act (ATSA), which created TSA.[1] ATSA required TSA to assume many of the civil aviation security responsibilities that the FAA maintained prior to that date. On February 22, 2002, TSA published a final rule transferring the bulk of the FAA's civil aviation security regulations to TSA and adding new standards required by ATSA.[2]

FAA and TSA Authority

The FAA has broad authority to regulate the safe and efficient use of the navigable airspace.[3] The FAA is also authorized to issue air traffic rules and regulations to govern the flight of aircraft, the navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace. Additionally, pursuant to 49 U.S.C. 40103(b)(3), the FAA has the authority, in consultation with the Department of Defense (DOD), to ''establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security.'' Such provisions may include establishing airspace areas the FAA decides are necessary in the interest of national defense; and by regulation or order, restricting or prohibiting flight of civil aircraft that the FAA cannot identify, locate, and control with available facilities in those areas. The FAA has broad statutory authority to issue regulations in the interests of safety in air commerce and national security.[4]

TSA has broad authority over civil aviation security.[5] TSA is responsible for developing policies, strategies, and plans for dealing with threats to transportation security, as well as other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the U.S. government.[6] TSA is also authorized to work in conjunction with the FAA with respect to any actions or activities that may affect aviation safety.[7]

The FAA retains authority over airspace, including the authority to issue airspace restrictions. FAA issued SFAR 94 under that authority. However, because some of the requirements in SFAR 94 deal primarily with security (including background checks for pilots operating to or from the Maryland Three Airports and security procedures for the airports), and because TSA's primary mission is civil aviation security, the FAA and TSA have determined that ground security procedures (including security threat assessments for pilots and airport security coordinators) for the Maryland Three Airports are best handled under TSA's authority. TSA also notes that TSA inspectors have conducted inspections of Maryland Three Airports for compliance with the airports' approved security procedures. For these reasons, the ground security requirements and procedures for the Maryland Three Airports as well as the security threat assessments for individuals operating aircraft to and from those airports are being placed in TSA regulations. The airspace security restrictions in NOTAM 3/0853 remain under FAA authority.

SFAR 94

The FAA issued SFAR 94 as a final rule on February 19, 2002.[8] SFAR 94 defined the restricted airspace over the Washington, DC, Metropolitan Area and established rules for all pilots operating aircraft to or from any of the Maryland Three Airports. It also established security procedures for the Maryland Three Airports. SFAR 94 had a one-year effective period and was set to expire on February 13, 2003. However, the FAA, in consultation with TSA and other Federal agencies, reissued SFAR 94 on February 14, 2003, with an expiration date of February 13, 2005.[9]

Security Justification for the Interim Final Rule

Because of its status as home to all three branches of the Federal government, as well as numerous Federal buildings, foreign embassies, multinational institutions, and national monuments of iconic significance, the

[1] Pub. L. 107–71, November 19, 2001, 115 Stat. 597.

[2] 67 FR 8340, February 22, 2002.

[3] See 49 U.S.C. 40103(a).

[4] See 49 U.S.C. 44701(a)(5).

[5] See 49 U.S.C. 114(d)(1).

[6] See 49 U.S.C. 114(f)(3) and (4).

[7] See 49 U.S.C. 114(f)(13).

[8] 67 FR 7537.

[9] 68 FR 7683.

Washington, DC, Metropolitan Area continues to be an obvious high priority target for terrorists.

Although there is no information suggesting an imminent plan by terrorists to use airplanes to attack targets in the Washington, DC, Metropolitan Area, the success of the September 11, 2001, attack on the Pentagon and reports demonstrating terrorist groups' enduring interest in aviation-related attacks indicate the need for continued vigilance in aviation security.

For example, the April 2004 arrest of Waleed bin Attash and the subsequent discovery of a plot to crash an explosive-laden small aircraft into the U.S. Consulate in Karachi, Pakistan, illustrates terrorist groups' continued interest in using aircraft to attack U.S. interests. Other information—such as documents found in Zacarias Moussaoui's possession that outlined crop duster operations—suggests that terrorist groups may have been considering other domestic aviation attack plans in addition to the September 11, 2001, attacks.

In addition, recent press reporting on the debriefings of detained terrorist leader Khalid Shaykh Muhammad not only hints at the complexity of planning involved in the September 11, 2001, attacks but also suggests the group was likely planning follow-on operations inside the United States, possibly including inside the Washington, DC, Metropolitan Area.

While DHS has no specific information that terrorist groups are currently planning to use GA aircraft to perpetrate attacks against the U.S., it remains concerned that (in light of completed and ongoing security enhancements for commercial aircraft and airports) terrorists may turn to GA as an alternative method for conducting operations.[10]

To protect against a potential threat to the Washington, DC, Metropolitan Area, FAA, in consultation with TSA and other Federal agencies, implemented a system of concentric airspace rings and complementary airspace control measures via NOTAM 3/0853 in February 2003. The dimensions of this protected airspace were determined after considering such factors as the average speed of likely suspect aircraft and minimum launch time and speed of intercept aircraft. After extensive coordination among Federal agencies, the dimensions for this protected airspace were established along with the requirements to enter and operate in the airspace. The outer lateral boundary is the same as the outer lateral boundary for the Tri-Area Class B airspace in the Washington-Baltimore area. This outer boundary is, at certain places, more than 40 nautical miles from the Washington Monument. The Government conditioned entry into this airspace on the identification of all aircraft operators within the airspace in order to ensure the security of protected ground assets. This airspace is called an Air Defense Identification Zone (ADIZ). Within the ADIZ airspace is an inner ring, called a Flight Restricted Zone (FRZ), which has a radius of approximately 15 NM centered on the Washington (DCA) VOR/DME. In order to enter and operate in FRZ airspace, more stringent access and security procedures are applied.

The Maryland Three Airports are located within the FRZ. Therefore, aircraft operating to or from one of the Maryland Three Airports must be subject to special rules. TSA notes that under SFAR 94 and NOTAM 3/0853, aircraft operations permitted in the FRZ are limited to U.S. Armed Forces, law enforcement, aeromedical services, air carriers that operate under 14 CFR part 121, and certain types of general aviation aircraft operations that receive an FAA waiver after the waiver applications are reviewed and cleared by TSA. The pilots of these operations have successfully completed a threat assessment prior to operating in the FRZ.

Discussion of the Interim Final Rule

TSA is adopting most of the security requirements and procedures that are currently in SFAR 94. TSA requests comment on each of the requirements discussed below. In the interim final rule, TSA has reorganized the paragraph structure of the requirements in SFAR 94 to help clarify the requirements.

In keeping with SFAR 94, the interim final rule applies to the three Maryland airports (College Park Airport (CGS), Potomac Airfield (VKX), and Washington Executive/Hyde Field (W32)) that are located within the airspace designated as the Washington, DC, Metropolitan Area FRZ, as defined in FAA NOTAM or regulations. These airports are referred to as the Maryland Three Airports. The interim final rule also applies to individuals who operate an aircraft to or from those airports.

Airport Operator Requirements

SFAR 94 required each Maryland Three Airport operator to adopt security procedures that met minimum requirements in SFAR 94 and were approved by the FAA Administrator. This interim final rule carries over that requirement, except that the airport security procedures must be approved by TSA. The minimum-security procedures are discussed in greater detail below. TSA notes that because the agency is making only minor revisions to the SFAR 94 requirements, the airport security procedures that were approved by FAA under SFAR 94 for each of the Maryland Three Airports will be approved by TSA under this interim final rule.

The interim final rule requires the airport operator to maintain at the airport a copy of the airport's TSA-approved security procedures, and to permit officials authorized by TSA to inspect the airport, the airport's TSA-approved security procedures, and any other documents required under the interim final rule. These requirements will help increase awareness of, and compliance with, the airport's approved security procedures, as well as facilitate the proper administration and oversight of the security procedures at each airport. SFAR 94 contained a similar provision at paragraph 4(a)(7).

The interim final rule also requires the airport operator to maintain at the airport a copy of each FAA NOTAM and rule that affects security procedures at the Maryland Three Airports. SFAR 94 did not contain this requirement. TSA is adding this requirement to help increase pilots' awareness of, and compliance with, the FAA's requirements for operating in the FRZ.

In addition, the interim final rule requires the airport operator to appoint an airport employee as the airport security coordinator. The airport security coordinator will be responsible for ensuring that the airport's security procedures are implemented and followed. The airport security coordinator must be approved by TSA. To obtain TSA approval, an airport security coordinator is required to undergo the same security threat assessment and criminal history records check as pilots who are approved to operate to or from a Maryland Three Airport. Accordingly, the airport

[10] TSA has taken several actions to enhance GA security. For example, TSA, in partnership with GA associations, implemented a GA Hotline (1–866–GA SECURE) that is tied to an Airport Watch Program. This provides a mechanism to enable any GA pilot to report suspicious activity at his or her airport to one central Federal Government focal point. The Hotline, which is operated by the National Response Center and managed by the U.S. Coast Guard, became operational on December 2, 2002. The Airport Watch program has extended the Neighborhood Watch concept to airports. Pilots, airport workers, and aircraft maintainers are asked to call the Hotline to report any suspicious activity. In addition, TSA has released guidelines to provide GA airport owners, operators, and users with a set of Federally-endorsed security enhancements and methods for determining implementation. The guidelines are available on the TSA Web site at *http://www.tsa.gov/public/interapp/editorial/editorial_1113.xml.*

security coordinator is required to present to TSA his or her name, social security number, date of birth, address, phone number, and fingerprints. These requirements, though not contained specifically in SFAR 94, were contained in the airport security procedures approved by TSA and FAA under SFAR 94.

The interim final rule imposes on airport security coordinators who are approved by TSA a continuing obligation to meet these requirements. If TSA determines that an airport security coordinator poses a threat to national or transportation security, or a threat of terrorism, after TSA has approved the airport security coordinator, TSA may withdraw its approval of the airport security coordinator. In addition, if an airport security coordinator is convicted or found not guilty by reason of insanity of any of the listed disqualifying crimes after receiving TSA approval, the airport security coordinator must report the conviction or finding of not guilty by reason of insanity within 24 hours of the decision. TSA may withdraw its approval of the airport security coordinator as a result of the conviction or finding of not guilty by reason of insanity.

TSA intends to issue a form that airport security coordinators can use to submit all of this information to TSA.[11] TSA notes that airport security coordinators who were approved under SFAR 94 may continue in their capacity as airport security coordinators without resubmitting to TSA the information described above.

Security Procedures

To be approved by TSA, an airport's security procedures must meet the minimum requirements set forth in the interim final rule. As noted above, TSA is making only minor revisions to the minimum requirements established in SFAR 94. Therefore, the airport security procedures that were approved by FAA under SFAR 94 for each of the Maryland Three Airports will be approved by TSA under the interim final rule. TSA requests comment on these minimum requirements. The minimum requirements are as follows.

First, as required under SFAR 94 at paragraph 4(a)(1), the interim final rule requires an airport's security procedures to contain basic airport information, outline the hours of operation, and identify the airport security coordinator who is responsible for ensuring that the security procedures are implemented and followed. Such information will help ensure accountability for compliance with the security procedures at each airport. The interim final rule also requires the airport security coordinator to present to TSA, in a form and manner acceptable to TSA, his or her name, social security number, date of birth, and fingerprints, and to successfully complete a TSA terrorist threat assessment, including a criminal history records check, that is the same as the threat assessment pilots will have to successfully complete to be approved to operate to or from any of the Maryland Three Airports. Airport security coordinators who were approved under SFAR 94 will continue to be approved under the interim final rule.

Second, the interim final rule requires an airport's security procedures to contain a current record of the individuals and aircraft authorized to operate to or from the airport. This will help ensure that only individuals who have been properly vetted by TSA operate aircraft to or from the Maryland Three Airports. SFAR 94 contained similar provisions at paragraphs 4(a)(2) and (3).

Third, the interim final rule requires an airport's security procedures to contain procedures to monitor the security of aircraft at the airport during operational and non-operational hours, and to alert aircraft owners and operators, the airport operator, and TSA of unsecured aircraft. Such procedures will help prevent aircraft located at the airport from being stolen and used for unauthorized purposes. SFAR 94 contained this provision at paragraph 4(b)(5).

Fourth, as required under paragraph 4(b)(6) of SFAR 94, the interim final rule requires an airport's security procedures to contain procedures to ensure that security awareness procedures are implemented and maintained at the airport. Such procedures will help ensure that airport employees and pilots operating to and from the airport are aware of, and comply with, the security procedures in place at the airport, and that they are able to recognize suspicious behavior or activity at the airport.

Fifth, the interim final rule requires an airport's security procedures to contain TSA-approved procedures for approving pilots who violate the Washington, DC, Metropolitan Area Flight Restricted Zone and are forced to land at an airport. For example, if a pilot who was not vetted by TSA to take off or land at one of the Maryland Three Airports did so, the security procedures would be used to allow the pilot to take off from the airport after he or she had been vetted by TSA.[12] The interim final rule requires that the pilot comply with all applicable FAA and TSA aircraft operator requirements before he or she is permitted by FAA to take off from the airport. Thus, the interim final rule requires the airport's security procedures to contain the requirements that the pilot would have to satisfy before he or she could receive a limited TSA approval. SFAR 94 contained a similar provision at paragraph 4(b)(4). That provision required airport security procedures to contain airport arrival and departure route descriptions, air traffic control clearance procedures, flight plan requirements, communications procedures, and procedures for transponder use.

Finally, the interim final rule requires an airport's security procedures to contain any additional procedures necessary to provide for the security of aircraft operations to or from the airport. This will allow TSA to work with each of the Maryland Three Airports to implement any additional security procedures that may be necessary to enhance secure aircraft operations at a particular airport, and allow TSA to amend an airport's security procedures in response to threat information or elevated threat levels. SFAR 94 contained this provision at paragraph 4(b)(9).

TSA notes that it may need to be able to quickly amend a particular airport's security procedures in response to threat information, an elevation in the threat level, noncompliance with the security procedures, or other circumstances. Thus, the interim final rule provides that airport security procedures approved by TSA remain in effect unless TSA determines that operations at the airport have not been conducted in accordance with the approved security procedures, or the airport's security procedures must be amended to provide for the security of aircraft operations to or from the airport. SFAR 94 contained a similar provision at paragraph 4(b) providing that an airport's security procedures remain in effect unless TSA determines that operations at the airport have not been conducted in accordance with the security procedures.

[11] This form will be issued in accordance with the requirements of the Paperwork Reduction Act.

[12] TSA recognizes that a pilot who violates the Flight Restricted Zone would not receive TSA approval to operate to or from any of the Maryland Three Airports because the pilot would have a record of an airspace violation under the interim final rule. However, TSA notes that the approval granted under this provision would be for a one-time operation for the pilot to take off from the airport and leave the Flight Restricted Zone. The approval granted under this provision would not allow the pilot to continuously operate to or from the Maryland Three Airports.

Pilot Requirements

The interim final rule prohibits a pilot from operating an aircraft to or from any of the Maryland Three Airports unless he or she is approved by TSA. To receive TSA approval, a pilot must meet the following requirements. As with the airport operator requirements, TSA is making only minor revisions to requirements that are currently in effect under SFAR 94. TSA also notes that pilots who were approved to operate to or from any of the Maryland Three Airports under SFAR 94 may continue to operate using the PIN issued to them by TSA. Such pilots do not have to reapply for TSA approval under the interim final rule.

First, the interim final rule requires a pilot to present to TSA[13] the following: (1) The pilot's name, social security number, date of birth, address, and phone number; (2) the pilot's current and valid airman certificate; (2) the pilot's current medical certificate; (3) one form of Government issued picture identification of the pilot; (4) the pilot's fingerprints, in a form and manner acceptable to TSA; and (5) a list containing the make, model, and registration number of each aircraft that the pilot intends to operate to or from the airport. These requirements will help establish a pilot's identification and permit TSA to conduct the required security threat assessment as well as check the pilot's FAA record. SFAR 94 contained a similar provision at paragraph 3(b)(1).[14] TSA intends to issue a form that pilots can use to submit all of this information to TSA.[15]

Second, the interim final rule requires pilots to submit their fingerprints to TSA in a form and manner acceptable to TSA. Paragraph 3(b)(2) of SFAR 94 required pilots to successfully complete a background check by a law enforcement agency, which could include submission of fingerprints and the conduct of a criminal history records check. Under SFAR 94, individuals who sought approval to operate to or from one of the Maryland Three Airports were required to submit their fingerprints at Ronald Reagan Washington National Airport (DCA) and pay the appropriate fee to the entity collecting the fingerprints as well as a fee to the Federal Bureau of Investigation (FBI) for processing the fingerprints. TSA did not charge any additional fee. TSA intends to continue using this process under the interim final rule.

Third, the interim final rule requires pilots to successfully undergo a terrorist threat assessment. This may include a check of terrorist watchlists and other databases relevant to determining whether a pilot poses a security threat or that confirm a pilot's identity. A pilot will not receive TSA approval under this analysis if TSA determines or suspects the individual of posing a threat to national or transportation security, or a threat of terrorism. The interim final rule imposes on pilots who are approved by TSA a continuing obligation to meet this requirement. If a pilot who is approved to operate to or from any of the Maryland Three Airports is determined by TSA to pose a threat to national or transportation security, or a threat of terrorism, TSA may withdraw its approval of the pilot.

Fourth, pilots are required to undergo a criminal history records check. A pilot may not be approved by TSA if he or she has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the ten years prior to the date of the pilot's request to operate to or from any of the Maryland Three Airports, or while authorized to do so, of any crime specified in 49 CFR 1542.209 or 1572.103. These crimes are: (1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; (2) interference with air navigation; (3) improper transportation of a hazardous material; (4) aircraft piracy; (5) interference with flight crew members or flight attendants; (6) commission of certain crimes aboard aircraft in flight; (7) carrying a weapon or explosive aboard aircraft; (8) conveying false information or threats; (9) aircraft piracy outside the special aircraft jurisdiction of the U.S.; (10) lighting violations involving transporting controlled substances; (11) unlawful entry into an aircraft or airport area that serves air carrier or foreign air carriers contrary to established security requirements; (12) destruction of an aircraft or aircraft facility; (13) murder; (14) assault with intent to murder; (15) espionage; (16) sedition; (17) kidnapping or hostage taking; (18) treason; (19) rape or aggravated sexual abuse; (20) unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive, explosive device, firearm, or other weapon; (21) extortion; (22) armed or felony unarmed robbery; (23) distribution of, or intent to distribute, a controlled substance; (24) felony arson; (25) a felony involving a threat; (26) a felony involving: willful destruction of property; importation or manufacture of a controlled substance; burglary; theft; dishonesty, fraud, or misrepresentation; possession or distribution of stolen property; aggravated assault; bribery; or illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year; (27) violence at international airports; (28) a crime listed in 18 U.S.C. Chapter 113B—Terrorism, or a State law that is comparable; (29) a crime involving a transportation security incident; (30) immigration violations; (31) violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*, or a State law that is comparable; or (32) conspiracy or attempt to commit any of these criminal acts.

With the exception of four of the crimes listed above, these are the same crimes that were considered disqualifying under paragraph 3(b)(4) of SFAR 94. TSA also notes that these crimes are considered disqualifying under 49 CFR 1544.229 for TSA security screeners and under § 1542.209 for individuals with unescorted access authority to a security identification display area (SIDA). TSA understands the unique nature of GA and that in many instances those security measures in place for commercial aviation would not be appropriate for GA facilities. However, the unique nature and security concerns surrounding the national capital region require additional security enhancements, such as requirements for disqualifying offenses similar to those used for individuals with SIDA access, that are more robust than those at other GA airports.

TSA is adding the disqualifying crimes listed in 49 CFR 1572.103. In developing that list of crimes, TSA consulted with the Department of Justice and Department of Transportation to include those offenses that are reasonably indicative of an individual's predisposition to engage in violent or deceptive behavior that may be predictive of a security threat. TSA notes that there is considerable overlap in the crimes listed in 49 CFR 1572.103 and 1542.209. The additional crimes listed in 49 CFR 1572.103 are the crimes listed above in (28), (29), (30), and (31), as well as the addition of the following language to the crimes listed in (20): ''explosive device'' and ''purchase,

[13] The airport security procedures approved by TSA and FAA under SFAR 94 required the airport operator to collect this information from pilots. TSA intends to continue that collection process under the interim final rule. In addition, TSA intends to issue a form that pilots can use to submit this information to the airport operator, who will submit the form to TSA.

[14] Although SFAR 94 did not specifically require pilots to submit their name, date of birth, or social security number, the airport security procedures approved by TSA and FAA under SFAR 94 did require pilots to submit that information.

[15] This form will be issued in accordance with the requirements of the Paperwork Reduction Act.

receipt, transfer, shipping, transporting, import, export, storage of, and dealing in''.

The listed crimes would be considered grounds for disqualification whether civilian or military authorities prosecute them. If a pilot has been convicted within the ten years preceding the individual's request to operate to or from any of the Maryland Three Airports, the pilot will be disqualified.[16]

The interim final rule also imposes on pilots who are approved by TSA a continuing obligation to meet this requirement. If a pilot is convicted or found not guilty by reason of insanity of any of the listed disqualifying crimes after receiving TSA approval, the pilot must report the conviction or finding of not guilty by reason of insanity within 24 hours of the decision. TSA may withdraw its approval of the pilot as a result of the conviction or finding of not guilty by reason of insanity. Paragraph 3(b)(4) of SFAR 94 required that pilots not be convicted or found not guilty by reason of insanity of any of the disqualifying crimes ''while authorized to operate to or from the airport.''

TSA invites comment from all interested parties concerning this list of disqualifying crimes. TSA must balance its responsibility to ensure the security of the critical infrastructure and Federal government assets in the Washington, DC, Metropolitan Area against the knowledge that individuals may participate in criminal acts but subsequently become trusted citizens. TSA wishes to minimize the adverse impact this interim final rule may have on individuals who have committed criminal offenses and served their sentences, without compromising the security of the infrastructure and assets in the nation's capitol.

Fifth, a pilot is required to receive a briefing acceptable to FAA and TSA that describes procedures for operating to and from the airport. These procedures will be contained in the airport's approved security procedures. SFAR 94 contained this requirement at paragraph 3(b)(3). Pilots comply with the requirement by viewing a videotaped FAA/TSA briefing. In the near term, TSA intends to continue to use that videotape for compliance with the TSA rule. However, in the future TSA intends to update that videotape or provide an alternate briefing. This requirement will help ensure that individuals are aware of, and comply with, the proper procedures for operating to and from the airport, and will help prevent inadvertent violations of those procedures.

Sixth, a pilot is required to undergo a check of his or her FAA record for certain violations. A pilot will not receive TSA approval if, in TSA's discretion, he or she has a record of a violation of: (1) A prohibited area designated under 14 CFR part 73; (2) a flight restriction established under 14 CFR 91.141; (3) special security instructions issued under 14 CFR 99.7; (4) a restricted area designated under 14 CFR part 73; (5) emergency air traffic rules issued under 14 CFR 91.139; (6) a temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145; or (7) an area designated under 14 CFR 91.143. In view of the critical need to protect the critical infrastructure and national assets in the Washington, DC, Metropolitan Area, TSA will not approve pilots who have a record of violating restricted airspace.[17] SFAR 94 contained a similar provision at paragraph 3(b)(5).

TSA notes that there may be special circumstances in which TSA may approve an individual who has a record of a violation of restricted airspace. TSA will review such circumstances on a case-by-case basis.

The interim final rule imposes upon pilots who are approved by TSA a continuing obligation to meet this requirement. If a pilot who is approved by TSA to operate to or from the Maryland Three Airports commits any of the violations described above, the pilot must notify TSA within 24 hours of the violation. TSA, in its discretion, may withdraw its approval of the pilot as a result of the violation. TSA notes that this obligation is slightly different from the requirement for a pilot who is applying for access to the Maryland Three Airports. In reviewing a pilot's application for access to the Maryland Three Airports, TSA will consider only final FAA determinations of violations to be disqualifying. However, if a pilot who has received TSA approval to operate to or from the Maryland Three Airports subsequently commits any of the violations described above, TSA, in its discretion, may withdraw its approval without waiting for a final FAA determination. This is necessary to ensure that TSA can immediately withdraw its approval of a pilot who commits one or more serious airspace violations.

The interim final rule also requires pilots who have received TSA approval to operate to and from the Maryland Three Airports to adhere to the following security measures.

First, the interim final rule requires a pilot to protect from unauthorized disclosure any identification information issued by TSA for the conduct of operations to or from the airport. SFAR 94 contained a similar provision at paragraph 3(b)(7). Under SFAR 94, TSA would issue a personal identification number (PIN) to each individual approved to operate to or from any of the Maryland Three Airports. TSA will continue to do so under this interim final rule. This requirement will help allow for the ready identification of individuals who have met the background check requirements and been approved for operations to or from any of the Maryland Three Airports.

Second, the interim final rule requires a pilot to secure the aircraft after returning to the airport from any flight. This requirement will help prevent aircraft from being stolen and used for terrorist and other criminal purposes. SFAR 94 contained this provision at paragraph 3(b)(14).

Finally, a pilot is required to comply with any other requirements for operating to or from the airport specified by the FAA or TSA. For example, in the event the national threat level is elevated to Orange, TSA may coordinate with local law enforcement officers to positively identify a pilot operating from one of the Maryland Three Airports by checking his or her identification or pilot's certificate before permitting the individual to take off. SFAR 94 contained a similar provision at paragraphs 3(b)(15) and (16).

The interim final rule allows a pilot who is approved by TSA to operate an aircraft to or from one of the Maryland Three Airports to operate an aircraft to any of the Maryland Three Airports, provided that the pilot: (1) Files an IFR or VFR flight plan with Leesburg Automated Flight Service Station; (2) obtains an ATC clearance with a discrete transponder code; and (3) follows any arrival/departure procedures required by the FAA. This was also permitted under SFAR 94.

TSA notes that under SFAR 94 and NOTAM 3/0853, only pilots and aircraft that were based at one of the Maryland Three Airports were permitted to operate to or from the Maryland Three Airports. Transient aircraft were not permitted to operate to or from any of the Maryland Three Airports. Based on comments to SFAR 94, TSA has determined that this restriction may be

[16] Pilots who were vetted in accordance with the requirements of SFAR 94 will not be required to reapply for approval under the interim final rule.

[17] TSA will consider only final FAA determinations of a violation of restricted airspace, not any pending enforcement actions. TSA will consider an FAA determination to be final if the matter has been fully and finally adjudicated or the time for filing an appeal has expired.

relaxed without degrading security. Therefore, under the interim final rule, TSA may approve transient aircraft to operate to or from any of the Maryland Three Airports if the pilot complies with all of the requirements described above, including submitting his or her fingerprints at DCA and successfully completing the TSA security threat assessment and terrorist threat analysis.

The interim final rule permits U.S. armed forces, law enforcement, and aeromedical services aircraft to operate to or from any of the Maryland Three Airports, provided that the pilot operating the aircraft complies with any procedures specified by FAA or TSA. These requirements include complying with the ATC procedures and aircraft equipment requirements specified in applicable FAA regulations, and complying with any other requirements for operating to or from the airport specified by TSA or FAA.

Below is a table comparing the requirements contained in SFAR 94 with the requirements in this interim final rule and the requirements that remain in NOTAM 3/0853 or may be included in any NOTAM or rule that the FAA issues to replace NOTAM 3/0853. As noted above, the requirements in this interim final rule are intended to replace the security requirements in SFAR 94, which will expire on February 13, 2005. The requirements in NOTAM 3/0853 will remain in effect until the FAA removes them or replaces them with another NOTAM or a rule.

AIRPORT OPERATOR REQUIREMENTS

SFAR 94	TSA interim final rule	NOTAM 3/0853
Identify and provide contact information for the manager responsible for ensuring that security procedures are implemented and maintained. 4(a)(1).	Appoint an airport employee as the airport security coordinator and provide contact information for him or her. § 1562.3(a)(1) and (c)(1).	
Identify aircraft eligible to be authorized for operations to or from the airport, and maintain a current record of those persons authorized to conduct operations to or from the airport and the aircraft in which the person is authorized to conduct those operations. 4(a)(2) and (3).	Maintain a current record of the individuals and aircraft authorized to operate to or from the airport. § 1562.3(c)(2).	
Maintain airport arrival and departure route descriptions, air traffic control clearance procedures, communications procedures, and procedures for transponder use. 4(a)(4).	Maintain procedures for limited approval of pilots who violate the Washington, DC, Metropolitan Area Flight Restricted Zone and are forced to land at the airport. § 1562.3(c)(5).	
Maintain procedures to monitor the security of aircraft at the airport during operational and non-operational hours and to alert aircraft owners and operators, airport operators, and the FAA of unsecured aircraft. 4(a)(5).	Maintain procedures to monitor the security of aircraft at the airport during operational and non-operational hours and to alert the aircraft owner(s) and operator(s), the airport operator, and TSA of unsecured aircraft. § 1562.3(c)(3).	
Maintain procedures to ensure that security awareness procedures are implemented and maintained at the airport. 4(a)(6).	Implement and maintain security awareness procedures at the airport. § 1562.3(c)(4).	
Ensure that a copy of the approved security procedures is maintained at the airport and can be made available for inspection upon FAA request, and provide FAA with the means necessary to make any inspection to determine compliance with the approved security procedures. 4(a)(7) and (8).	Maintain at the airport a copy of the airport's TSA-approved security procedures and permit officials authorized by TSA to inspect the security procedures. § 1562.3(a)(3) and (5).	
Maintain any additional procedures necessary to provide for the security of aircraft operations to or from the airport. 4(a)(9).	Maintain any additional procedures required by TSA to provide for the security of aircraft operations to or from the airport. § 1562.3(c)(6).	

PILOT REQUIREMENTS

SFAR 94	TSA interim final rule	NOTAM 3/0853
Prior to obtaining authorization to operate to or from the airport, present to FAA: (1) Current and valid airman certificate; (2) current medical certificate; (3) one form of Government issued picture identification; and (4) the make, model, and registration number of each aircraft the pilot intends to operate to or from the airport. 3(b)(1). Note that the airport security procedures approved by TSA and FAA under SFAR 94 required pilots to submit to FAA their: name, social security number, date of birth, address, phone number, and fingerprints.	To obtain TSA approval to operate to or from the airport, present to TSA: (1) Name; (2) social security number; (3) date of birth; (4) address; (5) phone number; (6) current and valid airman certificate or student pilot certificate; (7) current medical certificate; (8) one form of Government issued picture identification; (9) the make, model, and registration number of each aircraft the pilot intends to operate to or from the airport; and (10) fingerprints. § 1562.3(e)(1).	

PILOT REQUIREMENTS—Continued

SFAR 94	TSA interim final rule	NOTAM 3/0853
Successfully complete a background check by a law enforcement agency, which may include submission of fingerprints and the conduct of a criminal history records check. 3(b)(2).	Successfully complete a TSA terrorist threat assessment and a criminal history records check. § 1562.3(e)(2) and (4).	
Attend a briefing acceptable to FAA that describes procedures for operating to or from the airport. 3(b)(3).	Receive a briefing acceptable to TSA and FAA that describes procedures for operating to or from the airport. § 1562.3(e)(3).	
Not have been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years prior to being authorized to operate to or from the airport, or while authorized to operate to or from the airport, of those crimes specified in 14 CFR 108.229(d). 3(b)(4).	Not have been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years prior to applying for authorization to operate to or from the airport, or while authorized to operate to or from the airport, of any crime specified in 49 CFR 1542.209 or 1572.103. § 1562.3(e)(4).	
Not have a record on file with the FAA of: (1) a violation of a prohibited area designated under 14 CFR part 73, a flight restriction established under 14 CFR 91.141, or special security instructions issued under 14 CFR 99.7; or more than one violation of a restricted area designated under 14 CFR part 73, emergency air traffic rules issued under 14 CFR 91.139, a temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145, an area designated under 14 CFR 91.143, or any combination thereof. 3(b)(5).	Not have a record on file with the FAA of a violation of: a prohibited area designated under 14 CFR part 73; a flight restriction established under 14 CFR 91.141; special security instructions issued under 14 CFR 99.7; a restricted area designated under 14 CFR part 73; emergency air traffic rules issued under 14 CFR 91.139; a temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145; or an area designated under 14 CFR 91.143. § 1562.3(e)(5).	
Be authorized by the FAA to conduct operations to or from the airport. 3(b)(6).	Be approved by TSA. § 1562.3(e)	
Protect from unauthorized disclosure any identification information issued by FAA for the conduct of operations to or from the airport. 3(b)(7).	Protect from unauthorized disclosure any identification information issued by TSA for the conduct of operations to or from the airport. § 1562.3(f)(1).	
Operate an aircraft that is authorized by FAA for operations to or from the airport. 3(b)(8).	.....	
File an IFR or VFR flight plan telephonically with Leesburg AFSS prior to departure and obtain an ATC clearance prior to entering the FRZ. 3(b)(9).	.....	Part 2 of NOTAM 3/0853 requires each pilot to file an IFR or VFR flight plan with Leesburg AFSS for all arrivals and departures via telephone.
Operate the aircraft in accordance with an open IFR or VFR flight plan while in the FRZ, unless otherwise authorized by ATC. 3(b)(10).	.....	NOTAM 3/0853 contains specific flight plan procedures pilots must follow while operating in the FRZ.
Maintain two-way communications with an appropriate ATC facility while in the FRZ. 3(b)(11).	.....	Part 2 of NOTAM 3/0853 requires pilots to maintain two-way radio communication with ATS while in the FRZ.
Ensure that the aircraft is equipped with an operable transponder with altitude reporting capability and use an assigned discrete beacon code while operating in the FRZ. 3(b)(12).	.....	NOTAM 3/0853 requires aircraft to be equipped with an operational Mode C transponder, and pilots to remain on their assigned discrete beacon code until they land.
Comply with any instructions issued by ATC for the flight. 3(b)(13).	.....	NOTAM 3/0853 requires pilots to fly as assigned by ATC until they leave the FRZ.
Secure the aircraft after returning to the airport from any flight. 3(b)(14).	Secure the aircraft after returning to the airport from any flight. § 1562.3(f)(2).	
Comply with all additional safety and security requirements specified in applicable NOTAMs. 3(b)(15). Comply with any TSA or law enforcement requirements to operate to or from the airport. 3(b)(16).	Comply with any other requirements for operating to or from the airport specified by TSA or FAA. § 1562.3(f)(3).	

Waivers

Under the interim final rule, TSA, in coordination with FAA, the United States Secret Service, and any other relevant Federal agency, may permit an operation to or from any of the Maryland Three Airports if TSA finds that such action would be in the public interest and provide the level of security required under the interim final rule. Any waiver issued will be a temporary waiver for a single operation, such as an aircraft that is conducting aerial photography or an aircraft that is being moved from one of the Maryland Three Airports after maintenance. TSA will not issue any permanent waivers for continued operations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and

Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

This rulemaking contains information collection activities subject to the PRA. The FAA initially required this collection under SFAR 94 (now 49 CFR part 1562) and cleared under OMB control number 2120–0677. The responsibility for the collection has been transferred to TSA and assigned OMB control number 1652–0029.

As protection provided by the PRA, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, TSA has determined that the interim final rule's benefits outweigh its costs. TSA also has determined that the interim final rule will impose a significant economic impact on a substantial number of small entities. However, TSA believes that the requirements of a regulatory flexibility analysis were met in the FAA analysis of the 2-year extension of SFAR 94. The interim final rule is not expected to adversely affect international trade or impose unfunded mandates costing more than $100 million in a year on state, local, or tribal governments or on the private sector. These analyses, available in the rulemaking docket, are summarized below.

Economic Analyses

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. This rulemaking is not ''significant'' under the Executive Order. However, TSA has prepared a full regulatory evaluation for this rulemaking, which is available for review in the docket of this matter. The results of the evaluation are summarized here.

Costs

The interim final rule results in costs for the Maryland Three airports and for government agencies enforcing the requirements. Pilots that operate to and from the airports may also incur costs. However, TSA believes that the cost of the security requirements for pilots were incurred by practically all covered pilots during the first year of SFAR 94. Any additional costs imposed will be only for new pilots attracted to the airports. TSA believes that because of the security restrictions, new pilots attracted to these airports will be limited to pilots of transient operations, which will be allowed to return to these airports as a result of this interim final rule. TSA believes that given the security restrictions and three years experience with local based operations, transient operations at these airports is likely to be limited. Therefore, TSA assumed that minimal to no cost will be imposed for pilots as a result of the interim final rule. Therefore, TSA assumed for this analysis that minimal to no new costs will be imposed for pilots as a result of the interim final rule.

The cost impact of codifying the requirements and procedures of SFAR 94 result either from costs associated with the security-related provisions of TSA, or from the cost of flight restrictions imposed by the FAA. With regard to airports, security-related costs are imposed for: compliance with the physical security provisions of the interim final rule; preparation of security briefings for pilots and employees; and airport security program preparation, modification, and maintenance. Lost revenue as a result of operational restrictions will also be a cost for airports.

Although most costs could be identified as resulting either from TSA requirements or FAA requirements without much difficulty, it may be difficult to determine whether lost revenue from operational restrictions is totally the result of closures due to security restrictions, or the result of FAA flight restrictions. For that reason, the annual costs of codifying the requirements of SFAR 94 are summarized in two tables. Table ES–1 shows the estimated costs of the rule (in 2002 dollars) with the value of lost revenue from operational restrictions included, while Table ES–2 shows the estimated cost excluding lost revenue.

TABLE ES–1.—COST OF COMPLIANCE FOR SFAR–94 (2002 DOLLARS)

[With cost of operational restrictions]

Entity	Cost of security requirements	Cost of operational restrictions	Total costs
College Park	$181,500	$1,624,400	$1,805,900
Potomac Airfield	63,100	1,633,300	1,696,400
Washington Executive/Hyde	78,600	1,598,100	1,678,600
Total airport costs	323,200	4,855,800	5,179,000
Government Agencies	10,200	.....	10,200
Total cost per year	333,400	4,855,800	5,189,200

TABLE ES–2.—COST OF COMPLIANCE FOR SFAR–94 (2002 DOLLARS)

[Without cost of operational restrictions]

Entity	Cost of security requirements	Total costs
College Park	$181,500	181,500
Potomac Airfield	63,100	63,100
Washington Executive/Hyde	78,600	78,600
Total Airport Costs	323,200	323,200
Government Agencies	10,200	10,200
Total cost per year	333,400	333,400

Lost revenue as a result of operational restrictions is included as a cost in the FAA regulatory evaluation of its notice of proposed rulemaking (NPRM) to codify the airspace restrictions of SFAR 94. To avoid double counting those costs, the cost of operational restrictions is not included in the TSA estimates of total costs in this analysis. Based on the above, TSA estimated first year cost of compliance of the interim final rule at $0.3 million, and the 10-year undiscounted cost at $3.3 million. The present value of those costs is $2.3 million as shown in Table ES–3 below.

TABLE ES–3.—TOTAL COST OF COMPLIANCE OF INTERIM FINAL RULE SECURITY REQUIREMENTS

Year	College Park	Potomac Airfield	Washington Executive	Government	Total annual costs	7% discount factor	Net present value
2005	$181,500	$63,100	$78,600	$10,200	$333,400	0.9346	$311,600
2006	181,500	63,100	78,600	10,200	333,400	0.8734	291,200
2007	181,500	63,100	78,600	10,200	333,400	0.8163	272,200
2008	181,500	63,100	78,600	10,200	333,400	0.7629	254,400
2009	181,500	63,100	78,600	10,200	333,400	0.7130	237,700
2010	181,500	63,100	78,600	10,200	333,400	0.6663	222,100
2011	181,500	63,100	78,600	10,200	333,400	0.6227	207,600
2012	181,500	63,100	78,600	10,200	333,400	0.5820	194,000
2013	181,500	63,100	78,600	10,200	333,400	0.5439	181,300
2014	181,500	63,100	78,600	10,200	333,400	0.5083	169,500
Total	1,815,000	631,000	786,000	102,000	3,334,000	.....	2,341,600

When added to air space-related costs, as calculated by FAA, of $6.06 million annually and $60.6 million over 10 years, the total ten-year cost of codifying SFAR 94 is estimated at $63.9 million.[18]

Benefits

TSA believes that allowing transient operations at the airports will reduce some of the lost revenue shown in Table ES–1 as a result of this interim final rule. However, the primary benefit of the rule will be enhanced protection for a significant number of vital government assets in the National Capital Region, while keeping the airports operational. Without these measures, the Maryland Three Airports would have to be closed due to the FAA requirements. The security provisions contained in this rule are an integral part of the effort to identify and defeat the threat posed by members of foreign terrorist groups to vital U.S. assets and security. The TSA believes that the rule will reduce the risk that an airborne strike initiated from an airport moments away from vital national assets will occur. The TSA recognizes that such an impact may not cause substantial damage to property or a large structure; however, it could potentially result in an undetermined number of fatalities and injuries and reduced tourism. The resulting tragedy would adversely impact the regional economies. Thus, TSA has concluded that the benefits associated with the interim final rule vastly exceed the costs.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980, as amended, requires Federal agencies to consider the impact of regulatory actions on small entities. To that end, the RFA requires agencies to perform a review to determine whether a proposed or final rule will have ''a significant economic impact on a substantial number of small entities.'' Section 603(a) of the RFA requires that agencies prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) for rulemakings subject to the notice and comment requirements of the Administrative Procedure Act (APA). Section 604(a) of the RFA requires a final regulatory flexibility analysis (FRFA) for final rules issued subsequently.

TSA is issuing this interim final rule without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes the agency to issue a rule without notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' TSA finds that notice and public comment to the interim final rule are impracticable, unnecessary, and contrary to the public interest for the following reasons.

The Maryland Three Airport operators, and pilots who operate to and from those airports, have been operating

[18] The FAA estimate is based on information in the FAA regulatory evaluation of the codification of airspace requirements of SFAR 94.

under the SFAR 94 requirements since February 19, 2002. TSA is largely adopting the security measures and procedures that were required under SFAR 94. As a result, TSA believes that the interim final rule will not present any surprises or impose any additional burdens on the Maryland Three Airport operators or the pilots who operate to and from those airports. SFAR 94, however, is set to expire on February 13, 2005. Consequently, if TSA does not issue this interim final rule immediately, The Maryland Three Airports may be required to close until TSA completes this rulemaking.

The FAA issued SFAR 94 without prior notice and public comment, but did consider and respond to comments in its two-year extension of SFAR 94. The FAA also performed a Regulatory Flexibility Analysis, which addressed the following requirements of an IRFA:

1. *Reasons why the rule was considered.* In the wake of the catastrophic events of September 11, 2001, there was an awareness of the need to take steps to safeguard critical national assets and counter the increased threat level, while restoring operations at the Maryland Three Airports, which are located within a few minutes of vital civilian and military control centers.

2. *Objective.* To restore operations at the affected airports, while attempting to counter the threat of a possible terrorist airborne attack on vital national assets located within the National Capital Region. The legal basis is found in 49 U.S.C. 44901 and 49 U.S.C. 40101(d).

3. *Description and number of small entities regulated.* The IFR regulates two small (based on the SBA Office of Size Standards criteria of less than $6.0 million in annual receipts) privately-owned general aviation airports (Potomac Airfield and Washington Executive Airport). In total, three airports are regulated, but the third is owned by two governmental jurisdictions with a combined population of 1.7 million (well above the 50,000 SBA threshold population for small governmental jurisdictions), and thus was not considered a small entity for the analysis.

4. *Compliance requirements.* The FAA analysis discussed the airspace flight restrictions imposed and the cost of compliance and lost revenue as a result. In addition, the analysis described the security requirements to maintain a security program and to modify and submit security procedures to TSA upon request. The cost of flight restrictions, lost revenue, and security procedures is estimated at $290,700 annually for Washington Executive Airport and $220,700 for the Potomac Airfield Airport;[19] these costs increase to $333,100 and $252,200, respectively when the anticipated airport revenue losses are increased by 20 percent, as discussed in the full regulatory evaluation. The analysis further described the estimated time and cost requirements for modifying and submitting security procedures to TSA at 16 hours and $672 for Potomac, and 15 hours and $600 for Washington Executive.

5. *Duplication/Overlap.* The FAA is unaware of any Federal rules that duplicate, overlap, or were in conflict with SFAR 94.

The FAA Regulatory Flexibility Analysis also discussed the following alternatives: (1) Rescind the rule; (2) Maintain the status quo (SFAR 94); and (3) Close the airports permanently. Of those alternatives, maintaining the status quo (SFAR 94) is preferred because rescinding the rule would increase the vulnerability and diminish the level of protection now in place, while closing the airports permanently causes the greatest financial burden on the airports.

The FAA analysis also addressed the additional elements required for the FRFA. As required in the FRFA, FAA summarized and addressed significant issues raised by public comments, in addition to providing a summarized assessment of those issues. Further, in response to one of those issues raised as an alternative, this IFR relaxes one of the major burdens imposed—the requirement that aircraft approved to operate to or from any of the Maryland Three Airports be based at one of those airports. As a result, through this IFR, TSA may permit transient aircraft to operate to or from any of the Maryland Three Airports if the pilot complies with the requirements of the interim final rule. TSA believes that this change will reduce the burden on the airports without relaxing security.

For the reasons stated above, TSA believes that the requirements of both the IRFA and the FRFA have already been satisfied.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the TSA has assessed the potential effect of this interim final rule and has determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This interim final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or

[19] The full regulatory evaluation shows revenue losses and security costs broken down between actual airport costs and those incurred by other airport entities. The costs applicable here are only those incurred by the airports. For Potomac, revenue losses are $157,600 (Table 6 in full regulatory evaluation) and security costs are $63,100 (Table 7), summing to $220,700. For Washington Executive/Hyde, revenue losses are estimated at $212,100 and are calculated by summing $69,200 (Table 10) with the average of airport-only costs (excluding fuel and landing fees) from Tables 2 (College Park) and 6 (Potomac). The revenue losses from those two tables are $209,300 and $76,500, respectively, resulting in an average of $142,900 (($209,300 + $76,500 = $285,800) (÷ 2 = $142,900). Therefore, total revenue losses for Washington Executive are estimated at $212,100 ($69,200 + $142,900 = $212,100). With security costs at $78,600 (Table 11), the cost of compliance sums to $290,700 for Washington Executive ($212,100 + $78,600 = $290,700).

by the private sector, of more than $100 million annually. Thus, TSA has not prepared a written assessment under the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 requires TSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, TSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This interim final rule 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. Thus, TSA has determined that this interim final rule will not have sufficient Federalism implications to warrant the preparation of a Federal Assessment.

National Environmental Policy Act

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

Energy Impact

TSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). TSA has tentatively determined that this interim final rule will not be a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1562

Airports, Flight restricted zone, General aviation, Security threat assessment.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends Chapter XII, subchapter C, of Title 49, Code of Federal Regulations, by adding a new part 1562 to read as follows:

PART 1562—GENERAL AVIATION

Subpart A—Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone

Sec.
1562.1 Scope and definitions.
1562.3 Operating requirements.

Authority: 49 U.S.C. 114, 40113.

§ 1562.1 Scope and definitions.

(a) *Scope.* This subpart applies to the following airports, and individuals who operate an aircraft to or from those airports, that are located within the airspace designated as the Washington, DC, Metropolitan Area Flight Restricted Zone by the Federal Aviation Administration:

(1) College Park Airport (CGS);

(2) Potomac Airfield (VKX); and

(3) Washington Executive/Hyde Field (W32).

(b) *Definitions.* For purposes of this section:

Airport security coordinator means the official at a Maryland Three Airport who is responsible for ensuring that the airport's security procedures are implemented and followed.

Maryland Three Airport means any of the airports specified in paragraph (a) of this section.

§ 1562.3 Operating requirements.

(a) *Airport operator requirements.* Each operator of a Maryland Three Airport must:

(1) Appoint an airport employee as the airport security coordinator;

(2) Maintain and carry out security procedures approved by TSA;

(3) Maintain at the airport a copy of the airport's TSA-approved security procedures;

(4) Maintain at the airport a copy of each Federal Aviation Administration Notice to Airmen and rule that affects security procedures at the Maryland Three Airports; and

(5) Permit officials authorized by TSA to inspect—

(i) The airport;

(ii) The airport's TSA-approved security procedures; and

(iii) Any other documents required under this section.

(b) *Airport security coordinator requirements.* Each airport security coordinator for a Maryland Three Airport must be approved by TSA. To obtain TSA approval, an airport security coordinator must:

(1) Present to TSA, in a form and manner acceptable to TSA, his or her—

(i) Name;

(ii) Social Security Number;

(iii) Date of birth;

(iv) Address;

(v) Phone number; and

(vi) Fingerprints.

(2) Successfully complete a TSA terrorist threat assessment; and

(3) Not have been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years prior to applying for authorization to operate to or from the airport, or while authorized to operate to or from the airport, of any crime specified in 49 CFR 1542.209 or 1572.103.

(c) *Security procedures.* To be approved by TSA, an airport's security procedures, at a minimum, must:

(1) Identify and provide contact information for the airport's airport security coordinator.

(2) Contain a current record of the individuals and aircraft authorized to operate to or from the airport.

(3) Contain procedures to—

(i) Monitor the security of aircraft at the airport during operational and non-operational hours; and

(ii) Alert the aircraft owner(s) and operator(s), the airport operator, and TSA of unsecured aircraft.

(4) Contain procedures to implement and maintain security awareness procedures at the airport.

(5) Contain procedures for limited approval of pilots who violate the Washington, DC, Metropolitan Area Flight Restricted Zone and are forced to land at the airport.

(6) Contain any additional procedures required by TSA to provide for the security of aircraft operations to or from the airport.

(d) *Amendments to security procedures.* Airport security procedures approved by TSA remain in effect unless TSA determines that—

(1) Operations at the airport have not been conducted in accordance with those procedures; or

(2) The procedures must be amended to provide for the security of aircraft operations to or from the airport.

(e) *Pilot requirements for TSA approval.* Except as specified in paragraph (g) of this section, each pilot of an aircraft operating to or from any of the Maryland Three Airports must be approved by TSA. To obtain TSA approval, a pilot must:

(1) Present to TSA—

(i) The pilot's name;

(ii) The pilot's Social Security Number;

(iii) The pilot's date of birth;

(iv) The pilot's address;

(v) The pilot's phone number;

(vi) The pilot's current and valid airman certificate or current student pilot certificate;

(vii) The pilot's current medical certificate;

(viii) One form of Government-issued picture identification of the pilot;

(ix) The pilot's fingerprints, in a form and manner acceptable to TSA; and

(x) A list containing the make, model, and registration number of each aircraft that the pilot intends to operate to or from the airport.

(2) Successfully complete a TSA terrorist threat assessment.

(3) Receive a briefing acceptable to TSA and the Federal Aviation Administration that describes procedures for operating to and from the airport.

(4) Not have been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years prior to applying for authorization to operate to or from the airport, or while authorized to operate to or from the airport, of any crime specified in 49 CFR 1542.209 or 1572.103.

(5) Not, in TSA's discretion, have a record on file with the Federal Aviation Administration of a violation of—

(i) A prohibited area designated under 14 CFR part 73;

(ii) A flight restriction established under 14 CFR 91.141;

(iii) Special security instructions issued under 14 CFR 99.7;

(iv) A restricted area designated under 14 CFR part 73;

(v) Emergency air traffic rules issued under 14 CFR 91.139;

(vi) A temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145; or

(vii) An area designated under 14 CFR 91.143.

(f) *Additional pilot requirements.* Except as specified in paragraph (g) of this section, each pilot of an aircraft operating to or from any of the Maryland Three Airports must:

(1) Protect from unauthorized disclosure any identification information issued by TSA or the Federal Aviation Administration for the conduct of operations to or from the airport.

(2) Secure the aircraft after returning to the airport from any flight.

(3) Comply with any other requirements for operating to or from the airport specified by TSA or the Federal Aviation Administration.

(g) *Operations to any of the Maryland Three Airports.* A pilot who is approved by TSA in accordance with paragraph (d) of this section may operate an aircraft to any of the Maryland Three Airports, provided that the pilot—

(1) Files an instrument flight rules or visual flight rules flight plan with Leesburg Automated Flight Service Station;

(2) Obtains an Air Traffic Control clearance with a discrete transponder code; and

(3) Follows any arrival/departure procedures required by the Federal Aviation Administration.

(h) *U.S. Armed forces, law enforcement, and aeromedical services aircraft.* An individual may operate a U.S. Armed Forces, law enforcement, or aeromedical services aircraft on an authorized mission to or from any of the Maryland Three Airports provided that the individual complies with any requirements for operating to or from the airport specified by TSA or the Federal Aviation Administration.

(i) *Continuing responsibilities.* (1) If an airport security coordinator, or a pilot who is approved to operate to or from any of the Maryland Three Airports, is convicted or found not guilty by reason of insanity, in any jurisdiction, of any crime specified in 49 CFR 1542.209 or 1572.103, the airport security coordinator or pilot must notify TSA within 24 hours of the conviction or finding of not guilty by reason of insanity. TSA may withdraw its approval of the airport security coordinator or pilot as a result of the conviction or finding of not guilty by reason of insanity.

(2) If a pilot who is approved to operate to or from any of the Maryland Three Airports commits any of the violations described in paragraph (e)(5) of this section, the pilot must notify TSA within 24 hours of the violation. TSA, in its discretion, may withdraw its approval of the pilot as a result of the violation.

(3) If an airport security coordinator, or a pilot who is approved to operate to or from any of the Maryland Three Airports, is determined by TSA to pose a threat to national or transportation security, or a threat of terrorism, TSA may withdraw its approval of the airport security coordinator or pilot.

(j) *Waivers.* TSA, in coordination with the Federal Aviation Administration, the United States Secret Service, and any other relevant agency, may permit an operation to or from any of the Maryland Three Airports, in deviation from the provisions of this section, if TSA finds that such action—

(1) Is in the public interest; and

(2) Provides the level of security required by this section.

Issued in Arlington, Virginia, on February 4, 2005.

David M. Stone,

Assistant Secretary.

[FR Doc. 05–2630 Filed 2–9–05; 8:45 am]

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Federal Register

Vol. 70, No. 27

Thursday, February 10, 2005

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5043–5348 1
5349–5542 2
5543–5914 3
5915–6312 4
6313–6550 7
6551–6762 8
6763–6994 9
6995–7164 10

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7866 6545
7867 6547
7868 6995
7869 6997
Administrative Orders:
Presidential Determinations:
No. 2005-19 of January 27, 2005 6549

5 CFR

Ch. XCVII 5272
5501 5543
5502 5543
9701 5272

7 CFR

272 6313
275 6313
319 6999
905 5915
923 6999
932 6323
984 7002
989 6326
1260 7004
1463 7007
1700 5349
1709 5349
3550 6551
Proposed Rules:
300 6596
301 6596
923 6598
993 5944
1700 5382
1709 5382

9 CFR

53 6553
71 6553
93 6083
94 .....5043, 6083
95 6083
96 6083
327 6554

11 CFR

110 5565
Proposed Rules:
109 5382
300 .....5382, 5385

12 CFR

30 6329
201 6763
Proposed Rules:
Ch. I 5571
Ch. II 5571
Ch. III 5571
Ch. IV 5571
Ch. VII 5946

13 CFR

125 5568

14 CFR

39 .....5361, 5365, 5367, 5515, 5917, 5920, 7014, 7016, 7017
71 .....5370, 6334, 6335, 6336, 7020, 7021
95 6337
97 6338
119 5518
121 5518
129 5518
135 5518
183 5518
Proposed Rules:
25 6598
39 .....5064, 5066, 5070, 5073, 5076, 5078, 5081, 5387, 5390, 6782, 6786, 7052, 7056, 7057, 7059, 7061, 7063
71 .....6376, 6378, 6379, 6381, 6601
375 6382

15 CFR

902 7022

17 CFR

1 5923
155 5923
228 6556
229 6556
232 .....6556, 6573
240 6556
249 6556
270 6556
Proposed Rules:
1 5577

18 CFR

157 6340

20 CFR

416 6340

21 CFR

522 6764
1310 5925
1313 5925

22 CFR

22 5372

26 CFR

1 5044
Proposed Rules:
1 5948

27 CFR

Proposed Rules:
9 .....5393, 5397, 6792

29 CFR

Proposed Rules:
2520.....6306

30 CFR

948.....6575
Proposed Rules:
913.....6602
915.....6606

33 CFR

100.....5045
117 .....5048, 6345, 7024
165 .....5045, 5048, 5050, 6347, 6349
Proposed Rules:
165.....5083, 7065
167.....7067

36 CFR

Proposed Rules:
1253.....6386

37 CFR

1.....5053

38 CFR

17.....5926

39 CFR

111.....5055
551.....6764

40 CFR

9.....6351
52 .....5377, 5927, 5928, 6352, 6591, 7024, 7038, 7041
63.....6355, 6930
81 .....5057, 6361, 6591
271.....6765
180.....7044
300.....5930
442.....5058
Proposed Rules:
51.....5593
52 .....5085, 5399, 6387, 6796, 7069
63.....6388, 6974
81.....7081
122.....5093
155.....5400
261.....6811
271.....6819
300.....5949
442.....5100

41 CFR

Ch. 301 5932

42 CFR

Proposed Rules:
400.....6184
405.....6140, 6184
410.....6184
412.....5724, 6184
413.....6086, 6184
414.....6184
423.....6256
441.....6086
482.....6140
486.....6086
488.....6140, 6184
494.....6184
498.....6086

44 CFR

64.....6364
65.....5933, 5936
67 .....5937, 5938, 5942
Proposed Rules:
67 .....5949, 5953, 5954, 5956

47 CFR

0.....6593
1.....6771
2.....6771
15.....6771
22.....6761
25.....6771
54.....6365
73.....5380, 5381
76.....6593
90.....6758, 6761
301.....6776
Proposed Rules:
54.....6390

48 CFR

Ch. 12 6506
219.....6373
225.....6374
229.....6375
Proposed Rules:
250.....6393

49 CFR

214.....7047
571.....6777
1562.....7150
Proposed Rules:
173.....7072
385.....5957
390.....5957
395.....5957
605.....5600

50 CFR

229.....6779
622.....5061, 5569
648.....7050
660.....7022
679.....5062, 6781
Proposed Rules:
17 .....5101, 5117, 5123, 5401, 5404, 5959, 6819
21.....6978
226.....6394
300.....6395
622.....5128
648.....6608

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 10, 2005

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Beef promotion and research; published 2-10-05

AGRICULTURE DEPARTMENT

Energy Office, Agriculture Department

Farm Security and Rural Investment Act of 2002:

Biobased products; designation guidance for federal procurement; published 1-11-05

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Highly migratory species; published 2-10-05

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

West Virginia; published 2-10-05

Pesticides; emergency exemptions, etc.

Removal of expired time-limited tolerances for emergency exemptions; published 2-10-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Texas; published 1-28-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Colorado butterfly plant; published 1-11-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 1-6-05

Boeing; published 1-6-05

Gulfstream Aerospace LP; published 1-6-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Pears (winter) grown in—

Oregon and Washington; comments due by 2-14-05; published 1-13-05 [FR 05-00579]

AGRICULTURE DEPARTMENT

Agricultural Research Service

National Arboretum; conduct rules and fee schedule; comments due by 2-18-05; published 12-20-04 [FR 04-27394]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Critical habitat designations—

Pacific salmon and steelhead; comments due by 2-14-05; published 12-14-04 [FR 04-26682]

Fishery conservation and management:

Northeastern United States fisheries—

Monkfish; comments due by 2-14-05; published 1-14-05 [FR 05-00755]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Army Department

Law enforcement and criminal investigations:

Military police investigations; comments due by 2-14-05; published 12-16-04 [FR 04-27569]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Task and delivery order contracts; contract period; comments due by 2-14-05; published 12-15-04 [FR 04-27346]

EDUCATION DEPARTMENT

Elementary and secondary education:

Troops-to-Teachers Program; selection criteria; comments due by 2-14-05; published 1-14-05 [FR 05-00861]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Natural gas companies (Natural Gas Act):

Interstate natural gas pipelines; business practices standards; comments due by 2-18-05; published 1-4-05 [FR 05-00017]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Leather finishing operations; comments due by 2-17-05; published 2-7-05 [FR 05-02304]

Air quality implementation plans; approval and promulgation; various States:

Ohio; comments due by 2-18-05; published 1-19-05 [FR 05-01032]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

National Pollutant Discharge Elimination System (NPDES)—

Storm water discharges for oil and gas construction activity disturbing 1 to 5 acres of land; postponement; comments due by 2-17-05; published 1-18-05 [FR 05-00930]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

FEDERAL TRADE COMMISSION

Children's online privacy protection rule; personal information collection, use, or disclosure; parental consent; comments due by 2-14-05; published 1-14-05 [FR 05-00877]

GOVERNMENT ACCOUNTABILITY OFFICE

Practice and procedure:

Bid protest regulations; comments due by 2-18-

05; published 12-20-04 [FR 04-27615]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

Massachusetts; comments due by 2-14-05; published 12-15-04 [FR 04-27472]

New Jersey; comments due by 2-15-05; published 12-17-04 [FR 04-27675]

New York; comments due by 2-14-05; published 12-15-04 [FR 04-27470]

Virginia; comments due by 2-14-05; published 12-30-04 [FR 04-28548]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

FHA programs; introduction:

Multifamily accelerated processing; lender quality assurance enforcement; comments due by 2-15-05; published 12-17-04 [FR 04-27535]

Mortgage and loan insurance programs:

Federal Housing Administration Credit Watch Termination Initiative; revisions; comments due by 2-15-05; published 12-17-04 [FR 04-27536]

Public and Indian housing:

Demolition or disposition of public housing projects; comments due by 2-14-05; published 12-15-04 [FR 04-27206]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations—

Coachella Valley milk-vetch; comments due by 2-14-05; published 12-14-04 [FR 04-26690]

Western snowy plover; Pacific Coast population; comments due by 2-15-05; published 12-17-04 [FR 04-26877]

Migratory bird hunting:

Alaska; spring/summer migratory bird subsistence harvest; comments due by 2-18-05; published 12-20-04 [FR 04-27776]

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Noncriminal justice administrative functions; outsourcing procedures; comments due by 2-14-05; published 12-16-04 [FR 04-27488]

INTERIOR DEPARTMENT

National Indian Gaming Commission

Management contract provisions:

Minimum internal control standards; comments due by 2-18-05; published 1-11-05 [FR 05-00448]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Securities offerings (Regulation M); anti-manipulation rules; comments due by 2-15-05; published 12-17-04 [FR 04-27434]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 2-18-05; published 1-19-05 [FR 05-00993]

BAE Systems (Operations) Ltd.; comments due by 2-18-05; published 1-19-05 [FR 05-00994]

Boeing; comments due by 2-17-05; published 1-3-05 [FR 04-28667]

Bombardier; comments due by 2-18-05; published 12-20-04 [FR 04-27507]

Airworthiness standards:

Special conditions—

AMSAFE, Inc.; Mooney Model M20K, M20M, M20R, and M20S airplanes; comments due by 2-18-05; published 1-19-05 [FR 05-00973]

Class E airspace; comments due by 2-14-05; published 12-30-04 [FR 04-28555]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Door locks and retention components and side impact protection; comments due by 2-14-05; published 12-15-04 [FR 04-27215]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Transportation—

Primary lithium batteries and cells; prohibition aboard passenger aircraft; comments due by 2-14-05; published 12-15-04 [FR 04-27423]

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Tax-sheltered annuity contracts; comments due by 2-14-05; published 11-16-04 [FR 04-25237]

TREASURY DEPARTMENT

United States Mint

Operations and procedures:

Misuse of words, letters, symbols, or emblems of United States; civil penalties assessment; comments due by 2-18-05; published 1-12-05 [FR 05-00543]

TREASURY DEPARTMENT

Terrorism Risk Insurance Program:

Additional claims issues; insurer affiliations; comments due by 2-17-05; published 1-18-05 [FR 05-00925]

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*.

A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

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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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